89TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 1678

2208 -

CIVIL RIGHTS ACT OF 1966

JUNE 30, 1966.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. RODINO, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 14765]

The Committee on the Judiciary, to whom was referred the bill (H.R. 14765) to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill do pass.

The amendment is as follows: Strike out all after the enacting clause and insert in lieu thereof the following:

That this Act may be cited as the "Civil Rights Act of 1966."

TITLE I

SEC. 101. The analysis and sections 1861 and 1863 through 1869 of chapter 121 of title 28, United States Code, are amended to read as follows:

"CHAPTER 121—JURIES; TRIAL BY JURY

"Sec.
"1861. Declaration of policy.
"1862. Discrimination prohibited.
"1863. Jury commission.
"1864. Master jury wheel.
"1865. Drawing of names from the master jury wheel.
"1866. Qualifications for jury service.
"1867. Challenging compliance with selection procedures.
"1868. Maintenance and inspection of records.
"1869. Exclusion from jury service.
"1870. Definitions.
"1871. Fees.
"1872. Exemptions.
"1873. Challenges.
"1874. Issues of fact in Supreme Court.
"1875. Admiralty and maritime cases.
"1876. Actions on bonds and specialties.

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"§ 1861. Declaration of policy

"It is the policy of the United States that all litigants in Federal Courts entitled to trial by jury shall have the right to a jury selected from a cross section of the community in the district or division wherein the court convenes.

"It is further the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in the district courts of the United States and shall have an obligation to serve as jurors when summoned for that purpose.

"§ 1862. Discrimination prohibited

"No citizen shall be excluded from service as grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

"§ 1863. Jury commission

"(a) There shall be a jury commission for each district court of the United States composed of the clerk of the court and a citizen appointed by the court as a jury commissioner: *Provided,* That the court may establish a separate jury commission for one or more divisions of the judicial district by appointing an additional citizen as a jury commissioner to serve with the clerk for such division or divisions. The jury commissioner shall during his tenure in office reside in the judicial district or division for which appointed, shall not belong to the same political party as the clerk serving with him, and shall receive compensation to be fixed by the chief judge of the district at a rate not to exceed $50 per day for each day necessarily employed in the performance of his duties.

"(b) In the performance of its duties, the jury commission shall act under the supervision of the chief judge of the district.

"§ 1864. Master jury wheel

"(a) Each jury commission shall maintain a master jury wheel and shall place in the master wheel names selected at random from the voter registration lists of persons residing in the judicial district or division it serves: *Provided,* That the judicial council of the circuit, with such advice as the chief judge of the district may offer, shall prescribe some other source or sources of names for the master wheel in addition to the voter registration lists where necessary, in the judgement of the council, to protect the rights secured by section 1862 of this title.

"(b) The jury commission shall place in the master wheel the names of at least 1 per centum of the total number of persons listed on the voter registration lists for the district or division (or, if sources in addition to voter registration lists have been prescribed pursuant to subsection (a), at least 1 per centum of the total number of persons of voting age residing in the district or division according to the most recent decennial census): *Provided,* That in no event shall the jury commission place in the master wheel the names of fewer than two thousand persons.

"(c) The master jury wheel shall contain names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division.

"(d) The chief judge of the district shall prescribe, by rule, definite and certain procedures to be followed by the jury commission in making the random selection of names required by subsections (a), (b) and (c) of this section.

"(e) State, local, and Federal officials having custody, possession, or control of voter registration lists or other appropriate records shall make such lists and records available to the jury commission for inspection, reproduction, and copying at all reasonable times as the commission may deem necessary and proper for the performance of its duties under this title. The district courts shall have jurisdiction upon application by the Attorney General to compel compliance with this subsection by appropriate process.

"(f) The jury commission shall in accordance with this section (1) from time to time, as necessary, place additional names in the master wheel and (2) between November 15 and December 31 of each even-numbered year empty and refill the master wheel.

"§ 1865. Drawing of names from the master jury wheel

"(a) From time to time as necessary the jury commission shall publicly draw from the master jury wheel the names of as many persons as may be required for jury service, prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to sections 1867 and 1868 of this title and summon by certified mail the persons whose names are drawn. Each person

whose name is drawn, unless he claims exemption from jury service pursuant to section 1872 of this title and subsection (b) of this section, shall appear before the clerk and fill out a juror qualification form to be prescribed by the Administrative Office of the United States Courts in consultation with the Attorney General. The form shall elicit his name, address, age, sex, education, race, occupation, length of residence within the judicial district, prior jury service, and citizenship and whether he has any physical or mental infirmity impairing his capacity to serve as a juror, is able to read, write, speak, and understand the English language, and has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The clerk shall examine the form to determine whether it is filled out completely and responsively and shall call any omissions or apparent errors to the attention of such person who shall make such corrections or additions as may be necessary. If any person summoned is unable to fill out the form, the clerk shall do it for him and indicate on the form the fact that he has done so and the reason therefor: *Provided*, That in any district or division where the chief judge of the district with the concurrence of the judicial council of the circuit determines that the requirement of a personal appearance before the clerk, to fill out a juror qualification form would entail undue hardship or undue inconvenience for persons whose names are drawn from the master wheel, the clerk shall mail to every person whose name is drawn from the master jury wheel a juror qualification form with instructions to fill out and return the form duly signed to the clerk by mail within ten days. Any person who fails to return a juror qualification form as instructed shall be summoned by the clerk forthwith to appear before the clerk to fill out a juror qualification form.

"(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both: *Provided*, That any person summoned (or to whom a juror qualification form has been mailed by the clerk for execution) who is exempt from jury service pursuant to section 1872 of this title may state the basis for his exemption in the space provided on the summons (or juror qualification form) and return the summons (or juror qualification form) duly signed to the clerk by mail. Any person who willfully misrepresents a material fact concerning his exemption from jury service or concerning his qualifications for jury service on a summons or juror qualification form for the purpose of avoiding service as a juror may be fined not more than $100 or imprisoned not more than three days, or both.

"§ 1866. Qualifications for jury service

"(a) The jury commission shall determine solely on the basis of information provided on the juror qualification from or the returned summons whether a person is qualified for or exempt from jury service: *Provided*, That such determination shall be made by the court if other objective evidence obtained by the jury commission indicates that a person is not qualified pursuant to subparagraphs (1), (3), or (4) of subsection (b) hereof. The jury commission shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list. Whenever a person is determined to be not qualified for jury service, the jury commission shall note on the space provided on the the juror qualification form the specific ground of disqualification.

"(b) In making such determination the jury commission or the court shall deem any person qualified to serve on grand and petit juries in the district court unless he—

"(1) is not a citizen of the United States twenty-one years old who has resided for a period of one year within the judicial district;

"(2) is unable to read, write, speak, and understand the English language;

"(3) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

"(4) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(c) The jury commission shall maintain a qualified juror wheel and shall place in such wheel names of persons determined to be qualified as jurors. From time to time, the jury commission shall publicly draw from the qualified juror wheel

such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

"(d) When the court orders a grand or petit jury to be drawn the clerk shall issue summons for the required number of jurors and deliver them to the marshall for service.

"Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or business address.

"Such service shall be made by the marshal who shall attach to his return the addressee's receipt for the registered or certified summons, where service is made by mail.

"§ 1867. Challenging compliance with selection procedures

"(a) In criminal cases, prior to the introduction of evidence at trial, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The defendant shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with this title.

"(b) In criminal cases, before the petit jury is sworn, the Attorney General may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The Attorney General shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title."

"(c) In civil cases, prior to the introduction of evidence at trial, any party may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The moving party shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a jury in conformity with this title.

"(d) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime or a party in a civil case may challenge any jury in his case on the ground that such jury was not selected in conformity with sections 1864, 1865, or 1866 of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries.

"(e) The contents of any records or papers produced pursuant to subsections (a), (b) or (c) of this section shall not be disclosed, except as may be necessary in the preparation or presentation of the case, until after the master jury wheel has been emptied and refilled pursuant to section 1864(f) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service: *Provided*, That the parties in a case shall be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the pendency of the case. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

"§ 1868. Maintenance and inspection of records

"After the master jury wheel is emptied and refilled pursuant to section 1864(f) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers

compiled and maintained by the jury commission before the master wheel was emptied shall be preserved by the commission in the custody of the clerk for four years or for such longer period as may be ordered by a court and shall be available for public inspection.

"§ 1869. Exclusion from jury service

"(a) Except as provided in section 1872 of this title, no person or class of persons shall be excluded, excused or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court for not more than six months at a time upon a showing of undue hardship or extreme inconvenience or (2) excluded by the court upon a finding that such person may be unable to render impartial jury service or that his service as a juror would disrupt the proceedings, *or (3) excluded upon preemptory challenge as provided by law.* Whenever a person is excused or excluded from jury service, the jury commission shall note in the space provided on his juror qualification form the specific ground of excuse or exclusion.

"(b) In any two-year period, no person shall be required to (1) serve as a petit juror for more than thirty calendar days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

"§ 1870. Definitions

"For purposes of this chapter—

"(a) 'clerk' and 'clerk of the court' shall mean the clerk of the United States district court or any deputy clerk.

"(b) 'voter registration lists' shall mean the official records maintained by State or local election officials of persons registered to vote in the most recent general election for candidates for Federal office or, in the case of a State which does not require registration as a prerequisite to voting, such other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the lists maintained by the appropriate State or local officials.

"(c) 'division' shall mean one or more divisions of a judicial district established by statute, and, in judicial districts where no divisions are established by statute, shall mean such counties, parishes, or similar political subdivisions surrounding the places where court is held as the chief judge of the district shall determine.

"(d) 'district court of the United States', 'district court', and 'court' shall mean courts constituted under chapter 5 of title 28, United States Code: *Provided*, That for purposes of sections 1861, 1862, 1867, and 1869 of this chapter, these terms shall include the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia."

FEES

SEC. 102. (a) Section 1871 of title 28, United States Code, is amended by substituting "$20" for "$10" and "$25" for "$14" in the second paragraph, "$16" for "$10" in the third paragraph and "$20" for "$10" in the fourth paragraph.

(b) Section 1821 of title 28, United States Code, is amended by substituting "$20" for "$4", "10 cents" for "8 cents" and "$16" for "$8".

AMENDMENT AND REPEAL

SEC. 103. (a) Sections 1870, 1872, 1873, and 1874 of title 28, United States Code, are renumbered as sections 1873, 1874, 1875, and 1876, respectively, of that title.

(b) Section 1862 of title 28, United States Code, is renumbered as section 1872 of that title and amended to read as follows:

"§ 1872. Exemptions

"(a) The following persons shall be exempt from jury service:

"(1) Members in active service in the Armed Forces of the United States.

"(2) Members of the fire or police departments of any State, district, territory, possession, or subdivision thereof.

"(3) Public officers in the executive, legislative or judicial branches of the Government of the United States, or any State, district, territory, posses-

sion or subdivision thereof who are actively engaged in the performance of official duties.

"(b) The chief judge of the district may, by rule, exempt other occupational classes of persons from jury service based on a finding that—

"(1) jury service would entail extreme inconvenience for such class of persons; and

"(2) requiring such persons to perform jury service may adversely affect the public interest: and

"(3) exemption of such persons from jury service would not be inconsistent with section 1861 or 1862 of this title."

(c) Sections 13–701, 11–2301 through 2305 (except the last paragraph of section 11–2302), 11–2307 through 2312 and 7–213a of the District of Columbia Code are repealed.

(d) Except for the last paragraph of subsection (a), section 11–2306 of the District of Columbia Code is repealed and a new subsection (b) is added to the section as follows: "(b) The jury commission for the district court for the District of Columbia shall draw from the qualified jury wheel from time to time as may be required the names of persons to serve as jurors in the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia and such persons shall be assigned to jury panels in the General Sessions and Juvenile courts as those courts shall direct."

(e) Section 16–1312 of the District of Columbia Code is amended by substituting "section 1866 of title 28, United States Code" for "section 11–2301" in subsection (a) (1) and by substituting "chapter 121 of title 28, United States Code," for "chapter 23 of title 11" in subsection (c).

(f) Section 22–1414 of the District of Columbia Code is amended by inserting the words "or wheel" immediately following the word "box" each time it appears therein.

EFFECTIVE DATE

SEC. 104. Sections 101 and 103 of this title shall become effective one hundred and eighty days after the date of enactment: *Provided*, That such sections shall not apply in any case in which an indictment has been returned or petit jury impaneled prior to such effective date.

TITLE II

DISCRIMINATION PROHIBITED

SEC. 201. No citizen shall be excluded from service as grand or petit juror in any State court on account of race, color, religion, sex, national origin, or economic status.

SUITS BY THE ATTORNEY GENERAL

SEC. 202. (a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in any act or practice which would deny or abridge any right secured by section 201 of this title, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for an injunction, restraining order, or other order against a State, any political subdivision thereof, or any official of such State or political subdivision. In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether any aggrieved party shall have exhausted any administrative or other remedies that may be provided by law. Any action pursuant to this section shall be in every way expedited.

APPROPRIATE RELIEF

SEC. 203. If in any proceeding instituted pursuant to this title or any other law authorizing proceedings for injunctive relief, the district court finds that any right secured by section 201 has been denied or abridged, it may, in addition to any other relief, enter an order, effective for such period of time as may be appropriate—

(a) Prohibiting or suspending the use of any qualification for jury service or any basis for excuse, exemption, or exclusion from jury service which—

(1) violates or has been applied in violation of section 201 of this title, or

(2) is so subjective as to vest in jury officials undue discretion to determine whether any person has satisfied such qualification or whether

a basis exists for excusing, exempting, or excluding any person from jury service;

(b) Requiring the use of objective criteria to determine whether any person has satisfied any qualification for jury service or whether a basis exists for excusing, exempting, or excluding any person from jury service;

(c) Requiring maintenance of such records or additional records as may be necessary to permit a determination thereafter whether any right secured by section 201 has been denied or abridged; or

(d) Appointing a master to perform such duties of the jury officials as may be necessary to assure that the rights secured by section 201 of this title are not denied or abridged.

DISCOVERY OF EVIDENCE

SEC. 204. In any proceeding instituted pursuant to section 202 of this title or section 1983 of title 42 of the United States Code, or in any criminal proceeding in any State court prior to the introduction of any evidence at trial, or in any habeas corpus, coram nobis, or other collateral proceeding in any court with respect to a judgment of conviction entered after the effective date of this title, wherein it is asserted that any right secured by section 201 of this title has been denied or abridged—

(a) The appropriate State or local officials shall furnish a written statement of jury selection information subscribed to under oath which shall contain a detailed description of the following:

(1) the nature and location of the sources from which names were obtained for inclusion in the wheel, box, or similar device;

(2) the methods used and the procedures followed in selecting names from the sources referred to in subdivision (1) of this subsection for inclusion in the wheel, box, or similar device;

(3) the methods used for selecting names of prospective jurors from the wheel, box, or similar device for testing or otherwise demonstrating their qualifications for jury service;

(4) the qualifications, tests, standards, criteria, and procedures used in determining whether prospective jurors are qualified to serve as jurors; and

(5) the methods used for summoning or otherwise calling persons for jury service and assigning such persons to grand and petit jury panels.

(b) The statement of jury selection information shall be filed with the clerk of the court in which the proceeding is pending, and a copy thereof shall be served upon the attorney for the complaining party. The statement of jury selection information shall constitute evidence on the question whether any right secured by section 201 of this title has been denied or abridged: *Provided,* That the complaining party shall be entitled to cross-examine any person having knowledge of relevant facts concerning the information to be contained in such statement and to present in addition the testimony of the jury officials, together with any other evidence, and, where there is evidence of a denial or abridgment of a right secured by section 201 of this title, any relevant records and papers used by jury officials in the performance of their duties which are not public or otherwise available.

(c) If the court determines (1) that there is probable cause to believe that any right secured by section 201 of this title has been denied or abridged and (2) that the records and papers maintained by the State are not sufficient to permit a determination whether such denial or abridgment has occurred, it shall be the responsibility of the appropriate State or local officials to produce additional evidence demonstrating that such denial or abridgment did not occur. When such evidence is not otherwise available, the State shall use such process of the court as may be necessary in order to produce the evidence, including the right to subpena witnesses.

(d) The court may direct that the contents of any records or papers produced pursuant to subsection (b) of this section shall not be disclosed (except as may be necessary in the preparation and presentation of the case) during such period of time as such records and papers are not available for public inspection under State law: *Provided,* That parties to the proceeding shall be allowed to inspect, reproduce, and copy such records and papers at all reasonable times during the pendency of the case, and that disclosure of the contents of such records and papers by the Attorney General and his representatives shall be governed by subsection (b) of section 205 of this title. Any person who discloses the contents of any records or papers in violation

of this subsection may be fined not more than $1,000, or imprisoned not more than one year, or both.

PRESERVATION AND INSPECTION OF RECORDS

SEC. 205. (a) The jury officials in all State courts shall preserve the records and papers prepared or obtained in the performance of their duties for four years after the completion of service by all persons whose consideration for service as jurors was the subject of such records and papers. Any person, whether or not a jury official, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by this subsection to be preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) Any record or paper required by subsection (a) of this section to be preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying by the Attorney General or his representative. During such period of time as such records and papers are not available for public inspection under State law, unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose the contents of any record or paper produced pursuant to this title except to Congress and any committee thereof, governmental agencies, and in the preparation and presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

DEFINITIONS

SEC. 206. For purposes of this title—

(a) "State court" shall mean any court of any State, county, parish, city, town, municipality or other political subdivision of any State;

(b) "jury official" shall mean any person or group gf persons, including judicial officers, who select, summon, or impanel persons to serve as grand or petit jurors in any State court;

(c) "wheel, box, or similar device" shall include a file, list, or other compilation of names of persons prepared by a jury official;

(d) "political subdivision" shall mean any county, parish, city, town, municipality, or other territorial subdivision of a State.

EFFECT ON EXISTING LAWS

SEC. 207. The remedies provided in this title shall not preclude any person, the United States, or any State or local agency from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries in any State court.

EFFECTIVE DATE

SEC. 208. This title shall become effective one hundred and eighty days after the date of its enactment: *Provided*, That the provisions of this title shall not apply in any case in which an indictment has been returned or a petit jury impaneled prior to such effective date.

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race, color, religion, or national origin, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny

or hinder another in the exercise of such other's lawful right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination on account of such other's race, color, religion, or national origin, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV

POLICY

SEC. 401. It is the policy of the United States to prevent discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 402. For purposes of this title—

(a) "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families.

(c) "discriminatory housing practice" means an act that is unlawful under section 403 or 404.

(d) A person shall be deemed to be in the business of building, developing, selling, renting, or leasing dwellings if he has, within the preceding twelve months, participated as either principal or agent in three or more transactions involving the sale, rental, or lease of any dwelling or any interest therein.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 403. (a) It shall be unlawful for any person who is a real estate broker, agent, or salesman, or employee or agent of any real estate broker, agent, or salesman, or any other person in the business of building, developing, selling, renting, or leasing dwellings, or any employee or agent of any such person—

(1) To refuse to sell, rent, or lease, to refuse to negotiate for the sale, rental, or lease of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(2) To discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(3) To make, print, or publish, or cause to be made, printed, or published any oral or written notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(4) To fail or refuse to show any dwelling which he is authorized to show to prospective buyers, rentors, or lessors, because of race, color, religion, or national origin, or to fail to submit promptly to his principal any offer to buy, rent, or lease because of race, color, religion, or national origin, or to fail or refuse to use his best efforts to consummate any sale, rental, or lease because of the race, color, religion, or national origin of any party to the prospective sale, rental, or lease.

(5) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available.

(6) To deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents

or may present, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

(7) To engage in any act or practice, the purpose of which is to limit or restrict the availability of housing to any person or group of persons because of race, color, religion, or national origin.

(b) Nothing in this section shall apply to an owner with respect to the sale, lease, or rental by him of a portion of a building or structure which contains living quarters occupied or intended to be occupied by no more than four families living independently of each other if such owner actually occupies one of such living quarters as his residence.

(c) Nothing in this section shall bar any religious or denominational institution, or any charitable or educational institution or organization which is operated, supervised or controlled by or in conjunction with a religious organization, or any bona fide private or fraternal organization, from giving preference to persons of the same religion or denomination, or to members of such private or fraternal organization, or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes, or fraternal principles for which it is established or maintained.

(d) Nothing in this section shall affect, or be construed to affect, any liability for payment of a real estate or other commission by any person with respect to the sale, lease, or rental of a dwelling.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 404. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 405. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by sections 403 or 404.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 406. (a) The rights granted by sections 403, 404, and 405 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 405 occurred.

(b) Upon application by any party and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for such party or parties and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, restraining order, or other order, and may award actual damages to the plaintiff, or, in the alternative, if the defendant has received or agreed to receive compensation for services during the course of which the discriminatory housing practice occurred, the court may award as liquidated damages an amount not exceeding the amount of such compensation.

(d) In the case of a civil action brought under subsection (a) alleging a discriminatory housing practice which occurs in a State, or political subdivision of a State, which has a State or local law prohibiting such practice and establishing or authorizing a State or local authority to grant or seek relief from such practice, the court, upon issuance of a temporary injunction, restraining order, or other appropriate order preserving the complainant's right to obtain all relief, including the opportunity to buy or rent the specific dwelling with respect to which the alleged practice occurred, may stay proceedings in such civil action for a period not exceeding 30 days pending referral by the court or the complainant, as ap-

propriate, to such State or local authority, *Provided*, that at the expiration of such 30-day period, the court may further stay proceedings for an additional period or pending the termination of then pending State or local enforcement proceedings, if it believes that such proceedings will proceed expeditiously and that such further stay will serve the interests of justice; in the event of such further stay, the court may continue or withdraw any orders it has previously entered in the case as the interests of justice may require. The issuance or withdrawal of any temporary injunction, restraining order, or other order entered by the court pursuant to this subsection may be conditioned upon the posting of reasonable bond or other security as may be just. If, after direction by the court, a complainant fails to make reasonable efforts to initiate appropriate proceedings under applicable State or local law, the court may, in its discretion, and in the absence of a showing of good cause for such failure, dismiss the action.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 406 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

SEC. 408. (a)(1) There is hereby established a Fair Housing Board (hereinafter referred to as the Board). The Board shall consist of five members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as chairman. No more than three members of the Board may be of the same political party.

(2) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for four years, one for three years, one for two years and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(3) The chairman shall be compensated at the rate of $25,500 per annum and the other members at the rate of $25,000 per annum.

(4) Three members shall constitute a quorum for the transaction of business.

(b) The Board may, in accordance with civil service law, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures as may be necessary to carry out its functions.

(c)(1) The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions, including the conduct of hearings hereinafter authorized.

(2) The Board is authorized to delegate to any group of three or more members any or all of the powers it may itself exercise. It is further authorized to delegate to any member or members, or to any agent or agency the authority to conduct hearings.

(d) The Secretary of Housing and Urban Development (hereinafter referred to as the Secretary) is hereby authorized to direct and supervise, under such rules and regulations as he shall establish, investigations of violations of Sections 403, 404 and 405 of this Title, either upon the receipt of a written statement of a person alleging to be aggrieved or his representative, or on the basis of information available to the Secretary indicating that there are reasonable grounds to believe that a violation may have occurred.

(e) For purposes of investigation the Secretary shall have, and for purposes of hearing the Board shall have, the same powers and shall be subject to the same conditions and limitations as are provided for the National Labor Relations Board under 29 U.S.C. 161.

(f)(1) If, upon basis of an investigation, the Secretary shall determine that a violation has occurred he shall file with the Board a written complaint indicating that such violation has taken place and stating the facts upon which his determination is founded.

(2) A copy of such written cobplaint shall be served upon the person or persons charged with the violation.

(g)(1) Upon receipt of a complaint, the Board shall set a hearing thereon, provided no such hearing shall be conducted prior to ten days after service of the complaint upon the person charged.

(2) In any such hearing the Secretary shall designate a person or persons to present evidence in support of the complaint.

(h) Except as provided in Subsections (f) and (g) of this Section, the Board shall conduct hearings and shall issue and enforce orders in the same manner and shall be subject to the same conditions and limitations and appellate procedures as are provided for the National Labor Relations Board under 29 U.S.C. 160 (b), (c), (d), (e), (f), (g), (i) and (j) and all parties to the hearing shall have the same rights as are therein provided: *Provided*, The provisions of 29 U.S.C. 160(c) relative to reinstatement of employees and to complaints under 29 U.S.C. 158 (a)(1) or (a)(2) shall be inapplicable; *And provided further*, a violation hereunder shall be treated in the same manner as an unfair labor practice under said provisions of 29 U.S.C. 160.

(i) The Secretary may delegate any power or duty herein granted or imposed to a duly designated representative.

ASSISTANCE BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 409. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 410. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 411. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 412. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE V

INTERFERENCE WITH RIGHTS

SEC. 501. Whoever, whether or not acting under color of law, by force or threat of force—

(a) injuries, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is lawfully engaging or seeking to engage in—

(1) voting or qualifying to vote, qualifying or campaigning as a candidate for elective office, in any primary, special, or general election;

(2) enrolling in or attneding any public school or public college;

(3) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(4) applying for or enjoying employment, or any perquisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the services of any employment agency;

(5) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease or occupation of any dwelling;

(6) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(7) using any vehicle, terminal, or facility of any common carrier by motor, rail, water or air;

(8) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(9) enjoying the goods, services, facilities, privileges, advantages or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments; or

(b) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person (1) to discourage such person or any other person or any class of persons from lawfully participating or seeking to participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or (2) because he has so participated or sought to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(c) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account of race, color, religion, or national origin, or because he has afforded another person or class of persons equal treatment in so participating or seeking to so participate—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

AMENDMENTS

SEC. 502. (a) Section 241 of title 18, United States Code, is amended by striking out the final paragraph thereof and substituting the following:

"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

(b) Section 242 of title 18, United States Code, is amended by striking out the period at the end thereof and adding the following: "; and if death results shall be subject to imprisonment for any term of years or for life."

TITLE VI

SEC. 601. Title III of the Civil Rights Act of 1964 (78 Stat. 246; 42 U.S.C. 2000b–2000b–3), is amended to read as follows:

"TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

"SEC. 301. The Attorney General may institute, in the name of the United States, a civil action or other proceeding for desegregation of public education and other public facilities, including an application for a permanent or temporary

injunction, restraining order, or other order, whenever he has reasonable grounds to believe that—

"(a) Any person acting under color of law has denied, or attempted or threatened to deny, any other person, on account of his race, color, religion, or national origin, the equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

"(b) Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof.

"SEC. 302. In any proceeding under section 301 the United States shall be liable for costs the same as a private person.

"SEC. 303. As used in this title, (a) 'public school' and 'public college' shall have the same meanings as in section 401(c) of title IV of this Act.

"(b) As applied to public education, 'desegregation' means the assignment of students to public school and within such schools without regard to their race, color, religion, or national origin, but 'desegregation' shall not mean the assignment of students to public schools in order to overcome racial imbalance.

"SEC. 304. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.

"SEC. 305. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility, *Provided*, That this title shall be the exclusive means whereby the Attorney General may bring suits for the desegregation of public education."

SEC. 602. Sections 407 through 410 of the Civil Rights Act of 1964 (78 Stat. 248-249; 42 U.S.C. 2000c-6—2000c-9) are hereby repealed.

TITLE VII—PRESERVATION OF ELECTION RECORDS

SEC. 701. Title III of the Civil Rights Act of 1960 (42 U.S.C. 1974-1974e) is amended by adding at the end hereof the following new section:

"SEC. 307. Any officer of election or custodian required under section 301 of this Act to retain and preserve records and papers may petition the Attorney General to permit the destruction, prior to the retention period specified in this Act, of ballots, tally sheets, or other materials relating to the casting or counting of votes. Such petition shall set forth the grounds on which destruction is sought and shall be supported by such additional information as the Attorney General may require. If in the judgement of the Attorney General the destruction of these materials will not hinder, prevent, or interfer with the accomplishment of the purposes of this Act and of the Civil Rights Acts of 1957 and 1964, and the Voting Rights Act of 1965, he may grant the petition in whole or in part, and upon such terms and conditions as he may prescribe."

TITLE VIII—MISCELLANEOUS

AUTHORIZATION FOR APPROPRIATIONS

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

SEC. 802. If any provision of this Act is held invalid, the remainder of the Act shall not be affected thereby.

PURPOSE OF THE LEGISLATION

The bill, as amended, is designed primarily to eliminate discriminatory practices in the selection of juries in the United States, to afford relief against discrimination in housing, and to strengthen the authority of the Federal Government, through criminal sanctions and civil proceedings, to protect the exercise of civil rights. To accomplish

these objectives the bill (1) establishes a uniform procedure for jury selection in Federal courts designed to insure that Federal juries are drawn from a cross-section of the community, without discrimination on account of race, color, religion, sex, national origin, or economic status; (2) prohibits discrimination on grounds of race, color, religion, sex, national origin, or economic status, in the selection of State court juries, authorizes the Attorney General to bring civil proceedings to end such discrimination, and establishes procedures to assist in determining whether such discrimination exists; (3) authorizes the Attorney General or private persons to initiate civil proceedings against public officials or private individuals who are depriving others of rights on account of race, color, religion, or national origin; (4) prohibits real estate brokers, lending institutions, other financiers, and others in the business of building, developing, buying, selling, renting, or leasing residential dwellings, from discriminating on grounds of race, color, religion, and national origin in the sale, rental, or financing of such dwellings and provides for civil remedies; (5) provides criminal sanctions for forcible interference with the exercise of enumerated Federal rights; (6) amends the Civil Rights Act of 1964 to eliminate restrictions on the authority of the Attorney General to bring suit to desegregate public schools and public facilities; and (7) allows the Attorney General to authorize destruction of voting records prior to expiration of the 22-month retention period specified in title III of the Civil Rights Act of 1960.

History of the Legislation

On April 28, 1966, the President of the United States transmitted to the Congress a message proposing legislation pertaining to civil rights. The legislation was introduced in the House of Representatives on May 2, 1966, as H.R. 14765. It provided reform of the Federal jury system, elimination of discrimination in State juries, facilitation of desegregation of public schools and public facilities, judicial relief from discrimination in housing, and provision for penalties for certain acts of violence or intimidation.

A Judiciary subcommittee conducted hearings on 51 bills dealing with various facets of civil rights. These hearings were held on May 4, 5, 10, 11, 12, 17, 18, 19, 24, and 25, 1966 (Civil Rights, 1966. Hearings before Subcommittee No. 5 of the Committee on the Judiciary, House of Representatives, 89th Cong., 2d sess., Serial No. 16).

During the course of the hearings, testimony was received relating to all aspects of the proposed legislation. The witnesses included congressional authors of legislative proposals; other Members of Congress; the Attorney General; the Secretary of Housing and Urban Development; representatives of the Civil Rights Commission; representatives of various segments of the housing industry; private citizens as well as representatives of various organizations specifically concerned with civil rights legislation. Those who did not appear personally were afforded an opportunity to submit relevant materials for the record.

Upon conclusion of the hearings, the subcommittee met in executive session for 6 days to consider the legislation. The subcommittee struck out all after the enacting clause of H.R. 14765 and inserted in lieu thereof an amendment in the nature of a substitute, which it

recommended to the full Judiciary Committee. However, the subcommittee made no amendment nor any recommendation concerning title IV of the bill, which provided judicial relief from discrimination in housing. The substitute retained the principal provisions of the original measure and added two new titles which were—

(*a*) Authorization to the Attorney General to institute civil proceedings to protect against the deprivation of rights; and

(*b*) Authorization to the Attorney General to permit destruction of voting records otherwise required to be retained under existing law.

The full Committee on the Judiciary considered the bill for nine sessions. After deliberation and consideration of H.R. 14765, as amended by the subcommittee, the committee adopted an amendment in the nature of a substitute. The substitute retained the principal provisions recommended by the subcommittee with a major amendment to title IV of the bill—prohibiting discrimination in housing—to limit its prohibitions to real estate brokers, lending institutions, and others engaged in the business of building, developing, buying, selling, renting, leasing, or financing residential housing, and to provide administrative remedies for its enforcement.

TITLE I—FEDERAL JURIES

General

Title I declares it to be the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to a jury selected from a cross section of the community in the district or division where the court convenes. It declares further the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in Federal courts and shall have an obligation to serve when summoned. It provides that no citizen shall be excluded from Federal jury service on account of race, color, religion, sex, national original, or economic status.

Title I establishes a uniform procedure for the selection of jurors in Federal court. It provides for use of voter registration rolls as the source of names of prospective Federal jurors.

The qualifications for jury service prescribed by existing law are retained, and it is provided that all persons found in accordance with objective criteria to possess such qualifications are to be deemed qualified as jurors.

Title I also provides a means for challenging jury selection in criminal and civil cases on grounds that the procedures established have not been followed. This challenge procedure is made available prospectively, and should be a major guarantee of the equal rights which are the objective of the legislation.

Section 101 amends existing law (28 U.S.C. 1861, 1863–1869, and the analysis of 28 U.S.C. ch. 121) to provide a uniform method of selecting jurors in Federal courts. Section numbers that follow refer to sections of title 28, United States Code, as amended by this title.

Section 1861 declares it to be the policy of the United States that all litigants in Federal courts entitled to trial by jury shall have the right to a jury selected from a cross section of the community in the district or division where the court convenes, and all qualified persons shall have the opportunity to serve as jurors and the obligation to serve when summoned for jury service in the Federal courts.

Section 1862 provides that no citizen shall be excluded from service as a grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

Section 1863(a) establishes a two-member jury commission for each Federal judicial district, composed of the clerk (or, by virtue of the definition of "clerk" in section 1870(a), his deputy) and a local resident to be appointed by the court. The court is also authorized to establish separate jury commissions for one or more divisions of the district and, under the definition of the word "division" in subsection 1870(c), the court may establish separate jury commissions for different places in the district where court is actually held if the district is not divided into divisions by statute. In such cases, the chief judge of the district is to designate the geographic areas (composed of counties or similar political subdivisions) surrounding the various places where court is held, and jurors are to be drawn from those areas.

The appointed jury commissioner, during his tenure in office, must be a resident of the judicial district or division in which he serves, must not belong to the same political party as the clerk serving with him, and is to be compensated at a rate, not to exceed $50 per day, fixed by the chief judge of the district.

Section 1863(b) provides that the jury commission is to act subject to the supervision of the chief judge of the district in the performance of its duties.

Section 1864(a) provides that the jury commission is to maintain a "master jury wheel" for the district or division. The master wheel is to contain names of jurors selected "at random" from the official voter registration lists of persons residing in the district or division. The procedures governing the random selection are to be prescribed by the chief judge of the district under subsection 1864(d).

The voter lists are to be the exclusive source of names of prospective jurors, unless the judicial council of the circuit determines that the use of the voter lists alone in a particular district or division might have the result of excluding from jury service a significant portion of any class of persons on any of the grounds specified in section 1862. The section requires that in such cases other sources of names must be prescribed by the judicial council to supplement, and not to supplant, voting lists. The judicial council may prescribe the use of other existing lists or it may require the compilation of new lists to supplement the voter lists.

Section 1864(b) establishes the minimum number of names to be placed in the master jury wheel. The required number would be either (1) 1 percent of the total number of registered voters in the district or division (or, in districts or divisions in which supplemental sources of names have been prescribed by the judicial council, 1 percent of the total number of persons of voting age), or (2) 2,000, whichever is greater.

Section 1864(c) requires the jury commission to place names of persons residing in each of the "counties, parishes, or similar political subdivisions" in the district (or division) in the master wheel in order to assure that Federal jurors will be drawn from all parts of the area served by the court. This section would make it impermissible to draw names only from the areas closest to the court—for example, metropolitan areas, and exclude all other persons living within the district or division.

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Section 1864(d) provides that the chief judge of each district shall prescribe by rule definite and certain procedures to be followed by the jury commission in making the random selection of names required by sections 1864 (a), (b), and (c).

Section 1864(e) provides that State, local, and Federal officials must make available to the jury commission for inspection or copying registration lists and other necessary records in their possession or control, such as those containing home addresses and similar necessary information which may not be available from precinct or other voter lists alone. This section also confers jurisdiction on the district courts, upon application by the Attorney General, to compel the appropriate officials to make their records available to the jury commission.

Section 1864(f) requires the jury commission to refill the master wheel as necessary to assure that the supply of names will not be exhausted. This subsection also requires that the wheel be emptied completely and refilled between November 15 and December 31 of each even-numbered year—that is, shortly after each general Federal election.

This section provides that when names are added to the wheel and when the wheel is emptied and refilled, the jury commission must take names only from the voter lists (or other prescribed sources) and must follow the procedures prescribed by the chief judge under 1864(d); in emptying and refilling the wheel, the commission must also comply with sections 1864 (b) and (c).

Section 1865(a) prescribes the method to be followed in drawing names from the master wheel, summoning prospective jurors, and testing their qualifications. Names are to be drawn publicly from time to time as necessary and all persons whose names are drawn are to be summoned by certified mail. Persons summoned (except persons exempt from service under section 1872) must appear at the clerk's office (unless, as further expressly provided, this procedure would entail undue hardship or inconvenience) and fill out a juror qualification form to be prescribed by the Administrative Office of the United States Courts in consultation with the Attorney General. The form would elicit the prospective juror's name, address, age, sex, education, race, occupation, length of residence within the judicial district, prior jury service, and citizenship. In addition, the form would ask whether the prospective juror has any physical or mental infirmity impairing his capacity to serve as a juror, whether he has been convicted of any disqualifying crime, and whether he is able to read, write, speak, and understand the English language.

Except as provided in section 1866, executed forms would supply all of the information necessary to a judgment whether persons summoned are qualified to serve and would provide a basis, upon a challenge motion under section 1867 (or other appropriately asserted claim of discrimination), for determining compliance with section 1862 (or with constitutional standards). The clerk is required to examine the form to determine whether it is filled out completely and responsively and, if not, shall call any omissions or apparent errors to the prospective juror's attention. The person summoned is to make such corrections or additions as may be necessary. If the person summoned is unable to fill out the form the clerk is to fill it out for him and state the reason in the space provided on the form. The section would

permit testing of qualifications and assignment of jurors in a single visit to the courthouse, where local circumstances allow.

It is expressly provided that in any district or division where the chief judge of the district, with the concurrence of the judicial council of the circuit, determines that a personal appearance before the clerk to test qualifications would entail undue hardship or undue inconvenience for persons whose names are drawn from the master jury wheel, the clerk shall mail to every person whose name is drawn from the master jury wheel a juror qualification form with instructions to fill out and return the form duly signed to the clerk by mail within 10 days. Any person who fails to return a juror qualification form as instructed must be summoned by the clerk forthwith to appear before him to fill out a form.

This section also requires the jury commissioners to prepare an alphabetical list of persons summoned and prohibits them from disclosing the contents of this list except as authorized under sections 1867 or 1868.

Section 1865(b) provides that any person summoned pursuant to section 1865(a) who fails to appear as directed shall be ordered by the court forthwith to appear and show cause for his failure to comply with the summons. This requirement applies whether all persons are originally required to appear personally to fill out a juror qualification form or whether such forms are originally mailed to prospective jurors for execution, pursuant to the provision in section 1865(a). This provision imposes a mandatory duty on the court.

Any person who fails to appear pursuant to such an order or who appears but fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than 3 days, or both.

Any person summoned who is exempt from jury service pursuant to section 1872 may state the basis for his exemption on the summons (or juror qualification from) and return it to the clark by mail. Any person who willfully misrepresents a material fact concerning his exemption from jury service or his qualification for jury service on a summons (or juror qualification form) for the purpose of avoiding service as a juror may be fined not more than $100 or imprisoned not more than 3 days, or both.

Section 1866(a) provides that the jury commission shall determine whether a person is qualified for or exempt from jury service solely on the basis of the information contained on the executed juror qualification form or returned summons. If, however, other objective evidence obtained by the jury commission indicates that a person does not possess the qualifications prescribed by subparagraphs (1), (3) or (4) of section 1866(b) (relating, respectively, to age, citizenship and residence; mental or physical infirmity; and criminal charge or conviction), the court is to determine whether that person is qualified to serve and may consider such evidence in making the determination.

The jury commission is required to enter its determination of whether a person is qualified, not qualified, or exempt in a space provided on the juror qualification form and also on the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, this fact is to be noted on the alphabetical list. Whenever a person is determined to be not qualified for jury service, the jury commission is required to note on the space pro-

vided on the juror qualification form the specific ground of disqualification.

Section 1866(b) retains the qualifications for service prescribed by existing law, except that disqualification for serious pending criminal charges has been added. A person is qualified to serve as a Federal juror unless he (1) is not a citizen of the United States 21 years old who has resided for a period of 1 year within the judicial district; (2) is unable to read, write, speak, and understand the English language; (3) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or (4) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

Every person who executes a juror qualification form and who satisfies these qualifications is to be deemed a qualified juror and his name is to be placed in the qualified juror wheel.

Section 1866(c) prescribes the procedure for selecting, from among persons already found to be qualified, those who are actually to be assigned to jury panels. The names of persons drawn from the master jury wheel and determined to be qualified as jurors are to be placed in a second wheel—the "qualified juror wheel." From time to time, the jury commission is publicly to draw from the qualified juror wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk is required to prepare a separate list of names of persons assigned to each grand and petit jury panel.

Section 1866(d) incorporates present 28 U.S.C. 1867 and sets forth the procedure for summoning persons determined to be qualified for actual jury service. The clerk is to issue the requisite number of summonses and deliver them to the marshal who, in turn, is to serve the summonses either personally or by registered or certified mail. This procedure is unnecessary and may be omitted in districts where potential jurors are summoned for testing of their qualifications and assigned to jury panels at the same time.

Section 1867(a) establishes a method for challenging compliance with the selection procedures prescribed by title I. It provides that in criminal cases, prior to the introduction of evidence at trial, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of failure to comply with section 1864, 1865, or 1866. The defendant is entitled to present in support of his challenge motion the testimony of the jury commission together with other available evidence and, where there is evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevent records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court then determines that there has been a failure to comply with section 1864, 1865, or 1866, it is required to dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with the title.

The moving party is not automatically given access to confidential records upon the filing of a challenge motion to help to prevent the use of this procedure as a delaying tactic and the use of such records for the purpose of jury tampering. But the (*section*) provides that when the moving party meets the burden of producing "evidence" of a failure to comply with section 1864, 1865, or 1866—either by the

jury commission or by the court—he is to be given access to such records and may introduce them in support of his challenge.

Section 1867(b) authorizes the Attorney General to challenge the selection of petit juries in criminal cases under procedures the same as those available to a criminal defendant, except that such a challenge must be filed before the petit jury is sworn—the point at which jeopardy usually attaches. If the court determines that there has been a failure to comply with section 1864, 1865, or 1866, the court is required to stay the proceedings pending the selection of a petit jury in conformity with title I.

Section 1867(c) provides that the selection of petit juries in civil cases may be challenged by any party in the same manner as by a defendant in criminal cases under subsection (a). If the court determines that there has been a failure to comply with section 1864, 1865, or 1866, it is required to stay the proceedings pending the selection of a petit jury in conformity with the title.

Section 1867(d) provides that the challenge procedures provided by subsections (a), (b), and (c) are the exclusive means by which a person accused of a Federal crime or a party in a civil case may challenge the selection of a grand or petit jury on the ground of failure to comply with section 1864, 1865, or 1866. This section also provides that nothing in section 1867 shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in jury selection procedures.

Section 1867(e) prohibits disclosure of the contents of any records or papers produced in connection with a challenge motion under subsection (a), (b), or (c) of this section except as disclosure may be necessary in the preparation and presentation of the case or a motion with respect thereto, until after such records or papers become available for public inspection under section 1868. Parties to the proceeding are to be allowed to inspect, reproduce, and copy such records and papers at all reasonable times during the pendency of the case, including any appeal. Violations of this subsection are punishable by a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.

Section 1868 requires the preservation of all records and papers compiled and maintained by the jury commission in the performance of its duties for a period of 4 years after use or for such longer period as may be ordered by a court.

The 4-year period begins to run after the master jury wheel is emptied and refilled pursuant to section 1864(f) and after all persons selected to serve as jurors from that master wheel have completed service. During the 4-year period, such records and papers are to be kept in the custody of the clerk and are to be available for public inspection. Prior to that time, these records and papers are to be kept confidential by the jury commission and are not to be disclosed except in connection with a challenge motion as provided in section 1867 or except as ordered by the court in other proper circumstances.

Section 1869(a) prohibits the exclusion, excuse or exemption of any class of persons on hardship or other grounds, except as provided in section 1872 (pertaining to exemptions). The section authorizes the court to excuse an individual juror for 6 months at a time upon a showing of undue hardship or extreme inconvenience. The court

would also have the power (as under existing law) to exclude an individual juror upon finding that he may be unable to render impartial jury service, or that his service would disrupt the proceedings. In addition, individual jurors may be excluded upon peremptory challenge in accordance with present law.

Section 1869(b) probides that during any 2-year period, no person can be required to serve (1) as a petit juror for more than 1 month, except where necessary to finish service on a particular case; (2) on more than one grand jury; or (3) as both a grand and petit juror.

Section 1870(a) defines "clerk" and "clerk of the court" to mean the clerk of the U.S. district court or any deputy clerk.

Section 1870(b) defines "voter registration lists" to mean official records of persons registered to vote in the most recent general Federal election. The definition includes appropriate lists of qualified voters (such as lists of persons who have actually voted) in States (like Alaska) which do not require registration as a prerequisite to voting and includes eligibility lists prepared by Federal examiners in any area where the names on such lists have not been placed on the State voting rolls.

Section 1870(c) defines "division" to mean one or more divisions of a judicial district established by statute, and, in districts in which no divisions are established by statute, such counties or similar political subdivisions surrounding the places where court is actually held as determined by the chief judge of the district. This definition allows the chief judge of the district, pursuant to section 1863(a), to constitute separate jury commissions to select juries for one, two, or more divisions (or for different places of holding court), so long as, consistent with subsection 1864(c), the voter lists from each county or similar political subdivision of the district are used as a source of names for one of the master wheels in the district.

Section 1870(d) defines the terms "district court of the United States," "district court," and "court" to mean courts constituted under chapter 5 of title 28 of the United States Code. The proviso in this definition makes sections 1861, 1862, 1867, and 1869 applicable to the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia, both of which conduct jury trials.

Section 102 increases fees for grand or petit jury service from $10 to $20 per day, and increases from $14 to $25 per day the amount the court may allow for service over 30 days, instead of the present $14. This provision also increases per diem subsistence payments from $10 to $16 per day.

Section 103(a) renumbers certain provisions of the present law that are being retained.

Section 103(b) provides for exemption of classes of persons from jury service. It retains present 28 U.S.C. 1862 (to be renumbered as 28 U.S.C. 1872) which exempts servicemen, firemen, policemen, and certain types of public officials. In addition, it authorizes the chief judge of the district, by rule, to exempt other occupational classes of persons from jury service based on a finding that (1) jury service would entail extreme inconvenience for such class of persons, and (2) requiring such persons to perform jury service may adversely affect the public interest, and (3) exemption of such persons from jury service would not be inconsistent with sections 1861 and 1862 of this title.

Section 103(c) repeals most of the provisions of the District of Columbia Code which now govern the selection of juries from the U.S. district court and the general sessions and juvenile courts which conduct jury trials in the District of Columbia, since such courts will become subject to the provisions of title I.

Section 103(d) repeals all but the last paragraph of subsection (a) of section 11–2306 of the District of Columbia Code and substitutes a new subsection (b) which provides (as in existing law) that the jury commission for the District Court for the District of Columbia shall draw jurors for the general sessions and juvenile courts in the District as they are needed in accordance with the procedures prescribed by this title. Jurors drawn for these courts are to be assigned to panels as those courts direct.

Section 103 (e) and (f) make minor technical changes to conform the jury selection procedure in the District of Columbia to the selection procedures prescribed by this title.

Section 104 provides that sections 101 and 103 of this title; i.e., all provisions except those increasing juror and witness fees, shall become effective 180 days following the date of enactment. This section also provides, however, that this title shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to its effective date.

TITLE II—STATE JURIES

General

Title II of the bill is based on the power of Congress to enforce the 14th amendment by "appropriate legislation" and is designed to eliminate unconstitutional discrimination in the selection of grand and petit juries in State courts. This title provides that no citizen shall be excluded from service as a grand or petit juror in any State court on account of race, color, religion, sex, national origin, or economic status. In areas in which such discrimination is not practices, existing jury selection procedures would not be upset, but where discrimination exists, this title provides the means to eliminate it.

Title II has two principal features. First, it authorizes the Attorney General to bring civil proceedings for injunctive relief against discriminatory practices in State court jury selection. This authority would be similar to the authority the Attorney General now has to seek injunctions against discrimination in voting, public accommodations and employment and, under title VI of this bill, against discrimination in public schools and facilities.

Upon a finding of discrimination, the court is expressly authorized to grant specified kinds of effective relief which are specially tailored to deal with the problem of jury discrimination. In addition, the court may grant other appropriate relief under general equitable principles.

The second principal feature of this title deals with the need for disclosure and development of information relevant to the question whether discrimination results from the system for selecting jurors. This objective is accomplished by a challenge procedure which may be used by the Attorney General in a suit under this title, private litigants residing in the area who seek to enforce the prohibition against discrimination, or a defendant in a criminal case or convicted person attacking collaterally a criminal conviction.

Upon the filing of an allegation of discrimination appropriate State officials are required to furnish a detailed description of the procedures followed by them in selecting jurors. The complaining party may then introduce any other available relevant evidence in support of the challenge, and, if there is evidence of discrimination, the complaining party is given access to any other relevant records of jury selection which are not otherwise publicly available. If the court then determines that there is probable cause to believe that discrimination has occurred, it is the responsibility of the State to produce additional evidence demonstrating that the alleged discrimination did not occur.

Section 201 provides that no citizen shall be excluded from service as a grand or petit juror in any State court on account of race, color, religion, sex, national origin, or economic status. Unlike title I, title II does not prescribe a particular jury selection system which State courts must employ.

Section 202(a) authorizes the Attorney General to institute civil actions or other appropriate proceedings for preventive relief whenever he has reasonable grounds to believe that State jury officials have engaged or are about to engage in any act or practice which would deny or abridge any right secured by section 201. The State or political subdivisions thereof may be joined as parties and relief may be granted against them as well as against jury officials.

In such proceedings, the United States would be liable for costs the same as a private person.

Section 202(b) confers jurisdiction on the Federal district courts of proceedings instituted pursuant to this title and provides that such courts shall exercise jurisdiction without regard to whether aggrieved parties have exhausted any other available remedies, and that such actions shall be expedited.

Section 203 provides that, in proceedings instituted pursuant to this title or pursuant to any other law authorizing proceedings for injunctive relief (e.g., 42 U.S.C. 1983), if the Federal district court finds that any right secured by section 201 has been denied or abridged, it is authorized to grant, in addition to any other appropriate relief, four types of relief, to be effective for such period of time as may be appropriate.

First, the court may prohibit or suspend the use of any qualification for jury service, or any basis for excuse, exemption, or exclusion from jury service, which violates on its face or has been applied in violation of section 201, or which is so subjective as to vest in jury officials undue discretion to determine whether any person has satisfied such qualification or whether a basis exists for excusing, exempting, or excluding any person from jury service.

Second, the court would be authorized to require the use of objective criteria in determining qualifications, exemptions, exclusions, or excuses. This authority complements the authority to suspend the use of subjective criteria which vest undue discretion in jury officials and assures that such officials will have adequate guidance in discharging their duties.

Third, the court may require the jury officials to maintain in the future such records as may be necessary readily to permit a definite determination whether unlawful discrimination is being practiced. This provision is designed to meet the case where jury officials have not maintained adequate records in the past. The court may require

the future maintenance of records over and above recordkeeping requirements prescribed by State law.

Fourth, the court would be authorized to appoint a master responsible to it to perform the duties of the jury officials in cases where this may be necessary to assure that discrimination will cease.

Each of the above types of relief could presently be granted by the Federal district courts under 42 U.S.C. 1983, and established equitable principles. Section 203 confirms this authority and makes it clear that the courts may utilize such authority in order to frame effective relief where warranted by the facts. The courts are to grant other relief as may be necessary or appropriate.

Section 204 is designed to facilitate the disclosure of relevant evidence whenever jury discrimination is appropriately alleged and to require the appropriate State officials to disprove the allegation where there is probable cause to believe that such discrimination has occurred. The Attorney General in a suit under section 202 of this title, litigants in civil actions under 42 U.S.C. 1983, defendants in criminal cases in any State court prior to the introduction of any evidence at trial, and persons attacking criminal convictions in habeas corpus, coram nobis, or other collateral proceedings in Federal or State courts with respect to a judgment of conviction entered following the effective date of this title may invoke this provision by asserting that any right secured by section 201 has been denied or abridged. Existing discovery procedures under State and Federal law are left undisturbed by this section.

Section 204(a) provides that upon the filing of a claim that a right secured by section 201 has been denied or abridged, the appropriate State or local officials are required to furnish a sworn "written statement of jury selection information" which must contain a detailed description of the following:

(1) the nature and location of the sources from which names of potential jurors were obtained for inclusion in the jury wheel, box, or similar selection device;

(2) the methods and procedures followed in selecting names from such sources;

(3) the methods used for selecting names of prospective jurors from the wheel, box, or similar selection device for testing or otherwise demonstrating their qualifications for jury service;

(4) the qualifications, tests, standards, criteria, and procedures used in determining whether prospective jurors are qualified to serve as jurors; and

(5) the methods used for summoning persons for jury service and assigning them to grand and petit jury panels.

The court may compel compliance with this requirement by an order, followed, where necessary, by contempt proceedings or if compliance is not then forthcoming, by entering judgment for the complainant.

Section 204(b) provides that the written statement of jury selection information is to be filed with the clerk of the court in which the proceeding is pending and a copy is to be served on the attorney for the complaining party. The statement constitutes evidence on the question whether any right secured by section 201 has been denied or abridged and, in addition, the complaining party has the right to cross-examine any persons having knowledge of the relevant facts concerning the information to be contained in the statement. The

complaining party may also present the testimony of jury officials together with other available evidence in support of his allegations.

If, at that point, the court determines that there is evidence of a denial or abridgement of a right secured by section 201, the complaining party is to be given access to any relevant records and papers used by the jury officials in the performance of their duties which are not public or otherwise available.

Section 204(c) provides that if, after the jury records have been disclosed, the court determines that there is probable cause to believe that any right secured by section 201 has been denied or abriged and that such records are not sufficient to permit a determination whether any such right has been denied or abriged, it becomes the responsibility of the appropriate State or local officials to produce, if they can, additional evidence demonstrating that discrimination did not occur. If such evidence is not otherwise available, the State officials are required to use such process of the court, including the subpena power, as may be necessary to produce it. If the State officials nevertheless fail to produce such evidence, the court is to sustain the claim of discrimination and grant the appropriate relief.

Section 204(d) authorizes the court to direct that the contents of any records or papers produced pursuant to subsection (b) shall not be disclosed—except as necessary in the preparation and presentation of the case—during such time as they would not be available for inspection under State law. However, parties to the proceeding are to be allowed to inspect, reproduce, and copy such records and papers at all reasonable times while the case (including appeals) is pending. Disclosure of such records by the Attorney General is to be governed by subsection 205(b) (described below). Violations of this subsection are punishable by a fine of not more than $1,000 or imprisonment for not more than 1 year, or both.

Section 205(a) requires State jury officials to preserve all records prepared or obtained in the performance of their duties for 4 years after use. The phrase "prepared or obtained" is intended to cover lists, questionnaires, memorandums, correspondence and other papers actually prepared by the jury officials and also any records or papers obtained by them for their use; e.g., copies of voter lists, telephone books, city directories, and the like. The 4-year period begins to run after completion of jury service by all persons whose consideration for service was the subject of such records and papers. Under this requirement, if the jury officials continue to use the same sources of names or other records for an indefinite period of time, they must preserve such sources and other records indefinitely. On the other hand, if the wheel or box is emptied periodically (as under the federal system) the 4-year period would begin to run with respect to old source lists and other records after the box is emptied and persons drawn for service as jurors from the box complete such service.

This section also provides that any person, whether or not a jury official, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by this section to be preserved shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

Section 205(b) contains a provision that is similar to title III of the Civil Rights Act of 1960 and authorizes the Attorney General to inspect, reproduce, and copy voter registration records upon demand at all reasonable times without regard to whether he has filed a lawsuit

in which such records may be relevant. This subsection authorizes inspection and copying of jury records and forbids disclosure of such records by the attorney General during such period of time as they may be unavailable for public inspection under State law, except as disclosure may be ordered by a Federal court and except that disclosure may be made to Congress, other governmental agencies, and in the preparation and presentation of a case or proceeding before a court or grand jury. The Federal district court in the area in which such records are located is given jurisdiction to compel their production by appropriate process.

Section 206

Subsection (a) defines the term "state court" to include any court of any State, county, parish, city, town, municipality, or other political subdivision of any State. This definition is intended to cover all State and local courts of every kind whatsoever.

Subsection (b) defines the term "jury official" to mean any person or group of persons, including "judicial officers"; i.e., judges, who select, summon or impanel grand or petit juries in any State court. This definition is intended to cover any person who has any duty relating to the selection of jurors in State courts.

Subsection (c) provides that the phrase "wheel, box, or similar device" means the jury selection devices ordinarily connoted by those terms and includes as well any file, list, or other compilation of names of persons prepared by a jury official.

Subsection (d) defines the term "political subdivision" to mean any county, parish, city, town, municipality, or other territorial subdivision of any State.

Section 207 provides that the remedies provided in this title shall not preclude private individuals, the United States, or State or local agencies from pursuing any other available remedies, civil or criminal, for enforcing or vindicating any law prohibiting discrimination on account of race, color, religion, sex, national origin or economic status in the selection of juries in State courts. This provision is similar in scope and purpose to the last sentence of subsection 1867(d) of title I.

Section 208 provides that title II shall become effective 180 days following the date of its enactment, provided that the title is not to apply in any case in which an indictment has been returned or a petit jury impaneled prior to its effective date.

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

Section 301 authorizes the Attorney General to institute civil actions for preventive or mandatory relief whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race, color, religion, or national origin. The aggrieved person is also authorized to institute civil proceedings for similar relief on his own behalf.

Section 302 authorizes the Attorney General to institute civil actions for preventive or mandatory relief whenever there are reasonable grounds to believe that any person is about to engage or continue

to engage in any act or practice which would deny or hinder another in the exercise of such other's lawful right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination on account of race, color, religion, or national origin. As under section 301, the aggrieved person may also institute such proceedings in his own behalf.

Section 303 confers jurisdiction on the Federal district courts of proceedings instituted under this title and provides that such courts shall exercise jurisdiction without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States is to be liable for costs as a private person in such proceedings.

TITLE IV

Section 401 declares that it is the policy of the United States to prevent discrimination on account of race, color, religion, or national origin in the purchase, rental, financing, use, and occupancy of housing throughout the Nation.

Section 402(a) defines "person" to include one or more individuals, corporations, partnerships, labor organizations, or other legal entities.

Section 402(b) defines "dwelling" to include any building or structure or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged, for residential use by one or more individuals or families.

Section 402(c) defines "discriminatory housing practice" as an act that is unlawful under sections 403 or 404.

Section 402(d) provides that a person shall be deemed to be in the business of building, developing, selling, renting, or leasing dwellings if he has, within the preceding 12 months, participated as either principal or agent in three or more transactions involving the sale, rental, or lease of a dwelling or an interest in a dwelling.

Section 403(a) makes it unlawful for any person who is a real estate broker, agent, or salesman, or employee or agent of any real estate broker, agent, or salesman, or any other person in the business of building, developing, selling, renting, or leasing dwellings, or any employee or agent of such persons (1) to refuse to sell, rent, or lease, or negotiate for the sale, rental, or lease of, or otherwise deny, a dwelling to any person because of race, color, religion, or national origin; (2) to discriminate in the terms, conditions, or privileges of sale, rental, or lease, or in the provision of services or facilities in connection therewith because of race, color, religion, or national origin; (3) to make, print, or publish, or cause to be made, printed, or published, any oral or written notice or advertisement with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination; (4) to refuse or fail to show a dwelling which he is authorized to show, because of race, color, religion, or national origin, or to fail to submit promptly to his principal any offer to buy, rent, or lease because of race, color, religion, or national origin or to fail or refuse to use his best efforts to consummate any sale, rental, or lease because of the race, color, religion, or national origin of any party to the prospective sale, rental, or lease; (5) to represent to any person

because of race, color, religion, or national origin that a dwelling is not available for inspection, sale, rental, or lease when it is in fact so available; (6) to deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings; or (7) to engage in any act or practice the purpose of which is to limit or restrict the availability of housing to any person because of race, color, religion, or national origin.

Section 403(b) exempts an owner from coverage under the section with respect to the sale, rental, or lease of a portion of a building containing living quarters occupied or intended to be occupied by no more than four families living independently of each other if the owner occupies one of such living quarters as his residence.

Section 403(c) permits any religious or denominational institution, or any charitable or educational institution or organization which is operated, supervised, or controlled by or in conjunction with a religious organization, or any bona fide private or fraternal organization, to give preference to persons of the same religion or denomination, or to members of such private or fraternal organization, or to make such selection as is calculated to promote the religious principles or the aims, purposes, or fraternal principles for which it is established or maintained.

Section 403(d) provides that nothing in the title shall affect any liability for payment of a real estate or other commission.

Section 404 makes it unlawful for any bank, savings and loan institution, credit union, insurance company, or other lender of money for the purchase, construction, improvement, repair, or maintenance of dwellings to refuse to make such loans, or to discriminate in the terms or conditions thereof, because of the race, color, religion, or national origin of the borrower or of the prospective occupants of the dwellings involved.

Section 405 prohibits any person from intimidating, threatening, coercing, or interfering with, any person in the exercise or enjoyment of, or because he has exercised or enjoyed or aided or encouraged another in the exercise or enjoyment of, any right granted by section 403 or 404.

Section 406(a) authorizes the initiation of civil actions in appropriate Federal district courts and State courts to enforce the rights granted in sections 403, 404, and 405. Any such action must be brought within 6 months after the violation occurred.

Section 406(b) authorizes a Federal court to waive the payment of fees, costs, or security in any civil action brought under section 406(a) and to appoint an attorney for any party or parties under such circumstances as it considers just. State and local courts are also given such authority to the extent their laws and procedure allow.

Section 406(c) authorizes the court to grant appropriate relief, including injunctive relief, and to award actual damages or, in the alternative, if the defendant has received or agreed to receive compensation for services during the course of which the discriminatory housing practice occurred, to award as liquidated damages an amount not exceeding such compensation.

Section 406(d) provides that when a case is brought under section 406(a) alleging a discriminatory housing practice prohibited by an

applicable State or local law and from which relief can be obtained under State or local law, the court may, upon issuance of a temporary injunction or other appropriate order preserving the complainant's right to obtain all relief, including the opportunity to buy or rent the specific dwelling with respect to which the alleged discriminatory housing practice occurred, stay the action for up to 30 days pending referral by the court or by the complainant, as appropriate, to relevant State or local authorities. At the end of such stay, the court may order a further stay for such additional period as it deems appropriate or pending termination of State or local proceedings, if it believes the State or local proceedings will proceed expeditiously and that a further stay will serve the interests of justice. In the event of such a further stay, the court may continue or withdraw any orders it has previously issued, as justice requires. Issuance or withdrawal of any temporary injunction or other order may be conditioned upon the posting of reasonable bond or other security. If the court directs the complainant to make reasonable efforts to initiate appropriate proceedings under applicable State or local law and the complainant fails to do so and does not show good cause for such failure, the court may, in its discretion, dismiss the action.

Section 407(a) authorizes the Atrorney General to bring a civil action for preventive relief whenever he has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by title IV.

Section 407(b) authorizes the Attorney General to intervene in a civil action brought by a private person in a Federal court under this title, if he certifies that the action is of general public importance. In such cases, the United States shall be entitled to the same relief as if it had instituted the action.

Section 408(a) establishes a Fair Housing Board of five members appointed by the President with the advice and consent of the Senate. No more than three members of the Board may be of the same political party. Members will have staggered terms of 5 years each, and shall be compensated at the rate of $25,000 per annum, except for the chairman, designated by the President, who shall receive $25,500 per annum. Three members shall constitute a quorum.

Section 408(b) authorizes the Board, in accordance with civil service laws, to appoint and fix the compensation of such officers and employees as may be necessary to carry out its functions.

Section 408(c) authorizes the Board to issue necessary and proper rules and regulations, to delegate any or all of its powers to any three or more of its members, and to delegate its authority to conduct hearings to any member, agent, or agency.

Section 408(d) authorizes the Secretary of Housing and Urban Development to investigate violations of sections 403, 404, and 405 of this title, either on the basis of information giving reasonable grounds for belief that a violation has occurred or upon receipt of a written statement from a person who alleges that he is aggrieved by such a violation.

Section 408(e) provides that the Secretary of Housing and Urban Development, for purposes of investigation, and the Board, for purposes of hearing, shall have the same powers and be subject to the same conditions and limitations as are provided for the National Labor Relations Board, under 29 U.S.C. 161.

Section 408(f) provides that if the Secretary finds, after investigation, that a violation has occurred, he shall file a written complaint with the Board so stating, and stating the facts. The Secretary shall serve a copy of the complaint on the person or persons charged with the violation.

Section 408(g) provides that the Board shall set a hearing after it receives a complaint but no such hearing shall be conducted sooner than 10 days after service of the complaint on the person or persons charged. The Secretary is directed to designate a person to present evidence in support of the complaint.

Section 408(h) provides that except as provided in sections 408(f) and 408(g), the Board shall conduct its hearings and issue and enforce its orders in the same manner, and shall be subject to the same conditions and limitations and appellate procedures, as are provided for the National Labor Relations Board under 29 U.S.C. 160 (b), (c), (d), (e), (f), (g), (i), and (j), and that all parties to the hearing shall have the same rights as are therein provided. The provisions of 29 U.S.C. 160(c) relative to reinstatement of employees and to complaints under 29 U.S.C. 158 (a)(1) or (a)(2) are expressly made inapplicable. Violations under the title shall be treated in the same manner as unfair labor practices under 29 U.S.C. 160.

Section 408(i) permits the Secretary to delegate any of his powers or duties under the title.

Section 409 directs the Secretary of Housing and Urban Development to make studies and publish reports on discriminatory housing practices, cooperate with and render technical assistance to private or public agencies, including the Community Relations Service, and administer his Department's programs in a manner affirmatively to further the policies of title IV.

Section 410 provides that no State or local law granting or protecting the same rights as are granted or protected by title IV shall be invalidated or limited by title IV, but that any State or local law that purports to require or permit a discriminatory housing practice shall to that extent be invalid.

Section 411 provides that all cases of criminal contempt arising under title IV shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

Section 412 provides that nothing in title IV shall be construed to deny, impair, or otherwise affect any right or authority of the United States, or any of its agencies or officers, to bring or intervene in any civil action or to bring any criminal prosecution.

TITLE V—INTERFERENCE WITH RIGHTS

General

Title V is a criminal statute designed to deter and punish interference by force or threat of force with activities protected by Federal law or the Constitution. This title is intended to strengthen the Government's capability to meet the problem of civil rights violence. Each area of protected activity is specifically described. They are voting, public accommodations, public education, public services and facilities, employment, housing, jury service, use of common carriers, and participation in federally assisted programs.

The statute would punish interference or attempts to interfere with any person because of his race, color, religion, or national origin while

he is lawfully engaging in or seeking to engage in such activities. It would also make it a crime to interfere or attempt to interfere with any person to discourage the victim from lawfully participating in such activities or because he has so participated in such activities. The title would punish violence directed against a person who has not been involved in civil rights activity but who is selected as a victim in order to intimidate others.

This title would also protect persons who urge or aid participation in these activities, as well as those who engage in speech or peaceful assembly opposing denial of the opportunity to participate in such activities. Persons who have duties to perform with respect to the protected activities—such as public school officials, restaurant owners, and employers—would also be protected.

The title would prohibit forcible interference with any of the specified activities by private individuals acting alone as well as by public officers or other persons acting under color of law.

The prescribed penalties are graduated in accordance with the seriousness of the results of violations, ranging from misdemeanor penalties to life imprisonment.

Title V also amends the penalty provisions of sections 241 and 242 of title 18, United States Code, to provide a similarly graduated penalty structure.

Section 501(a) makes it a crime for any person, whether or not acting under color of law, by force or threat of force, to injure, intimidate or otherwise interfere with, or to attempt to injure, intimidate, or interfere with, any person because of his race, color, religion, or national origin while he is lawfully engaging or seeking to engage in any of the nine protected areas of activity. Each area of activity is described in specific terms in order to make definite and certain the conduct which is prohibited.

Section 501(b) makes it a crime for any person, whether acting under color of law or otherwise, by force or threat of force, to injure, intimidate, or otherwise interfere with, or attempt to injure, intimidate, or interfere with any person to discourage lawful participation by such person or any other person or class of persons in any of the activities or benefits described in section 501(a) or because any such person has participated or sought to participate in such activities, or urged or aided others to so participate or engage in speech or peaceful assembly opposing any denial of the opportunity to so participate. Specifically, this provision makes it a crime to resort to force or threat of force to discourage the victim or any other person or class of persons from lawfully participating or seeking to participate in any of the activities or benefits without discrimination on account of race, color, religion, or national origin. In addition, it makes it a crime to use force or the threat of force against any person because he has (1) so participated or sought to so participate, or (2) urged or aided others to so participate, or (3) engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate in any of the described activities.

Section 501(c) makes it a crime for any person, whether or not acting under color of law, by force or threat of force, to injure, intimidate or otherwise interfere with, or attempt to injure, intimidate or interfere with, any public official or other person to discourage such official or person (*e.g.*, members of school boards, proprietors of restaurants, employers), from affording equal treatment to those participating

or seeking to participate in any of the described activities or benefits or because he has afforded another person or class of persons such equal treatment.

The penalties for violations of sections 501(a), (b), or (c) are graduated depending upon whether actual physical injury results. If no one is actually harmed, penalties are limited to a $1,000 fine or 1 year imprisonment or both; if bodily injury results, the maximum penalties are a $10,000 fine or 10 years imprisonment or both; and if death results, the defendant is subject to imprisonment for any term of years or for life.

Section 502 amends present sections 241 and 242 of title 18, United States Code, to authorize increased penalties. The penalties authorized for violation of 18 U.S.C. 241 are increased from the present maximums of $5,000 or imprisonment for 10 years, or both to $10,000 of imprisonment for 10 years, or both; and if death results from the violation, imprisonment for any term of years or for life. To section 242, there is added to the existing penalties provided for therein imprisonment for any term of years or for life, if death results from the violation.

TITLE VI

General

Title VI amends existing law to eliminate the requirement contained in titles III and IV of the Civil Rights Act of 1964 (42 U.S.C. 2000b–2000b-3, 2000c-6–2000c-9) that before the Attorney General may institute a suit to desegregate a public facility (title III) or a public educational institution (title IV), he must have received a written complaint and determined that the complainant is unable to bring suit.

Section 601 amends title III of the 1964 act to provide for suits by the Attorney General with respect to both public schools and public facilities and changes its title accordingly. The sections of title III of the 1964 act, as they would be amended by this section, are described below:

Section 301, as amended, authorizes the Attorney General to institute a civil action for desegregation of public education and other public facilities whenever he has reasonable grounds to believe that any person acting under color of law has denied, or attempted or threatened to deny, any other person on account of race, color, religion, or national origin, the equal protection of the laws with respect to any public school or public college or with respect to any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof. It also authorizes the Attorney General to institute proceedings whenever he has reasonable grounds to believe that any person, whether or not acting under color of law, has intimidated, threatened, coerced, or interfered with, or has attempted or threatened to intimidate, threaten, coerce, or interfere with, any other person in the exercise or enjoyment of, or because he has exercised or enjoyed, any right to the equal protection of the laws with respect to any public school or public college, or with respect to any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof. This provision would also apply to similar interference with another person because he has aided or encouraged others to exercise or enjoy such rights.

Section 302, as amended, provides that the United States shall be liable for costs in proceedings instituted under section 301 the same as a private person.

Section 303, as amended, provides that, as used in this title, the phrases "public school" and "public college" are to have the same meanings as in section 401(c) of the Civil Rights Act of 1964 and that, as applied to public education, "desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but shall not mean the assignment of students to public schools in order to overcome racial imbalance.

Section 304, as amended, confers jurisdiction on the district courts of proceedings instituted pursuant to this title and directs those courts to exercise their jurisdiction.

Section 305, as amended, declares that nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public schools or facilities and provides the title shall be the exclusive means whereby the Attorney General may bring suits for desegregation of public education.

Section 602 repeals sections 407 through 410 of title IV of the Civil Rights Act of 1964.

TITLE VII—PRESERVATION OF ELECTION RECORDS

Section 701 amends existing law (42 U.S.C. 1974–74e) to add a new section 307 to title III of the Civil Rights Act of 1960, which requires, among other things, that appropriate State and local election officials preserve all records and papers relating to registration or any other act requisite to voting in Federal elections for a period of at least 22 months following any general, special, or primary Federal election. This new section would provide that any election official or custodian required under section 301 of the 1960 act to retain and preserve such records and papers may petition the Attorney General to permit the destruction, prior to the retention period specified in that act, of ballots, tally sheets, or other materials relating to the casting or counting of votes. Such petition shall set forth the grounds on which destruction is sought and shall be supported by such additional information as the Attorney General may require. If in the judgment of the Attorney General the destruction of these materials will not hinder, prevent, or interfere with the accomplishment of the purposes of the 1960 act and of the Civil Rights Acts of 1957 and 1964, and of the Voting Rights Act of 1965, he may grant the petition in whole or in part, and upon such terms and conditions as he may prescribe.

Nothing in this title affects the equity power of the courts to order the preservation of voting records or papers in a particular case.

TITLE VIII—MISCELLANEOUS

Section 801 authorizes the appropriation of such sums as are necessary to carry out the provisions of the act.

Section 802 is a general separability clause, providing that the invalidity of any portion of the act shall not affect the validity of the remainder of the act.

CHANGES IN EXISTING LAW

In compliance with clause 3 of rule XIII of the House of Representatives, there is printed below in roman existing law in which no change is proposed by the bill as reported. Matter proposed to be stricken by the bill as reported is enclosed in black brackets. New language proposed by the bill as reported is printed in italic.

TITLE 28, UNITED STATES CODE—JUDICIARY AND JUDICIAL PROCEDURE

Chapter 121.—JURIES; TRIAL BY JURY

Sec.

[*Pub. L. 85-315, § 152, Sept. 9, 1957, 71 Stat. 638, which amended section 1861 of this title, did not amend analysis to reflect the change.]

Sec. 1861. [Qualifications of Federal jurors.] *Declaration of policy.*

[Any citizen of the United States who has attained the age of twenty-one years and who has resided for a period of one year within the judicial district, is competent to serve as a grand or petit juror unless—

[(1) He has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

[(2) He is unable to read, write, speak, and understand the English language.

[(3) He is incapable, by reason of mental or physical infirmities to render efficient jury service.]

It is the policy of the United States that all litigants in Federal Courts entitled to trial by jury shall have the right to a jury selected from a cross section of the community in the district or division wherein the court convenes. It is further the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in the district courts of the United States and shall have an obligation to serve as jurors when summoned for that purpose.

Sec. 1862. [Exemptions.] *Discrimination prohibited.*

[The following persons shall be exempt from jury service:

[(1) Members in active service in the armed forces of the United States.

[(2) Members of the Fire or Police departments of any State, District, Territory, Possession or subdivision thereof.

[(3) Public officers in the executive, legislative or judicial branches of the government of the United States, or any State, District, Territory, or Possession or subdivision thereof who are actively engaged in the performance of official duties.]

No citizen shall be excluded from service as grand or petit juror in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

Sec. 1863. [Exclusion of excuse from service.] *Jury commission.*

[(a) A district judge for good cause may excuse or exclude from jury service any person called as a juror.

[(b) Any class or group of persons may, for the public interest, be excluded from the jury panel or excused from service as jurors by order of the district judge based on a finding that such jury service would entail undue hardship, extreme inconvenience or serious obstruction or delay in the fair and impartial administration of justice.

[(c) No citizen shall be excluded from service as grand or petit juror in any court of the United States on account of race or color.]

(a) There shall be a jury commission for each district court of the United States composed of the clerk of the court and a citizen appointed by the court as a jury commissioner: Provided, That the court may establish a separate jury commission for one or more divisions of the judicial district by appointing an additional citizen as a jury commissioner to serve with the clerk for such division or divisions. The jury commissioner shall during his tenure in office reside in the judicial district or division for which appointed, shall not belong to the same political party as the clerk serving with him, and shall receive compensation to be fixed by the chief judge of the district at a rate not to exceed $50 per day for each day necessarily employed in the performance of his duties.

(b) In the performance of its duties, the jury commission shall act under the supervision of the chief judge of the district.

Sec. 1864. [Manner of drawing; jury commissioners and their compensation.] *Master jury wheel.*

[The names of grand and petit jurors shall be publicly drawn from a box containing the names of not less than three hundred qualified persons at the time of each drawing.

[The jury box shall from time to time be refilled by the clerk of court, or his deputy, and a jury commissioner, appointed by the court.

[Such jury commissioner shall be a citizen of good standing, residing in the district and a well known member of the principal political party in the district, opposing that to which the clerk, or his deputy then acting, may belong. He shall receive $5 per day for each day necessarily employed in the performance of his duties.

[The jury commissioner and the clerk, or his deputy, shall alternately place one name in the jury box without reference to party affiliations, until the box shall contain at least 300 names or such larger number as the court determines.

[This section shall not apply to the District of Columbia.]

(a) Each jury commission shall maintain a master jury wheel an shall place in the master wheel names selected at random from the vote registration lists of persons residing in the judicial district or division i serves: Provided, That the judicial council of the circuit, with such advic as the chief judge of the district may offer, shall prescribe some othe source or sources of names for the master wheel in addition to the vote registration lists where necessary, in the judgment of the council, to protec the rights secured by section 1862 of this title.

(b) The jury commission shall place in the master wheel the names o at least 1 per centum of the total number of persons listed on the voter registration lists for the district or division (or, if sources in addition to voter registration lists have been prescribed purusant to subsection (a), a least 1 per centum of the total number of persons of voting age residing in the district or division according to the most recent decennial census): Provided, That in no event shall the jury commission place in the master wheel the names of fewer than two thousand persons.

(c) The master jury wheel shall contain names of persons residing in each of the counties, parishes, or similar political subdivisions within the judicial district or division.

(d) The chief judge of the district shall prescribe, by rule, definite and certain procedures to be followed by the jury commission in making the random selection of names required by subsections (a), (b) and (c) of this section.

(e) State, local, and Federal officials having custody, possession, or control of voter registration lists or other appropriate records shall make such lists and records available to the jury commission for inspection, reproduction, and copying at all reasonable times as the commission may deem necessary and proper for the performance of its duties under this title. The district courts shall have jurisdiction upon application by the Attorney General to compel compliance with this subsection by appropriate process.

(f) The jury commission shall in accordance with this section (1) from time to time, as necessary, place additional names in the master wheel and (2) between November 15 and December 31 of each even-numbered year empty and refill the master wheel.

Sec. 1865. [Apportionment within district; additional jury commissioners.] *Drawing of names from the master jury wheel.*

[(a) Grand and petit jurors shall from time to time be selected from such parts of the district as the court directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end the court may direct the maintenance of separate jury boxes for some or all of the places for holding court in the district and may appoint a jury commissioner for each such place.

[(b) Grand or petit jurors summoned for service at one place for holding court in a district may, if the public convenience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district.]

(a) From time to time as necessary the jury commission shall publicly draw from the master jury wheel the names of as many persons as may be required for jury service, prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to sections

1867 and 1868 of this title and summon by certified mail the persons whose names are drawn. Each person whose name is drawn, unless he claims exemption from jury service pursuant to section 1872 of this title and subsection (b) of this section, shall appear before the clerk and fill out a juror qualification form to be prescribed by the Administrative Office of the United States Courts in consultation with the Attorney General. The form shall elicit his name, address, age, sex, education, race, occupation, length of residence within the judicial district, prior jury service, and citizenship and whether he has any physical or mental infirmity imparing his capacity to serve as a juror, is able to read, write, speak, and understand the English language, and has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The clerk shall examine the form to determine whether it is filled out completely and responsively and shall call any omissions or apparent errors to the attention of such person who shall make such corrections or additions as may be necessary. If any person summoned is unable to fill out the form, the clerk shall do it for him and indicate on the form the fact that he has done so and the reason therefor: Provided, That in any district or division where the chief judge of the district with the concurrence of the judicial council of the circuit determines that the requirement of a personal appearance before the clerk to fill out a juror qualification form would entail undue hardship or undue inconvenience for persons whose names are drawn from the master wheel, the clerk shall mail to every person whose name is drawn from the master jury wheel a juror qualification form with instructions to fill out and return the form duly signed to the clerk by mail within ten days. Any person who fails to return a juror qualification form as instructed shall be summoned by the clerk forthwith to appear before the clerk to fill out a juror qualification form.

(b) Any person summoned pursuant to subsection (a) of this section who fails to appear as directed shall be ordered by the court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both: Provided, That any person summoned (or to whom a juror qualification form has been mailed by the clerk for execution) who is exempt from jury service pursuant to section 1872 of this title may state the basis for his exemption in the space provided on the summons (or juror qualification form) and return the summons (or juror qualification form) duly signed to the clerk by mail. Any person who willfully misrepresents a material fact concerning his exemption from jury service or concerning his qualifications for jury service on a summons or juror qualification form for the purpose of avoiding service as a juror may be fined not more than $100 or imprisoned not more than three days, or both.

Sec. 1866. [Special petit juries; talesmen from bystanders.] *Qualifications for jury service.*

[(a) Whenever sufficient petit jurors are not available, the court may require the United States marshal to summon a sufficient number of talesmen from the bystanders.

[(b) When a special jury is ordered by a district court, it shall be returned by the marshal in the same manner and form as is required in such case by the law of the State in which such district court sits.]

(a) The jury commission shall determine solely on the basis of information provided on the juror qualification form or the returned summons whether a person is qualified for or exempt from jury service: Provided, That such determination shall be made by the court if other objective evidence obtained by the jury commission indicates that a person is not qualified pursuant to subparagraphs (1), (3), or (4) of subsection (b) hereof. The jury commission shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list. Whenever a person is determined to be not qualified for jury service, the jury commission shall note on the space provided on the juror qualification form the specific ground of disqualification.

(b) In making such determination the jury commission or the court shall deem any person qualified to serve on grand and petit juries in the district court unless he—

(1) is not a citizen of the United States twenty-one years old who has resided for a period of one year within the judicial district;

(2) is unable to read, write, speak, and understand the English language;

(3) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

(4) has a charge pending against him for the commission of, or has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

(c) The jury commission shall maintain a qualified juror wheel and shall place in such wheel names of persons determined to be qualified as jurors. From time to time, the jury commission shall publicly draw from the qualified juror wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

(d) When the court orders a grand or petit jury to be drawn the clerk shall issue summons for the required number of jurors and deliver them to the marshal for service.

Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or business address.

Such service shall be made by the marshal who shall attach to his return the addressee's receipt for the registered or certified summons, where service is made by mail.

§ 1867. [Summoning jurors.] *Challenging compliance with selection procedures.*

[When the court orders a grand or petit jury to be drawn the clerk shall issue summons for the required number of jurors and deliver them to the marshal for service.

[Each person drawn for jury service may be served personally or by registered or certified mail addressed to such person at his usual residence or business address.

[Such service shall be made by the marshal who shall attach to his return the addressee's receipt for the registered or certified summons, where service is made by mail.]

(a) In criminal cases, prior to the introduction of evidence at trial, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The defendant shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with this title.

(b) In criminal cases, before the petit jury is sworn, the Attorney General may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The Attorney General shall be entitled to present in support to such motion the testimony of the jury commission together with other evidence and, where this is evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a petit jury in conformity with this title.

(c) In civil cases, prior to the introduction of evidence at trial, any party may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The moving party shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a jury in conformity with this title.

(d) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime or a party in a civil case may challenge any jury in his case on the ground that such jury was not selected in conformity with sections 1864, 1865, or 1866 of this title. Nothing in this section shall preclude any person or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries.

(e) The contents of any records or papers produced pursuant to subsections (a), (b), or (c) of this section shall not be disclosed, except as may be necessary in the preparation or presentation of the case, until after the master jury wheel has been emptied and refilled pursuant to section 1864(f) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service: Provided, That the parties in a case shall be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the pendency of the case. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 1868. [Disqualification of marshal or deputy.] *Maintenance and inspection of records.*

[Whenever the United States marshal or his deputy is, in the opinion of the court, disqualified to summon grand or petit jurors, the court may appoint some disinterested person who shall take oath to perform such duty truly and impartially.]

After the master jury wheel is emptied and refilled pursuant to section 1864(f) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the jury commission before the master wheel was emptied shall be preserved by the commission in the custody of the clerk for four years or for such longer period as may be ordered by a court and shall be available for public inspection.

§ 1869. [Frequency of service.] *Exclusion from jury service.*

[In any district court, a petit juror may be challenged on the ground that he has been summoned and attended such court as a petit juror at any session held within one year prior to the challenge.]

(a) Except as provided in section 1872 of this title, no person or class of persons shall be excluded, excused or exempt from service as jurors: Provided, That any person summoned for jury service may be (1) excused by the court for not more than six months at a time upon a showing of undue hardship or extreme inconvenience or (2) excluded by the court upon a finding that such person may be unable to render impartial jury service or that his service as a juror would disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law. Whenever a person is excused or excluded from jury service, the jury commission shall note in the space provided on his juror qualification form the specific ground of excuse or exclusion.

(b) In any two-year period, no person shall be required to (1) serve as a petit juror for more than thirty calendar days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

§ 1870. [Challenges.] *Definitions.*

[In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

[All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.]

For purposes of this chapter—

(a) "clerk" and "clerk of the court" shall mean the clerk of the United States district court or any deputy clerk.

(b) "voter registration lists" shall mean the official records maintained by State or local election officials of persons registered to vote in the most recent general election for candidates for Federal office or, in the case of a State which does not require registration as a prerequisite to voting, such other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the lists maintained by the appropriate State or local officials.

(c) "division" shall mean one or more divisions of a judicial district established by statute, and, in judicial districts where no divisions are established by statute, shall mean such counties, parishes, or similar political subdivisions surrounding the places where court is held as the chief judge of the district shall determine.

(d) "district court of the United States", "district court", and "court" shall mean courts constituted under chapter 5 of title 28, United States Code: Provided, That for purposes of sections 1861, 1862, 1867, and 1869 of this chapter, these terms shall include the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia.

§ 1871. Fees.

Grand and petit jurors in district courts or before United States commissioners shall receive the following fees, except as otherwise expressly provided by law:

For actual attendance at the place of trial or hearing and for the time necessarily occupied in going to and from such place at the beginning and end of such service or at any time during the same, [$10] *$20* per day, except that any juror required to attend more than thirty days in hearing one case may be paid in the discretion and upon the certification of the trial judge a per diem fee not exceeding [$14] *$25* for each day in excess of thirty days he is required to hear such case.

For the distance necessarily traveled to and from a juror's residence by the shortest practicable route in going to and returning from the place of service at the beginning and at the end of the term of service 10 cents per mile; and for additional necessary daily or other interim travel during the term of service the juror shall be allowed for such travel 10 cents per mile, but not to exceed the subsistence allowance which would have been paid him if he had remained at the place of holding court overnight or during temporary recess, and if daily travel appears impracticable, subsistence of [$10] *$16* per day shall be allowed, including the time necessarily occupied in going to and returning from the place of attendance. Whenever in any case the jury is ordered to be kept together and not to separate, the cost of subsistence during such period shall be paid by the United States marshal upon the order of the court in lieu of the foregoing subsistence allowance.

Jury fees and travel and subsistence allowances provided by this section shall be paid by the United States marshal on the certificate of the clerk of the court, and in the case of jury fees in excess of [$10] *$20* per diem, when allowed as hereinabove provided, on the certificate of the trial judge.

Sec. 1872. [Issues of fact in Supreme Court.] *Exemptions.*

[In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.]

(a) The following persons shall be exempt from jury service:

(1) Members in active service in the Armed Forces of the United States.

(2) Members of the fire or police departments of any State, district, territory, possession, or subdivision thereof.

(3) Public officers in the executive, legislative or judicial branches of the Government of the United States, or any State, district, territory,

possession or subdivision thereof who are actively engaged in the performance of official duties.

(b) The chief judge of the district may, by rule, exempt other occupational classes of persons from jury service based on a finding that—

(1) jury service would entail extreme inconvenience for such class of persons; and

(2) requiring such persons to perform jury service may adversely affect the public interest; and

(3) exemption of such persons from jury service would not be inconsistent with section 1861 or 1862 of this title.

Sec. 1873. [Admiralty and maritime cases.] *Challenges.*

[In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.]

In civil cases, each party shall be entitled to three peremptory challenges. Several defendants or several plaintiffs may be considered as a single party for the purposes of making challenges, or the court may allow additional peremptory challenges and permit them to be exercised separately or jointly.

All challenges for cause or favor, whether to the array or panel or to individual jurors, shall be determined by the court.

Sec. 1874. [Actions on bonds and specialties.] *Issues of fact in Supreme Court.*

[In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.]

In all original actions at law in the Supreme Court against citizens of the United States, issues of fact shall be tried by a jury.

Sec. 1875. Admiralty and maritime cases.

In any case of admiralty and maritime jurisdiction relating to any matter of contract or tort arising upon or concerning any vessel of twenty tons or upward, enrolled and licensed for the coasting trade, and employed in the business of commerce and navigation between places in different states upon the lakes and navigable waters connecting said lakes, the trial of all issues of fact shall be by jury if either party demands it.

Sec. 1876. Actions on bonds and specialties.

In all actions to recover the forfeiture annexed to any articles of agreement, covenant, bond, or other specialty, wherein the forfeiture, breach, or nonperformance appears by default or confession of the defendant, the court shall render judgment for the plaintiff for such amount as is due. If the sum is uncertain, it shall, upon request of either party, be assessed by a jury.

TITLE 28, UNITED STATES CODE—JUDICIARY AND JUDICIAL PROCEDURE

Chapter 119.—EVIDENCE; WITNESSES

§ 1821. Per diem and mileage generally; subsistence.

A witness attending in any court of the United States, or before a United States commissioner, or before any person authorized to take his deposition pursuant to any rule or order of a court of the United States, shall receive [$4] *$20* for each day's attendance and for the time necessarily occupied in going to and returning from the same, and [8 cents] *10 cents* per mile for going from and returning to his place of residence. Regardless of the mode of travel employed by the witness, computation of mileage under this section shall be made on the basis of a uniform table of distances adopted by the Attorney General. Witnesses who are not salaried employees of the Government and who are not in custody and who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of [$8] *$16* per day for expenses of subsistence including the time necessarily occupied in going to and returning from the place of attendance: *Provided*, That in lieu of the mileage allowance provided for herein, witnesses who are required to travel between the Territories and possessions, or to and from the continental United States, shall be entitled to the actual expenses of travel at the lowest first-class rate available at the time of reservation for passage, by means of transportation employed: *Provided further*, That this section shall not apply to Alaska.

When a witness is detained in prison for want of security for his appearance, he shall be entitled, in addition to his subsistence, to a compensation of $1 per day.

DISTRICT OF COLUMBIA CODE

TITLE 7—HIGHWAYS, STREETS, BRIDGES

Chapter 2.—LAND FOR STREETS

Sec. 7-212 * * *

[§ 7-213a. Compensation of juror in eminent domain cases.

[In all eminent domain cases instituted by or on behalf of the District of Columbia, each juror shall receive as compensation for his services the sum of $10 per day for every day necessarily employed in the performance of his duties.]

Sec. 7-214 * * *

TITLE II—ORGANIZATION AND JURISDICTION OF THE COURTS

Chapter 23.—JURORS AND JURY COMMISSIONERS

(P.L. 88-241, 77 Stat. 505, et seq.)

[§ 11-2301. Qualifications of jurors.]

[(a) Any citizen of the United States who has attained the age of 21 years and who has resided for a period of one year within the District of Columbia is competent to serve as a grand or petit juror in courts of the District unless he:

[(1) has been convicted in a State, territorial, or federal court of record, or court of the District, of a crime punishable by imprisonment for more than one year, and his civil rights have not been restored by pardon or amnesty;

[(2) is unable to read, write, speak and understand the English language; or

[(3) is incapable by reason of mental or physical infirmities to render efficient jury service.

[(b) An otherwise qualified person is not disqualified from jury service by reason of sex, but a woman may not be compelled so to serve.]

[§ 11-2302. Exemptions.

[The following persons are exempt from jury service:

[(1) members in active service in the armed forces of the United States:

[(2) members of the fire and police departments of the United States and of the District of Columbia;

[(3) public officers in the executive, legislative, or judicial branch of the Government of the United States or the Government of the District of Columbia who are actively engaged in the performance of official duties;

[(4) attorneys-at-law in active practice;

[(5) ministers of the gospel and clergymen of every denomination;

[(6) physicians and surgeons in active practice;

[(7) keepers of charitable institutions created by or under the laws relating to the District of Columbia; and

[(8) persons employed on vessels navigating the waters of the District of Columbia.]

All other persons, otherwise qualified according to law, whether employed in the service of the Government of the United States or of the District of Columbia, all officers and enlisted men of the National Guard of the District of Columbia, both active and retired; all officers and enlisted men in the reserve components of the armed forces of the United States, all notaries public, all postmasters, and those who are the recipients or beneficiaries of a pension or other gratuity from the Federal or District Government or who have contracts with the United States or the District of Columbia, are qualified to serve as jurors in the District of Columbia and are not exempt from jury service.

[§ 2303. Jury commission; appointment, qualifications, oath, tenure, compensation, and removal.

[(a) The jury commission shall continue in the District of Columbia.

[(b) The commission consists of three commissioners appointed by the United States District Court for the District of Columbia.

[(c) Any person may be appointed a jury commissioner if he:

[(1) is a citizen of the United States;

[(2) is an actual resident of the District, and has been domiciled therein for at least three years prior to his appointment;

[(3) owns real property in the District;

[(4) is not engaged in the practice of law; and

[(5) at the time of his appointment, is not a party to any cause pending in a court of the District.

[A person otherwise qualified is not disqualified from service as a jury commissioner by reason of sex, but a woman may not be compelled so to serve.

[(d) Jury commissioners shall be appointed or reappointed for terms of three years each, staggered so that one commissioner will be appointed each year; and they shall continue in office until the appointment and qualification of their successors.

[(e) Each jury commissioner shall receive $10 per day for each day or fraction of a day when he is actually engaged in the performance of his duties, not to exceed five days in a month, nor $250 in a year, which shall be paid, upon the commissioner's certificate, by the United States marshal for the District of Columbia.

[(f) Each jury commissioner, when appointed, shall take an oath of office prescribed by the District Court.

[(g) The District Court may summarily remove a jury commissioner for:

[(1) absence, inability, or failure to perform his duties; or

[(2) misfeasance or malfeasance in office—and may appoint another person for the unexpired term.

[(h) If a jury commissioner is ill or otherwise unable to perform the duties of his office, or is absent from the District, the remaining two commissioners may perform the duties of the commission.]

[§ 11-2304. Record of names—Jury box—Custody.

[(a) The jury commission shall:

[(1) make and preserve a record of the list of names of grand and petit jurors, including the names of commissioners and jurors in condemnation proceedings, for service in all the courts of the District having cognizance of jury trials and condemnation proceedings;

[(2) write the names of the jurors, including the names of commissioners and jurors in condemnation proceedings, on separate and similar pieces of paper, which they shall so fold or roll that the names can not be seen, and place them in a jury box to be provided for the purpose;

[(3) thereupon seal the jury box, and after thoroughly shaking it, deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping;

[(4) have custody and control of the jury box;

[(5) keep a sealed record, in alphabetical form, of all names remaining in the jury box from time to time, and deposit the

record for safekeeping in the office of the clerk of the District Court when the commission is not in session.

[(b) Only the commission may unseal or open the jury box, or have access to the record required by clause (5) of subsection (a) of this section.]

[§ 2305. Selection of jurors.]

[The jury commission shall select the jurors and commissioners specified by section 11–2304, as nearly as may be, from intelligent and upright residents of the District.]

§ 11–2306. Manner of drawing.

(a) [Grand and Petit Jurors for District Court.—At least ten days before the commencement of each term of the United States District Court for the District of Columbia, at which jury trials are to be had, the jury commission shall:

[(1) publicly break the seal of the jury box and draw therefrom, by lot and without previous examination, the names of such number of persons as the court directs to serve as grand and petit jurors in the court; and

[(2) forthwith certify to the clerk of the court the names of the persons so drawn as jurors.]

If the United States attorney for the District of Columbia certifies in writing to the chief judge of the District Court, or in his absence, to the presiding judge, that the exigencies of the public service require it, the judge may, in his discretion, order an additional grand jury summoned, which shall be drawn at such time as he designates. Unless sooner discharged by order of the chief judge, or, in his absence, the presiding judge, the additional grand jury shall serve until the end of the term in and for which it is drawn.

[(b) Number of Names in Jury Box.—At the time of each drawing of jurors by the jury commission, there shall be in the jury box the names of not less than six hundred qualified persons.

[(c) Other Courts.—At least ten days before each term of the District of Columbia Court of General Sessions or of the Juvenile Court of the District of Columbia, at which jury trials are to be had, the jury commission shall:

[(1) publicly break the seal of the jury box and draw therefrom, by lot and without examination, the names of persons to serve as petit jurors in those courts; and

[(2) forthwith certify to the clerk of the District Court the names of the persons so drawn.

[In each drawing of jurors under this subsection, the jury commission shall draw, for service in the Court of General Sessions, such number of names as the court directs, and for service in the Juvenile Court, at least twenty-six names.

[Upon receipt of the certification referred to in this subsection, the clerk of the District Court shall certify the names to the Court of General Sessions or the Juvenile Court, as the case may be, for service as jurors for the ensuing term.

[(d) The distribution, assignment, reassignment, and attendance of petit jurors in courts of the District shall be in accordance with rules prescribed by the respective courts.]

(b) The jury commission for the district court for the District of Columbia shall draw from the qualified jury wheel from time to time as may be required the names of persons to serve as jurors in the District of

Columbia Court of General Sessions and the Juvenile Court of the District of Columbia and such persons shall be assigned to jury panels in the General Sessions and Juvenile courts as those courts shall direct."

[§ 11–2307. Substitution in case of Vacancies.]

[When a person whose name is drawn from the jury box is dead or has removed from the District before being selected, or removes therefrom after being selected, or becomes otherwise disqualified or disabled, the jury commission shall destroy the slip containing his name, and shall draw from the box the name of another person to serve in his stead.]

[§ 11–2308. Disposition of box after drawing—Excuse from further service.]

[When the requisite number of jurors has been drawn, the jury commission shall seal the jury box and deliver it to the clerk of the United States District Court for the District of Columbia for safekeeping. Except in the case of persons who are excused from service or for other reasons fail to serve, the names of the persons drawn may not be placed again in the box for one year.]

[§ 11–2309. Filling vacancies—Deficiencies in panel.]

[When persons drawn as grand or petit jurors cannot be found, or prove to be incompetent, or are excused from service by the court for which their names were drawn, the jury commission, under the order of the court, shall draw from the box the names of other persons to take their places, and if, after the organization of the jury, vacancies occur therein, the commission shall fill them in like manner.]

[§ 11–2310. Talesmen from bystanders.]

[When sufficient petit jurors are not available, the District of Columbia Court of General Sessions and the Juvenile Court have the same powers to require the United States marshal to summon a sufficient number of talesmen from the bystanders as those vested in the District Court by section 1866(a) of Title 28, United States Code.]

[§ 11–2311. Summoning jurors.]

[When a petit jury has been drawn for the District of Columbia Court of General Sessions or the Juvenile Court, and the names of the jurors have been certified to the clerk of the court by the clerk of the District Court as provided by section 11–2306(c), the clerk of the former court shall issue summonses for the required number of jurors and deliver them to the United States marshal for the District for service. The marshal or his deputies shall serve each summons and make return of service in the manner provided by section 1867 of Title 28, United States Code, with respect to summoning jurors for district courts.]

[§ 11–2312. Length of service.]

[(a) Petit jurors summoned for service in a court of the District shall serve for such period of time and at such sessions of the court as the court directs, but, unless actually engaged as a trial juror in a particular case, may not be required to serve in the District Court or the District of Columbia Court of General Sessions for more than one month in any twelve consecutive months, or to serve in the Juvenile Court for more than three months in any twelve consecutive months.

[(b) Jury service in one court does not exempt, exclude, or disqualify a person from jury service in another court, except during his term of actual service.

[(c) This section does not affect the provisions of section 1869 of Title 28, United States Code, relating to frequency of petit jury service in district courts, including the United States District Court for the Distr.ct of Columbia.]

TITLE 13.—PROCEDURE GENERALLY

Chapter 7.—TRIAL

[§ 13-701. Special juries in District Court.]

[(a) In a case, civil or criminal, called for trial in the United States District Court for the District of Columbia, in which either party desires a special or struck jury, the clerk shall prepare a list of twenty jurors from the jurors in attendance and furnish the list to each of the parties. Each party or his counsel may strike off the names of four persons from the list, and the persons whose names remain on the list shall thereupon be impaneled and sworn as the petit jury in the case. If either party or his counsel neglects or refuses to strike from the list the number of names authorized by this subsection, the clerk may strike off the names, and the twelve persons whose names remain on the list shall be impaneled as the petit jury in the case.

[(b) If the proceeding authorized by subsection (a) of this section is not insisted upon by either party, either party may furnish to the clerk a list of the jurors, not exceeding four in number, whom he wishes to be omitted from the panel sworn in the case, and the clerk, in making up the panel, shall omit the jurors to whom objection was so made.

[(c) This section does not deprive a person of the right to challenge the array or polls of a panel returned, or to have all or any of the jurors examined on their voir dire before the list is prepared to determine their competency to sit in a particular case.]

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Chapter 13.—EMINENT DOMAIN

§ 16-1312. Jury—Special List—Qualifications—Procedure for drawing.

(a) For the purposes of this subchapter, the jury commission shall:

(1) prepare a special list of persons who have the qualifications of jurors, as prescribed by [section 11-2301] *section 1866 of Title 28, U.S.C.*, and who, in addition, are owners of real property in the District;

(2) * * *

(3) * * *

(b) * * *

(c) Except as provided by this section [chapter 23 of Title 11] *chapter 121 of Title 28, U.S.C.*, insofar as it may be applicable, governs

the qualifications of jurors in cases under section 16-1311 and the duties and conduct of the jury commissioners under this section.

(d) * * *

TITLE 22.—CRIMINAL OFFENSES

Chapter 14.—FORGERY—FRAUDS

§ 22-1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

If any person shall fraudulently tamper with any box *or wheel*, used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box *or wheel*, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box *or wheel*, the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall willfully draw from any such box *or wheel*, a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more that $500 or imprisonment in the District jail or workhouse for not more than one year, or both.

TITLE 18, UNITED STATES CODE—CRIMES AND CRIMINAL PROCEDURE

Chapter 13.—CIVIL RIGHTS

§ 241. Conspiracy against rights of citizens.

If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise of enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

[They shall be fined not more than $5,000 or imprisoned not more than ten years, or both.]

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life.

§ 242. Deprivation of rights under color of law.

Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined not more than $1,000 or imprisoned not more than one year, or both[.]*; and if death results shall be subject to imprisonment for any term of years or for life.*

CIVIL RIGHTS ACT OF 1964

P.L. 88-352 (78 Stat. 241)

[TITLE III—DESEGREGATION OF PUBLIC FACILITIES

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

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

SEC. 302. In any action or proceeding under this title the United States shall be liable for costs, including a reasonable attorney's fee, the same as a private person.

SEC. 303. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in any facility covered by this title.

SEC. 304. A complaint as used in this title is a writing or document within the meaning of section 1001, title 18, United States Code.]

TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

SEC. 301. *The Attorney General may institute, in the name of the United States, a civil action or other proceeding for desegregation of public education and other public facilities, including an application for a permanent or temporary injunction, restraining order, or other order, whenever he has reasonable grounds to believe that—*

(a) *Any person acting under color of law has denied, or attempted or threatened to deny, any other person, on account of his race, color, religion, or national origin, the equal protection of the laws with respect to any public school or public college, or any public facility*

which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

(b) *Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof.*

SEC. 302. *In any proceeding under section 301 the United States shall be liable for costs the same as a private person.*

SEC. 303. *As used in this title, (a) "public school" and "public College" shall have the same meanings as in section 401(c) of title IV of this Act; (b) as applied to public education, "desegregation" means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but "desegregation" shall not mean the assignment of students to public schools in order to overcome racial imbalance.*

SEC. 304. *The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.*

SEC. 305. *Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility, Provided, That this title shall be the exclusive means whereby the Attorney General may bring suits for the desegregation of public education.*

TITLE IV—DESEGREGATION OF PUBLIC EDUCATION

* * * * * * *

[SUITS BY THE ATTORNEY GENERAL]

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

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

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

and the Attorney General believes the complaint is meritorious and certifies that the signer or signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief and that the institution of an action will materially further the orderly achievement of desegregation in public education, the Attorney General is authorized, after giving notice of such complaint to the appropriate school board or college authority and after certifying that he is satisfied that such board or authority has had a reasonable time to adjust the conditions alleged in such complaint, to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for

such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, provided that nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure compliance with constitutional standards. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder.

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

[(c) The term "parent" as used in this section includes any person standing in loco parentis. A "complaint" as used in this section is a writing or document within the meaning of section 1001, title 18, United States Code.

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

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

[SEC. 410. Nothing in this title shall prohibit classification and assignment for reasons other than race, color, religion, or national origin.]

TITLE III—CIVIL RIGHTS ACT OF 1960

(74 Stat. 88) (42 U.S.C. 1974–1974e)

FEDERAL ELECTION RECORDS

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SEC. 307. Any officer of election or custodian required under section 301 of this Act to retain and preserve records and papers may petition the Attorney General to permit the destruction, prior to the retention period specified in this Act, of ballots, tally sheets, or other materials relating to the casting or counting of votes. Such petition shall set forth the grounds on which destruction is sought and shall be supported by such additional information as the Attorney General may require. If in the judgment of the Attorney General the destruction of these materials will not hinder, prevent, or interfere with the accomplishment of the purposes of this Act and of the Civil Rights Acts of 1957 and 1964, and the Voting Rights Act of 1965, he may grant the petition in whole or in part, and upon such terms and conditions as he may prescribe.

MINORITY VIEWS OF THE HONORABLE BASIL L. WHITENER ON H.R. 14765

H.R. 14765 is a bill proposed for the asserted purpose of protecting the rights of all Americans. In reality, it is destructive of the rights of all Americans. This will be the true result of the bill. It is true that new rights would be created for special classes of people, but at the same time other precious rights of all of us would be lost.

The Constitution and laws of the United States protect the right of all Americans to equal and impartial justice and to the right to contract freely. I do not condone discriminatory practices, private or public, which would deprive any American of any basic right. Neither do I support creating special privileges and rights for some. This is why I must register my strong opposition to H.R. 14765.

In detailing this opposition I will proceed with a brief title by title analysis of the bill.

TITLE I

Unlike other titles of this bill, there has been no controversy over the Administration's proposal for altering the Federal jury system. There is no doubt of its legality. The authority of Congress over the Federal judiciary is plenary. At first glance there is nothing in it to offend either the Constitution or our system of jurisprudence. However, this is exactly the defect of title I—a first glance is all the committee has taken at it.

It may well be that this is a meritorious proposal, carefully drafted to meet its worthy objective of a uniform method of Federal jury selection. But how are we to know? Ordinarily such measures are submitted to the Judicial Conference for approval, and the views of the American Bar Association and individual expert witnesses are solicited. Congress acts only after the most painstaking consideration—consideration which may take months or years. In this instance, we are asked to rubber-stamp a proposal which will have a significant impact on the judicial machinery of every Federal district court in the country. I do not use the term "rubber stamp" casually. It is uniquely appropriate in describing the Committee's so-called consideration of title I.

Little notice was paid to this stepchild of H.R. 14765 during the few weeks of hearings and executive sessions in which this bill has been jammed through subcommittee and then committee. This may be understandable in view of the revolutionary nature of the remainder of the bill. However, there can be no excuse for abandoning our normal and orderly processes and recommending change of the jury selection system without first considering the ramifications of change.

Under the circumstances, I do not support title I.

TITLE II

If title I has been ill considered, it is even more apparent that title II is ill conceived. It is violative of the Constitution and destructive

of the principle of federalism. If enacted and upheld, it would place an intolerable burden on the State courts of the Nation.

Perhaps some Members of Congress have become bored with warnings that Federal legislation is encroaching upon constitutiona and traditional areas of State responsibility. I hope not. The constitutional and traditional areas of the States to administer justice, and the complex and delicate balance between State and Federal jurisdiction, are among the most important elements of American Government.

It was pleasant to welcome to the cause of States rights the prestige of the Chief Justice of the United States, who is not generally considered a conservative in this area. His recent warnings against Federal encroachment upon rights of States in the selection of State court juries gave me great hope that the Committee on the Judiciary would look closely and critically at the propriety of such legislation.

I would have thought that the Chief Justice's remarks would have caused the committee to examine carefully the constitutionality of title II. Unfortunately, this was not the case in our committee.

All State courts and all State judicial officers are inferentially condemned by this legislation. Not only are their motives questioned, but their judicial integrity is impugned. They are not even considered sufficiently responsible to give a fair hearing on a challenge to the jury. I value highly the place of the jury system in our jurisprudence. I do not see why State courts should not be trusted to continue to administer State laws.

The Federal rules that would be imposed upon the State legal systems by title II are said to be authorized by the 14th amendment. The fallacy of this assertion, however, is elementary constitutional law. The amendment is prohibitory in nature. It does not require the States affirmatively to revise their criminal procedures. It does not permit the Congress to establish Federal rules of State criminal procedure. Never before has anyone asserted that "equal protection of the laws" permits Federal absorption of the State judicial system. Such a claim was too novel even for the Chief Justice. But the committee has accepted it unconditionally.

Outside the question of constitutionality this section imposes a number of awkward and burdensome discovery obligations which are automatically invoked upon a claim of discrimination in a criminal trial.

The mere assertion of discrimination requires the prosecution to present a full statement of the procedures used in juror selection. In addition, the State jury officials are automatically subject to cross-examination. If there is "evidence" that the assertion of discrimination is valid, "any relevant records and papers used by jury officials in the performance of their duties" must be presented.

Finally, if all this fails to rebut a showing of "probable cause" of discrimination, the burden shifts to the State to disprove the allegation. This legislation does more than impugn the integrity of local officials—it opens every criminal prosecution in every State to obstruction, delay, and frustration. The discrimination that may be asserted is not restricted to race—a defendant would also allege discrimination on the basis of religion, sex, national origin, or economic status, or on any combination of these.

It would not take the most imaginative criminal lawyer in the land to completely hamstring a prosecution by attacking the jury system on

each of these grounds, and then sitting back to watch the State try to disprove discrimination on each specific. A successfull defense in one courtroom would not deter these dilatory tactics in other tribunals.

The 14th amendment is prohibitory in nature, and Federal rules prohibiting racial discrimination in the selection of jurors are already established. The Attorney General has not shown that there has been an attempt to enforce these laws or why more laws are needed. He has given no adequate justification for the unconstitutional imposition of Federal rules of procedure on State courts as proposed in title II.

The committee has not attempted to make title II conform to the Constitution. It should be defeated.

TITLE III

The same objections which apply to title I apply doubly to title III. This new view of the committee was added without even the pretense of hearings or prior consideration, and the language it embodies resembles the prose of the State Department more than that of a Federal statute.

Even a cursory reading shows that it is hastily and badly drafted and that it is so vague and complex as to be incapable of comprehension. According to its terms, an individual would be subjected to "temporary or permanent preventative or mandatory relief" in a civil action "or other proper proceeding." And why? Because there "are reasonable grounds to believe that any person is about to continue to engage in any practice which would deprive another of any privilege or immunity secured by the Constitution on account of such other's race, color, religion, or national origin." In quoting section 301, I have eliminated nothing but the verbosity of the 120-word sentence. Section 302 would impose penalties on those who would "hinder" others.

It would be comforting if there were nothing to fear from the title except its bad grammar, imprecise language, and poor structure and style. However, the title is so constructed that any court would be forced to find that it either is unconstitutionally vague or that it is broad enough to encompass every human activity. Apparently the committee hopes the latter is the case, and that the courts will open a Pandora's box of privileges and immunities to all comers. The authoritative "Constitution of the United States Annotated" contains a brief chapter beginning at page 1075 on privileges and immunities. The first sentence under that title states:

> Unique among constitutional provisions, the privileges and immunities clause of the Fourteenth Amendment enjoys the distinction of having been rendered a "practical nullity" by a single decision of the Supreme Court rendered within five years after its ratification.

This is not the time to breathe new, undefined life into the privileges and immunities of the 14th amendment Nor is this the time to resurrect the defeated and discredited part III of the 1957 Civil Rights Act with a new part III, which is worse.

TITLE IV

Title IV or the so-called fair housing section, is the most controversial title of H.R. 14765. And deservingly so because along with title II, it constitutes a serious abrogation of the limitations on Federal power and control. Although proposed in the name of liberty and freedom, it in fact vitiates both.

The Attorney General has stated that it is necessary to free minorities from "compulsory residential segregation." But there is no such thing in existence. Racial residential patterns in the United States are the result of the free and voluntary decisions of homeowners. The Supreme Court of the United States, having rendered racially restrictive covenants unenforcible in *Shelley* v. *Kraemer* (334 U.S. 1 (1948)), has made it impossible to prevent by State action or private contract, a real property owner from selling or renting to whomever he wishes regardless of race, color, religion, or national origin. The Attorney General strangely twists the meaning of words to contend that there now exists "compulsory residential segregation."

Actually, title IV destroys the freedom of all men and replaces it with Federal control. This is the type of governmental control which is the hallmark of totalitarian nations—the enemy of a free country.

Furthermore, the American people are protected from this intrusion of the Federal Government into their private liberty by the Constitution of the United States. The proponents of this title rely on the 14th amendment and the "commerce clause" as the constitutional basis for these provisions.

There can be no serious argument that the 14th amendment grants to Congress power for this proposal. For a century there has been neither obscurity nor diverse judgment in interpreting that amendment. The Supreme Court has written a clear and eloquent chapter in the law as to its meaning and its limitation to the actions of the State in abridging the privileges and immunities of the U.S. Citizens, or in depriving life, liberty, or property without due process, or in denying equal protection of the laws.

Mr. Justice Douglas, concurring in *Lombard* v. *Louisiana* (373 U.S. 267 (1963)) said:

> If this were an intrusion of a man's home or yard or farm or garden, the property owner could seek and obtain the aid of the State against the intruder. For the Bill of Rights, as applied to the States through the due process clause of the 14th amendment, casts its weight on the side of the privacy of homes. The third amendment with its ban on quartering of soldiers in private homes radiates that philosophy. The fourth amendment, while concerned with official invasions of privacy through searches and seizures, is eloquent testimony of the sanctity of private premises. For even when the police enter a private precinct they must, with rare exceptions, come armed with a warrant issued by a magistrate. A private person has no standing to obtain even limited access. The principle that a man's home is his castle is basic to our system of jurisprudence.

Yet title IV, if passed, would authorize the arm of the law to reach into a private home and instruct the owner as to how he may dispose

of it. The number of houses he may own or how often he may dispose of them is irrelevant to the legal problem.

Justice Harlan, in his concurring opinion in *Peterson* v. *Greenville* (373, U.S. 244 (1963)), underscored the suppression of individual freedom which would inevitably ensue were the Congress to enact title IV. He said:

> * * * Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be irrational, arbitrary, capricious, even unjust in his personal relations are things all entitled to a large measure of protection from governmental interference. This liberty would be overridden, in the name of equality, if the strictures of the amendment were applied to governmental and private action without distinction. Also inherent in the concept of State action are values of federalism, a recognition that there are areas of private rights upon which Federal power should not lay a heavy hand and which should properly be left to the more precise instruments of local authority.

The proponents of title IV rely on *Shelly* v. *Kraemer*, *supra*, but the majority opinion in that case contains the following language:

> * * * the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the State. That amendment erects no shield against merely private conduct, however, discriminatory or wrongful.

It is clear, therefore, that under the plain meaning of words and the uniform holding of the Supreme Court, title IV is not authorized by the 14th amendment.

Additionally, proponents of this title have argued that Congress has power to enact it pursuant to article I, section 8 of the Constitution to regulate interstate commerce. It is beyond doubt that real property does not follow in interstate commerce because the distinctive attribute of real property is in its immovability. It has been suggested that because the materials which are used to build dwellings have moved in interstate commerce the Congress can regulate the sale or rental of the dwellings. It is true we can regulate the materials as they move in the channels of interstate commerce; but here they have stopped and by legal definitions have assumed the character of realty.

The precedents cited by the Attorney General to support Congress power under the commerce clause are slender reeds to support his conclusions. Perhaps the case which comes nearest to support this title is *Katzenbach* v. *McClung* (379 U.S. 294 (1964)). In that case, arising out of the public accommodation title of the Civil Rights Act of 1964, the court relied on the fact that the food served in Ollie's Barbecue Stand moved in interstate commerce. The situation here is readily distinguishable because in *McClung* the food did not in fact come to rest but was sold in a matter of hours; whereas, building materials not only come to rest but lose their separate identity as they become part of dwellings.

Furthermore, title IV is in direct contravention of other provisions of the Constitution. Even if we were to accept the Attorney General's contention that Congress has affirmative power in the field, the title is unconstitutional because of the right to freedom of association guaranteed by the first amendment (see: *NAACP* v. *Alabama*, 357 U.S. 449 (1958)). It is illegal under the penumbra of the Bill of Rights which recognizes a special right in the sanctity of the home (see: *Griswold* v. *Connecticut*, 381 U.S. 479 (1965); and *Lombard* v. *Louisiana*, *supra*).

Two separate provisions of the fifth amendment prohibit what the committee would do to the property owner. First, it would deny him both liberty and property without due process of law. Second, it would violate that provision of the amendment which states "nor shall private property be taken for public use, without just compensation." A basic rule of construction is that the enumeration of one thing implies the exclusion of another. It is clear, therefore, that the framers never intended that the Federal Government be allowed to take private property for private use with or without just compensation.

Even if enacted and sustained, however, title IV would not be effective to accomplish that which its proponents wish to accomplish. It is proposed to provide adequate and integrated housing for minority groups. Most of the areas where slums and racial "ghettos" exist are covered by State or local fair housing laws. The passage of such laws, however, has had no impact on such conditions. Additionally, the National Committee Against Discrimination in Housing has called title IV "totally inadequate to meet today's critical national problems of the explosive racial ghetto * * * even if it could be strengthened * * * such a proposal at this strategic moment may raise false hope among the Negro masses which cannot possibly be fulfilled by this proposal."

It is nonsensical to pass a bill which would do little or nothing to help minority groups, which would raise their false hopes, and which would seriously abridge the constitutional rights and freedoms of all Americans.

The committee has recognized the gross inequities of the enforcement provisions of title IV as introduced and has eliminated some of them. It has, however, provided for the establishment of a fair housing board with much the same functions and powers as the National Labor Relations Board.

What this committee has done is establish a dual forum with dual prosecutors and dual remedies. For those who do not trust the Federal courts a new board is created with the Department of Housing and Urban Development as prosecutor. For those who wish no truck with the conciliation available from the board, a Federal district court with the assistance of the Attorney General, is open.

The fact of the matter is the committee has created another administrative agency charged with carrying out policy rather than objectively finding facts. The justification for any agency is that it has special expertise in the field. The special expertise necessary in this field is the determination of intent to discriminate. Determination of intent, however, is the special competence of the judiciary.

The entire title is a dangerous and futile attempt to enforce the Christian ethic by coercion and the abolition of freedom. It is

indeed sad that the committee would use the tools and language of freedom to destroy it.

TITLE V

Title V represents a novel interpretation of the 14th amendment. It is the illegitimate product of the injudicious advisory opinion of several concurring justices in the recent case of *U.S.* v. *Guest*, 383 U.S. 745 (1966).

The legislative history, and almost 100 years of judicial interpretation—including the holding of the Court in *U.S.* v. *Guest*—reveal that those rights guaranteed by the 14th amendment to the Constitution may be protected by the Federal Government against infringement through persons acting under color of law. Admittedly, the threshold of State action has been stretched far beyond the original understanding. But it has not been diluted to include purely private action. Yet, it is proposed here that the activities of private individuals should become the business of the Federal Government. Title V makes criminal such undefined action as "intimidation," "interference," and "attempts to interfere." These provisions contain the vice of vagueness in violation of due process and may, as now worded, violate the freedom of speech guaranteed in the first amendment.

Under title V, special classes of people are selected for the preferential protection of the Federal Government. If crimes are committed because of their race while they are engaged in specified activities, the Federal Government may punish those crimes. But if crimes are committed against persons engaging in any of the enumerated "Federal rights" in title V for other reasons, the State law controls; and if a crime of race hatred is committed while the victim is not engaged in the protected activity, State law controls. The unrealistic nature of these provisions proves that State law should always control.

There are laws in every State to punish the crimes which title V enumerates, and they are worded without regard to race or color. But if we are to take this giant step at all, it should be done uniformly and made applicable to all American citizens, and it should be accomplished by an amendment to the Constitution. Equal protection and due process cannot be and should not be solely identified with race. Race is mentioned nowhere in the 14th amendment, and that amendment should remain for the protection of all Americans.

TITLE VI

During the last several years, the Attorney General has come to this committee to complain that he is unable to erase alleged discrimination with the legal tools afforded him by the Constitution and Congress. Each year he proposes legislation "to complete the desegregation" of schools or public facilities, and we have capitulated on each occasion. But now, after a brief and law-abiding experience with the 1964 Civil Rights Act, Congress is being asked to repeal part of that act and replace it with an unbridled grant of authority to the Attorney General.

The Attorney General testified that his authority under titles III and IV of the Civil Rights Act of 1964 has proved deficient. But nowhere in his one-page treatment of title VI of H.R. 14765 does he mention the unbelievable control and Federal Government exercises

over public education through title VI of the 1964 act. It is obvious to all that title VI of that act is being vigorously enforced—often in a manner which is inconsistent with the language and legislative history of that title.

In considering legislation on public facilities, what we should do is limit the arbitrary and coercive power which the Department of Health, Education, and Welfare has assumed in its drive to force racial balance in the southern schools. Instead, the Attorney General asks us for the authority to institute civil actions in counties where there have been no complaints—where everyone is pleased with the way their own officials are running their schools. Where genuine discrimination exists, the Attorney General has all the authority necessary under titles III and IV of the 1964 act.

In a direct line of cases from *Briggs* v. *Elliott*, 132 F. Supp. 776 (1955), to this date, it has been held by the Federal courts that free choice of schools is permissible—indeed, is all that is required—under the Constitution and the decision of the Supreme Court in *Brown* v. *Board of Education*, 347 U.S. 483 (1954). As Judge Parker said in the *Briggs* case:

> It has not decided that the States must mix persons of different races in the schools or must require them to attend schools or must deprive them of the right of choosing the schools they attend * * * but if schools which it (the State) maintains are open to children of all races, no violation of the Constitution is involved even though children of different races voluntarily attend different schools, as they attend different churches. Nothing in the Constitution or in the decision of the Supreme Court takes away from the people freedom to choose the schools they attend. The Constitution, in other words, does not require integration. It merely forbids discrimination. It does not forbid such segregation as occurs as a result of voluntary action. It merely forbids the use of governmental power to enforce segregation. The 14th amendment is a limitation upon the exercise of power by the State or State agencies, not a limitation upon the freedom of individuals.

Apparently, the committee is not satisfied with the decisions of the Federal courts. It is willing to overrule existing opinions by abolishing free choices. Furthermore, the committee finds it necessary to include vague and ambiguous "wrongs" which can give rise to a civil suit brought by the Attorney General. Sanctions may be imposed against such activities as a "threat to threaten" or a "threat to intimidate."

Finally, I submit that before granting the Attorney General authority to institute civil actions in those situations contemplated in title VI, Congress should more closely observe both the success and mischief achieved under existing law and focus its attention on the potential of the 1964 act.

CONCLUSION

It is the sworn obligation of every Member of Congress to consider the constitutionality of every bill on which he votes. This obligation consists of more than predicting what the courts will hold concerning

a particular measure. The Supreme Court has consistently recognized this, as it gives a presumption of constitutionality to all our acts. Each Member of each House must decide according to his own conscience and according to his own understanding of the language and intent of the Constitution.

It is my opinion that, if enacted, the courts might well rule much of H.R. 14765 unconstitutional, even with the presumption of validity. Without this presumption, I believe that the entire bill, with the exception of title I, is unconstitutional.

H.R. 14765 should, therefore, be defeated.

BASIL L. WHITENER.

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CIVIL RIGHTS, 1966

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HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

SECOND SESSION

ON

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

H.R. 14765

MAY 4, 5, 10, 11, 12, 17, 18, 19, 24, AND 25, 1966

Serial No. 16

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CIVIL RIGHTS, 1966

WEDNESDAY, MAY 4, 1966

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

The subcommittee met at 10 a.m., pursuant to call, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Donohue, Kastenmeier, Corman, McCulloch, Cramer, and MacGregor.

Also present: Messrs. Gilbert, Tenzer, Grider, and McClory.

Also present: William R. Foley, general counsel; Benjamin L. Zelenko, counsel; Martin R. Hoffmann, associate counsel.

The CHAIRMAN. The committee will come to order.

The Chair wishes to make a statement. This morning Subcommittee No. 5 of the Judiciary Committee begins hearings on civil rights legislation which, among other things, is designed to assure the impartial selection of Federal and State court juries and to proscribe certain acts of violence and intimidation directly against those who seek to exercise rights secured by the Constitution and the laws of the United States.

The Civil Rights Acts of 1957, 1960, and 1964, and the Voting Rights Act of 1965, have reflected the national response to the appeal for equality under law.

To quote Victor Hugo, "When the time for an idea has come, nothing can stop it."

I see the time has come for freeing the Negro from centuries old shackles, shackles of ignorance, poverty, and squalor.

The innate sense of a preponderant majority of American people demands equality of treatment. No strident voice or ruthless act of a small minority can impede the onward flow to freedom of opportunity. We are part and parcel of the Judeo-Christian civilization, one of the principal tenets of which is "Love thy neighbor as thyself."

Through hostility on the part of some and apathy on the part of others, we have failed to heed the admonition of Leviticus, "Proclaim liberty throughout the land, and to all of the inhabitants thereof."

Not to some, but to all of the inhabitants. We can pass many statutes aiming toward equality, but unless those statutes find response within the minds and hearts of our citizenry everywhere, the voice of Leviticus is mute.

A number of statutes that we have passed, have been rendered abortive by the stupidity and violence of a few. There are numerous gaps in the legislative fabric. They must be filled. The legislation before us today attempts to fill in those gaps, and to strengthen the enforcement of these laws.

rights, privileges, or immunities secured by the Constitution and laws of the United States shall be fined not more than $1,000 or imprisoned not more than one year, or both;

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

"(2) Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;

"(2) Subjecting any person to unnecessary force liciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;

"(4) Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;

"(5) Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or

"(6) Aiding or assisting private persons in any way to carry out acts of unlawful violence."

(b) The enactment of this section shall not be construed as indicating an intent on the part of the Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exer-

cising jurisdiction over any offense over which they would have jurisdiction in the absence of the enactment of this section.

FEDERAL CIVIL REMEDIES FOR UNLAWFUL OFFICIAL VIOLENCE

SEC. 3. Section 1979 of the Revised Statutes of the United States (42 U.S.C. 1983) is amended by inserting "(a)" immediately after "SEC. 1979.", and by adding at the end thereof the following:

"(b) Every city, county, or political subdivision of a State or territory which has in its employ a person who, under color of any statute, ordinance, regulation, custom, or usage of such State, subjects, or cases to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress to the same extent as the person employed is liable to the party injured."

PROTECTION OF FEDERAL OFFICERS AND UNIFORMED MEMBERS OF THE ARMED SERVICES FROM INJURY AND THREATS

SEC. 4. Section 1114 of title 18 of the United States Code is amended by striking out "officer or enlisted man of the Coast Guard" and inserting in lieu thereof "uniformed

member of the Army, Navy, Air Force, Marine Corps, or Coast Guard, and by striking out "of the Federal Bureau of Investigation."

EXCLUSION OF MINORITY GROUP MEMBERS FROM JURY SERVICE

SEC. 5. (a) The Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage of any State or political subdivision thereof, exclude any person or groups of persons from grand or petit jury service on account of their race, color, or national origin.

(b) As used in subsection (a), the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

89TH CONGRESS
1ST SESSION

H. R. 7388

IN THE HOUSE OF REPRESENTATIVES

APRIL 13, 1965

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

A BILL

To protect civil rights by providing criminal and civil remedies for unlawful official violence, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Protection Against Unlawful Official Violence Act."

PROTECTION AGAINST VIOLENCE UNDER COLOR OF LAW

SEC. 2. (a) Section 242 of title 18, United States Code, is amended by inserting "(a)" immediately before "Whoever", and by adding at the end thereof the following:

"(b) Whoever, under color of any law, statute, ordinance, or regulation or custom knowingly performs any of

the following acts depriving another person of any of the rights, privileges, or immunities secured by the Constitution and laws of the United States shall be fined not more than $1,000 or imprisoned not more than one year, or both:

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

"(2) Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;

"(3) Subjecting any person to violence or maliciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;

"(4) Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;

"(5) Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or

"(6) Aiding or assisting private persons in any way to carry out acts of unlawful violence."

(b) The enactment of this section shall not be con-

strued as indicating an intent on the part of the Congress to prevent any State, any possession or Commonwealth of the United States, or the District of Columbia, from exercising jurisdiction over any offense over which they would have jurisdiction in the absence of the enactment of this section.

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"(b) Every city, county, or political subdivision of a State or territory which has in its employ a person who, under color of any statute, ordinance, regulation, custom, or usage of such State, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress to the same extent as the person employed is liable to the party injured."

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PROTECTION OF FEDERAL OFFICERS AND UNIFORMED MEMBERS OF THE ARMED SERVICES FROM INJURY AND THREATS

SEC. 4. (a) Chapter 73 of title 18 of the United States Code is amended by adding at the end of such chapter the following new section:

"§ 1510. Injuring or threatening to injure officers of the United States

"Whoever, by force, intimidation, or threat, prevents or attempts to prevent any person from accepting or holding any office, trust, or place of confidence under the United States, or attempts to induce by like means any officer of the United States to leave the place where his duties as an officer are required to be performed; or whoever injures or attempts to injure or threatens to injure any such person or the property of such person on account of the lawful discharge of the duties of his office, or while such person is engaged in the lawful discharge thereof; or whoever injures or attempts to injure or threatens to injure the property of any such person so as to molest, interrupt, hinder, or impede such person in the discharge of his official duties shall be fined not more than $5,000 or imprisoned not more than six years, or both."

(b) The analysis of chapter 73, immediately preceding

section 1501 of title 18 of the United States Code, is amended by adding at the end thereof the following:

"1510. Injuring or threatening to injure officers of the United States."

(c) Section 1114 of title 18 of the United States Code is amended by striking out "officer or enlisted man of the Coast Guard" and inserting in lieu thereof "uniformed member of the Army, Navy, Air Force, Marine Corps, or Coast Guard".

89TH CONGRESS
1ST SESSION

H. R. 8153

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 1965

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

A BILL

To protect civil rights by providing criminal and civil remedies for unlawful official violence, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Protection Against Unlawful Official Violence Act."

PROTECTION AGAINST VIOLENCE UNDER COLOR OF LAW

SEC. 2. (a) Section 242 of title 18, United States Code, is amended by inserting "(a)" immediately before "Whoever", and by adding at the end thereof the following:

"(b) Whoever, under color of any law, statute, ordinance, or regulation or custom knowingly performs any of

the following acts depriving another person of any of the rights, privileges, or immunities secured by the Constitution and laws of the United States shall be fined not more than $1,000 or imprisoned not more than one year, or both:

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

"(2) Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;

"(3) Subjecting any person to violence or maliciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;

"(4) Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;

"(5) Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or

"(6) Aiding or assisting private persons in any way to carry out acts of unlawful violence."

(b) The enactment of this section shall not be con-

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89TH CONGRESS
1ST SESSION

H. R. 11728

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1965

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

A BILL

To protect the constitutional rights of individuals irrespective of race, creed, color, or national origin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the letter and spirit of the Constitution of the United States are being violated in some jurisdictions in the United States under color of law with the result that individuals are being subjected to discriminatory treatment in the exercise of their constitutional rights because of race, creed, color, or national origin, or because they seek the removal of unconstitutional barriers to equal rights. The Congress hereby further declares that such persons, sometimes referred to as freedom riders,

freedom walkers, and sit-ins, as well as other law-abiding citizens intent upon peaceful resistance to discrimination and segregation, and the achievement of the constitutional rights of all persons in all jurisdictions of the United States, have suffered the stigma of criminal proceedings. It is therefore the sense of the Congress that the effect of such criminal proceedings should be neutralized by affording to such persons appropriate relief to the maximum extent possible.

SEC. 2. Notwithstanding any provision of law to the contrary, no person shall be denied any license, right, benefit, or privilege under any law of the United States, or incur any other disability or disqualification under any such law, or be denied the right of employment by the Government of the United States or the government of the District of Columbia or, if so employed, be subject to dismissal, solely because of his participation in any peaceful demonstration or other peaceful activity, the object of which is to achieve equal rights for all persons regardless of race, creed, color, or national origin or to resist discriminatory treatment and segregation in any public facility or place of public accommodation.

89TH CONGRESS
1ST SESSION

H. R. 11729

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1965

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

A BILL

To amend part III of the Civil Rights Act of 1957.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part III of the Civil Rights Act of 1957 (71 Stat. 637) is amended by adding at the end thereof the following new section:

"SEC. 123. (a) (1) Whenever the Attorney General finds that any person or group of persons is being deprived of, or is being threatened with the loss of, the right to the equal protection of the laws by reason of race, color, religion, or national origin (including cases involving racial segregation in public schools), and the Attorney General

section 1501 of title 18 of the United States Code, is amended by adding at the end thereof the following:

"1510. Injuring or threatening to injure officers of the United States."

(c) Section 1114 of title 18 of the United States Code is amended by striking out "officer or enlisted man of the Coast Guard" and inserting in lieu thereof "uniformed member of the Army, Navy, Air Force, Marine Corps, or Coast Guard".

89TH CONGRESS
1ST SESSION

H. R. 11728

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1965

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

A BILL

To protect the constitutional rights of individuals irrespective of race, creed, color, or national origin, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the letter and spirit of the Constitution of the United States are being violated in some jurisdictions in the United States under color of law with the result that individuals are being subjected to discriminatory treatment in the exercise of their constitutional rights because of race, creed, color, or national origin, or because they seek the removal of unconstitutional barriers to equal rights. The Congress hereby further declares that such persons, sometimes referred to as freedom riders,

freedom walkers, and sit-ins, as well as other law-abiding citizens intent upon peaceful resistance to discrimination and segregation, and the achievement of the constitutional rights of all persons in all jurisdictions of the United States, have suffered the stigma of criminal proceedings. It is therefore the sense of the Congress that the effect of such criminal proceedings should be neutralized by affording to such persons appropriate relief to the maximum extent possible.

SEC. 2. Notwithstanding any provision of law to the contrary, no person shall be denied any license, right, benefit, or privilege under any law of the United States, or incur any other disability or disqualification under any such law, or be denied the right of employment by the Government of the United States or the government of the District of Columbia or, if so employed, be subject to dismissal, solely because of his participation in any peaceful demonstration or other peaceful activity, the object of which is to achieve equal rights for all persons regardless of race, creed, color, or national origin or to resist discriminatory treatment and segregation in any public facility or place of public accommodation.

89TH CONGRESS
1ST SESSION

H. R. 11729

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1965

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

A BILL

To amend part III of the Civil Rights Act of 1957.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That part III of the Civil Rights Act of 1957 (71 Stat. 637) is amended by adding at the end thereof the following new section:

"SEC. 123. (a) (1) Whenever the Attorney General finds that any person or group of persons is being deprived of, or is being threatened with the loss of, the right to the equal protection of the laws by reason of race, color, religion, or national origin (including cases involving racial segregation in public schools), and the Attorney General

certifies that, in his judgment, such person or group of persons is unable for any reason to seek effective legal protection for the right to the equal protection of the laws, the Atorney General is authorized to institute for or in the name of the United States, a civil action or other proceeding for preventive relief, including an application for an injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or subdivision or instrumentality thereof, deprives or threatens to deprive such person or group of persons of the right to equal protection of the laws by reason of race, color, religion, or national origin and against any individual or individuals acting in concert with them.

"(2) A person or group of persons shall be deemed unable to seek effective legal protection for the right to the equal protection of the laws within the meaning of paragraph (1) of this subsection not only when such person or group of persons is financially unable to bear the expenses of the litigation, but also when there is reason to believe that the institution of such litigation would jeopardize the employment or economic standing of, or might result in injury or economic damage to, such person or group of persons or their families or their property.

"(b) The Attorney General is hereby authorized, upon

written request of the duly constituted authorities of any State or territory, or municipality, subdivision, or instrumentality thereof, to institute for or in the name of the United States, a civil action or other proceeding for preventive relief, including an application for an injunction or other order, against any two or more persons who conspire through violence, threats, or otherwise to prevent or hinder such duly constituted authorities from giving or securing to any person his right to equal protection of the laws.

"(c) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether any administrative or other remedies that may be provided by law shall have been exhausted. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"(d) Nothing in this section shall impair any right secured by the Constitution and laws of the United States, or any remedies already existing for their protection and enforcement.

"SEC. 124. The Attorney General may intervene on the part of the United States in any civil action brought by individuals involving alleged denials of civil rights arising out of the maintenance of racial segregation in public schools.

Such intervention shall be for the purpose of assuring that such denials of civil rights are remedied.

"SEC. 125. (a) Whenever the Attorney General finds that any person or group of persons is being deprived of, or is being threatened with the loss of, any right guaranteed by the fourteenth amendment to the Constitution, because such person or group of persons has opposed or opposes the denial of the equal protection of the laws to others because of race, color, religion, or national origin, and the Attorney General certifies that, in his judgment, such person or group of persons is unable for any reason to seek effective legal protection for such right guaranteed by the fourteenth amendment to the Constitution, the Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for or an injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or subdivision or instrumentality thereof, deprives or threatens to deprive such person or group of persons of such right guaranteed by the fourteenth amendment to the Constitution because such person has opposed or opposes the denial of the equal protection of the laws to others because of race, color, religion, or national origin, and against any

other individual or individuals acting in concert with such individual or individuals.

"(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether any administrative or other remedies that may be provided by law shall have been exhausted. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"(c) Nothing in this section shall impair any right secured by the Constitution and laws of the United States, or any remedies already existing for their protection and enforcement."

89TH CONGRESS
1ST SESSION

H. R. 11730

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1965

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

A BILL

To provide protection against lynchings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

PURPOSE

SECTION 1. The provisions of this Act are enacted in exercise of the power of Congress to enforce, by appropriate legislation, the provisions of the fourteenth amendment to the Constitution of the United States, and for the purpose of better assuring under such amendment equal protection and due process of law by the several States to all persons charged with or suspected or convicted of any offense within their jurisdiction.

DEFINITIONS

SEC. 2. (a) Whenever two or more persons shall knowingly in concert (1) commit or attempt to commit violence upon any person or persons or on his or their property because of his or their race, creed, color, national origin, ancestry, language, or religion, or (2) exercise or attempt to exercise, by violence against person or property, any power of correction or punishment over any person or persons in the custody of any governmental officer or employee or suspected of, charged with, or convicted of the commission of any criminal offense, with the purpose or consequence of preventing the apprehension or trial or punishment by law of such person or persons, or of imposing a punishment not authorized by law, such person shall constitute a lynch mob within the meaning of this Act. Any such action, or attempt at such action, by a lynch mob shall constitute lynching within the meaning of this Act.

(b) The term "governmental officer or employee", as used in this Act, shall mean any officer or employee of a State or any governmental subdivision thereof, or any officer or employee of the United States, the District of Columbia, or any territory, possession, or other area within the exclsuive jurisdiction of the United States.

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PUNISHMENT FOR LYNCHING

SEC. 3. Any person whether or not a member of a lynch mob who willfully instigates, incites, organizes, aids, abets, or commits a lynching by any means whatsoever, and any member of a lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $10,000 or by imprisonment not exceeding twenty years, or by both such fine and imprisonment.

PUNISHMENT FOR FAILURE TO PREVENT LYNCHING

SEC. 4. Whenever a lynching shall occur, any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching, but shall have neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching, and any officer or employee of a State or governmental subdivision thereof who shall have had custody of the person or persons lynched and shall have neglected, refused, or willfully failed to make all diligent efforts to protect such person or persons from lynching, and any officer or employee of a State or governmental subdivision thereof who, in violation of his duty as such officer or employee, shall neglect, refuse, or willfully fail to make all

diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynch mob, shall be guilty of a felony and upon conviction thereof shall be punished by a fine not exceeding $5,000 or by imprisonment not exceeding five years, or by both such fine and imprisonment.

DUTY OF THE ATTORNEY GENERAL OF THE UNITED STATES

SEC. 5. Whenever a lynching of any person or persons shall occur, and information on oath is submitted to the Attorney General of the United States that any officer or employee of a State or any governmental subdivision thereof who shall have been charged with the duty or shall have possessed the authority as such officer or employee to prevent the lynching or protect such person or persons from lynching, or who shall have had custody of the person or persons lynched, has neglected, refused, or willfully failed to make all diligent efforts to prevent the lynching or protect such person or persons from lynching, or that any officer or employee of a State or governmental subdivision thereof, in violation of his duty as such officer or employee, has neglected, refused, or willfully failed to make all diligent efforts to apprehend, keep in custody, or prosecute the members or any member of the lynch mob, the Attorney General of the United States shall cause an investigation to be

made to determine whether there has been any violation of this Act.

COMPENSATION FOR VICTIMS OF LYNCHING

SEC. 6. (a) Every governmental subdivision of a State to which the State shall have delegated police functions shall be responsible for any lynching occurring within its territorial jurisdiction. Every such governmental subdivision shall also be responsible for any lynching which follows upon the seizure and abduction of the victim or victims within its territorial jurisdiction, irrespective of whether such lynching occurs within its territorial jurisdiction or not. Any such governmental subdivision which shall fail to prevent any such lynching or any such seizure and abduction followed by lynching shall be liable to each individual who suffers injury to his or her person as a result of such lynching, or to his or her next of kin if such injury results in death, for a sum of not less than $2,000 and not more than $10,000 as monetary compensation for such injury or death: *Provided, however,* That the governmental subdivision may prove by a preponderance of evidence as an affirmative defense that the officers thereof charged with the duty of preserving the peace, and the citizens thereof, when called upon by any such officer, used all diligence and all powers vested in them for the protection of the person lynched: *And provided further,*

That the satisfaction of judgment against one governmental subdivision responsible for a lynching shall bar further proceedings against any other governmental subdivision which may also be responsible for that lynching.

(b) Liability arising under this section may be enforced and the compensation herein provided for may be recovered in a civil action in the United States district court for the judicial district of which the defendant governmental subdivision is a part. Such action shall be brought and prosecuted by the Attorney General of the United States in the name of the United States for the use of the real party in interest, or, if the claimant or claimants shall so elect, by counsel employed by the claimant or claimants, but in any event without prepayment of costs. If the amount of any such judgment shall not be paid upon demand, payment thereof may be enforced by any process available under the State law for the enforcement of any other money judgment against such governmental subdivision. Any officer of such governmental subdivision or any other person who shall disobey or fail to comply with any lawful order or decree of the court for the enforcement of the judgment shall be guilty of contempt of that court and punished accordingly. The cause of action accruing hereunder to a person injured by lynching shall not abate with the subsequent death of that person before final judgment but shall survive to his or her next of

kin. For the purpose of this Act the next of kin of a deceased victim of lynching shall be determined according to the laws of intestate distribution in the State of domicile of the decedent. Any judgment or award under this Act shall be exempt from all claims of creditors.

(c) Any judge of the United States district court for the judicial district wherein any suit shall be instituted under the provisions of this Act may by order direct that such suit be tried in any place in such district which he may designate in such order, except that no such suit shall be tried within the territorial limits of the defendant governmental subdivision.

KIDNAPING

SEC. 7. The crime defined in and punishable under section 1201 of title 18, United States Code, shall include the transportation in interstate or foreign commerce of any person unlawfully abducted and held for purposes of punishment, coercion, or intimidation.

89TH CONGRESS
1ST SESSION

H. R. 11742

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 21, 1965

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend chapter 13 of title 18, United States Code, to provide additional protection for civil rights guaranteed by the Constitution of the United States, to prescribe additional penalties for violations of civil rights, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 241 and 242 of chapter 13 of title 18, United States Code, relating to civil rights, are amended to read as follows:

"§ 241. Deprivation of rights by persons not acting under color of law

"No person, acting otherwise than under color of law, shall injure, oppress, threaten, or intimidate another in the

free exercise or enjoyment of any right or privilege which the Constitution or laws of the United States secures against violations by persons not acting under color of law, or because of his having exercised or been about to exercise the same; nor shall any such person injure, oppress, threaten, or intimidate another for reasons of race.

"The rights and privileges protected by this section shall include, but not be limited to, the right to speak, write, assemble, petition, or lawfully and peaceably march and demonstrate, or otherwise publicize opinions, on matters of Federal concern; the right to travel from State to State and to be free from violence on the streets and highways and other instruments or instrumentalities of commerce; and all rights created, secured, or protected by the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

"Any violation of this section which results in death or maiming or was intended so to result is a felony and shall be punished by a fine of not more than $20,000 or imprisonment for any term of years or life, or both.

"Any violation of this section which is carried out with a deadly weapon or which causes or was intended to cause bodily harm is a felony and shall be punished by a fine of not more than $15,000 or imprisonment for not more than ten years, or both.

"Any other violation of this section is a misdemeanor

and shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

"If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of the section and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

"As used in this section, 'for reasons of race' shall mean because of hostility to the victim's race, or racial associations, or support of racial equality, or with intent to discourage racial equality.

"§ 242. Deprivation of rights by persons acting under color of law

"No person, acting under color of any law, statute, ordinance, regulation, or custom established by or having the force of law, or in conspiracy with or in aid of another, so acting, shall injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege which the Constitution or laws of the United States secures against violation by persons acting under color of law or otherwise, or because of his having exercised or been about to exercise the same, or for reasons of race.

"The rights and privileges protected by this section shall include, but not be limited to, all of the rights and privileges set forth in the previous section; the right to be free from

discrimination under color of law on account of race or religion; and all rights secured by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, and by the fifth, fourteenth, and fifteenth amendments to the Constitution of the United States.

"The following actions are included within, but are not exclusive of, actions prohibited by this section:

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

"(2) Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;

"(3) Subjecting any person to violence or maliciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;

"(4) Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;

"(5) Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or

"(6) Aiding or assisting private persons in any way to carry out acts of unlawful violence.

"Any violation of this section which results in death or maiming or was intended so to result is a felony and shall be

punished by a fine of not less than $5,000, or imprisonment for any term of years not less than five, or for life, or both.

"Any violation of this section which is carried out with a deadly weapon or which causes or was intended to cause bodily harm is a felony and shall be punished by a fine of not less than $1,000 nor more than $20,000 or imprisonment for not less than one year nor more than fifteen years, or both.

"Any other violation of this section is a misdemeanor and shall be punished by a fine of not less than $300 nor more than $1,000 or imprisonment for not less than thirty days nor more than one year, or both.

"If any provision of this section or of the application thereof to any person or circumstances is held invalid, the remainder of the section and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

"As used in this section, 'for reasons of race' shall have the same meaning as in section 241 of this title.".

89TH CONGRESS
2D SESSION

H. R. 12086

IN THE HOUSE OF REPRESENTATIVES

JANUARY 17, 1966

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

A BILL

To amend chapter 13 of title 18, United States Code, to provide additional protection for civil rights guaranteed by the Constitution of the United States, to prescribe additional penalties for violations of civil rights, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections 241 and 242 of chapter 13 of title 18, United States Code, relating to civil rights, are amended to read as follows:

"§ 241. Deprivation of rights by persons not acting under color of law

"No person, acting otherwise than under color of law, shall injure, oppress, threaten, or intimidate another in the

free exercise or enjoyment of any right or privilege which the Constitution or laws of the United States secures against violations by persons not acting under color of law, or because of his having exercised or been about to exercise the same; nor shall any such person injure, oppress, threaten, or intimidate another for reasons of race.

"The rights and privileges protected by this section shall include, but not be limited to, the right to speak, write, assemble, petition, or lawfully and peaceably march and demonstrate, or otherwise publicize opinions, on matters of Federal concern; the right to travel from State to State and to be free from violence on the streets and highways and other instruments or instrumentalities of commerce; and all rights created, secured, or protected by the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

"Any violation of this section which results in death or maiming or was intended so to result is a felony and shall be punished by a fine of not more than $20,000 or imprisonment for any term of years or life, or both.

"Any violation of this section which is carried out with a deadly weapon or which causes or was intended to cause bodily harm is a felony and shall be punished by a fine of not more than $15,000 or imprisonment for not more than ten years, or both.

"Any other violation of this section is a misdemeanor

and shall be punished by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

"If any provision of this section or the application thereof to any person or circumstances is held invalid, the remainder of the section and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

"As used in this section, 'for reasons of race' shall mean because of hostility to the victim's race, or racial associations, or support of racial equality, or with intent to discourage racial equality.

"§ 242. Deprivation of rights by persons acting under color of law

"No person, acting under color of any law, statute, ordinance, regulation, or custom established by or having the force of law, or in conspiracy with or in aid of another, so acting, shall injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege which the Constitution or laws of the United States secures against violation by persons acting under color of law or otherwise, or because of his having exercised or been about to exercise the same, or for reasons of race.

"The rights and privileges protected by this section shall include, but not be limited to, all of the rights and privileges set forth in the previous section; the right to be free from

discrimination under color of law on account of race or religion; and all rights secured by the Civil Rights Act of 1964 and the Voting Rights Act of 1965, and by the fifth, fourteenth, and fifteenth amendments to the Constitution of the United States.

"The following actions are included within, but are not exclusive of, actions prohibited by this section:

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

"(2) Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody;

"(3) Subjecting any person to violence or maliciously subjecting such person to unlawful restraint in the course of eliciting a confession to a crime or any other information;

"(4) Subjecting any person to violence or unlawful restraint for the purpose of obtaining anything of value;

"(5) Refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place; or

"(6) Aiding or assisting private persons in any way to carry out acts of unlawful violence.

"Any violation of this section which results in death or maiming or was intended so to result is a felony and shall be

punished by a fine of not less than $5,000, or imprisonment for any term of years not less than five, or for life, or both.

"Any violation of this section which is carried out with a deadly weapon or which causes or was intended to cause bodily harm is a felony and shall be punished by a fine of not less than $1,000 nor more than $20,000 or imprisonment for not less than one year nor more than fifteen years, or both.

"Any other violation of this section is a misdemeanor and shall be punished by a fine of not less than $300 nor more than $1,000 or imprisonment for not less than thirty days nor more than one year, or both.

"If any provision of this section or of the application thereof to any person or circumstances is held invalid, the remainder of the section and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

"As used in this section, 'for reasons of race' shall have the same meaning as in section 241 of this title.".

89TH CONGRESS
2D SESSION

H. R. 12807

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 14, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, in-

cluding the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service, and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of districts courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in

any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and insertiag in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel or similiar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service and the date thereof and such additional appropriate records as the judge or judges or said court may direct. Such

records shall be retained for a period of not less than four years.

JURY DISCRIMINATION

SEC. 106. (a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service

laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of subsections (a), (b), (c), and (d) of section 1974 of title 42, United States Code, shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prose-

cution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated

against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political sub-

division exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202 (e) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment, in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become exclusive of

the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the

United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General

described in section 203 (b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a

Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed

findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its de-

tailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Section 241 of title 18, United States Code, is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or

protected by the Constitution or laws of the United States, or because of his having so exercised the same;

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using, directly or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted

he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person, because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any

other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order: *Provided*, That such other person above mentioned is a person described in subsection 202 (d) (i) or (ii) and any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

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TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States

against abridgement or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted, or (ii) by any act, the purpose or design

of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not

in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in subsections (1) and (2) of section 161 of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

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(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the politicial subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected

by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentionally causes grave bodily injury or death to another or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public

officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on behalf of the person or persons so injured or on behalf of the deceased requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge and if after such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (hereafter referred to as the "respondent") a copy of the com-

plaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence the Commission shall find that the respondent has engaged in the acts or omissions charged in the complaint, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary, (2) removing respondent from office, and (3) disqualifying respondent from holding said or any other office for such period of time not exceeding ten (10) years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or removal from office is not warranted, but that acts of violence

have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602 (c). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon

which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission which shall file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered

and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint and no appeal shall lie from said order of dismissal.

SEC. 605. In any action commenced pursuant to this title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States,

a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows:

"The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701 (c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706 (c): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707 (a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707 (a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709 (a) on lines 1 and 5 of section 710 (c) and on lines 2 and 7 of section 713 (b).

TITLE VIII—MISCELLANEOUS

SEC. 801. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race

or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 802. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 12818

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 1966

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

A BILL

Designed to prevent crimes of intimidation, violence, and murder against Negroes and civil rights workers lawfully seeking to enforce the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation, and methods of selecting and drawing jurors

"'(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation, or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, in-

cluding the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service, and the dates thereof and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or record-keeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United

States court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, approve the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write".

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reason-

ably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10.00 per day" and inserting in their place "$15.00 per day or loss of pay, whichever is greater"; and by striking the words "$14.00 for each day" and inserting in their place "$20.00 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10.00 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10.00 per diem" and inserting in their place "jury fees in excess of $15.00 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel, or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service, and the dates thereof, and such additional appropriate records

as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—

(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service laws, appoint and fix the

compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however*, That in case all or part of the two-year period antedates the effective date of this Act, the State or

local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of subsections (a), (b), and (c) of section 1974 of title 42, United States Code, shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever pros-

ecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is—

(i) a member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) a person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) Systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise; or

(ii) Systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected; or

(iii) Systematically segregated in, or discriminated

against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, court, or other public buildings related to the administration of justice; or

(iv) Systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) Systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political

subdivision exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202(e) (i) or (ii): *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a

certificate, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and

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to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General described in section 203(b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section—

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such

indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investi-

gation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings

of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Section 241, title 18, United States Code is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured,

or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or

acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity granted, secured or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any

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other person of, or hinder him in the exercise of, the right to speak, assemble, petition or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order; *Provided,* That such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Con-

stitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person

from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission many request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it

is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same power of investigation and subpoena as those granted the National Labor Relations Board in section 161, subsections (1) and (2) of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any

right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the

person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided,* That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentionally causes grave bodily injury or death to another

or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on behalf of the person or persons so injured or on behalf of the deceased requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge and if after

such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (hereafter referred to as the "respondent") a copy of the complaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence the Commission shall find that the respondent has engaged in the acts or omissions charged in the complaint, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary, (2) removing respondent from office and (3) disqualifying respondent from holding said or any other

office for such period of time not exceeding ten years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or removal from office is not warranted, but that acts of violence have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of

appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602(e). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction

of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or

set aside. A copy of such petition shall be forthwith served upon the Commission which shall file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint and no appeal shall lie from said order of dismissal.

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SEC. 605. In any action commenced pursuant to this title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c)

of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701 (c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706 (e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707 (a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707 (a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709 (a) on lines 1 and 5 of section 710 (c) and on lines 2 and 7 of section 713 (b).

TITLE VIII—MISCELLANEOUS

SEC. 801. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or

because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 802. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 12845

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 16, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SECTION 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk, and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including

the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however,* That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably

required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem."

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service

and the dates thereof, and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court, and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service

laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the Sate or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of title 42, United States Code, sections 1974 (a), (b), (c), and (d) shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prose-

cution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated

against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202 (e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political sub-

division exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202 (e) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period, antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become

exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United

States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardry attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General de-

scribed in section 203 (b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate; and

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate.

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time

or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the

county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsec-

tion (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. 18 U.S.C. 241 is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, priv-

ilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to pre-

vent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney Gen-

eral for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order; provided that such other person above mentioned is a person described in subsection 202 (d) (i) or (ii) and any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circum-

stances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal, or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the

President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

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SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission

shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpoena as those granted the National Labor

Relations Board in 29 U.S.C. 161 (1) and (2).

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall

have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence

of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State, provided that in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award

shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 601. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit;"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701 (c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706 (e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707 (a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707 (a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709 (a) on lines 1 and (5) of section 710 (c) and on lines 2 and 7 of section 713 (b).

TITLE VII—MISCELLANEOUS

SEC. 701. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not

otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 702. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 12891

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 17, 1966

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

A BILL

Designed to prevent crimes of intimidation, violence, and murder against Negroes and civil rights workers lawfully seeking to enforce the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation, and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation, or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, in-

cluding the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service, and the dates thereof and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or record-keeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United

States court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, approve the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however,* That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write".

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reason-

ably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10.00 per day" and inserting in their place "$15.00 per day or loss of pay, whichever is greater"; and by striking the words "$14.00 for each day" and inserting in their place "$20.00 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10.00 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10.00 per diem" and inserting in their place "jury fees in excess of $15.00 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel, or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service, and the dates thereof, and such additional appropriate records

as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—

(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service laws, appoint and fix the

compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the State or

local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of subsections (a), (b), and (c) of section 1974 of title 42, United States Code, shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever pros-

ecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is—

(i) a member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) a person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) Systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise; or

(ii) Systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected; or

(iii) Systematically segregated in, or discriminated

against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, court, or other public buildings related to the administration of justice; or

(iv) Systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) Systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political

subdivision exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202(e) (i) or (ii): *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a

certificate, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and

to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General described in section 203(b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section—

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such

indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investi-

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gation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings

of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Section 241, title 18, United States Code is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured,

or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or

acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity granted, secured or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any

other person of, or hinder him in the exercise of, the right to speak, assemble, petition or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order; *Provided*, That such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

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TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202(d) and if any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Con-

stitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person

from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission many request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it

is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same power of investigation and subpoena as those granted the National Labor Relations Board in section 161, subsections (1) and (2) of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any

right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the

person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentionally causes grave bodily injury or death to another

or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on behalf of the person or persons so injured or on behalf of the deceased requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge and if after

such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (hereafter referred to as the "respondent") a copy of the complaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence the Commission shall find that the respondent has engaged in the acts or omissions charged in the complaint, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary, (2) removing respondent from office and (3) disqualifying respondent from holding said or any other

office for such period of time not exceeding ten years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or removal from office is not warranted, but that acts of violence have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of

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appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602(e). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction

of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or

set aside. A copy of such petition shall be forthwith served upon the Commission which shall file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint and no appeal shall lie from said order of dismissal.

SEC. 605. In any action commenced pursuant to this title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701(a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701(b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501(c)

of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701(c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701(c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and 5 of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VIII—MISCELLANEOUS

SEC. 801. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or

because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 802. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 13323

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. **Qualifications of Federal jurors**

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. **Method of selecting jurors**

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"**§ 1865. Apportionment within district**

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

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TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

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SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13324

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

13

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13325

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

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TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13326

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

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"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13327

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

Mrs. DWYER introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

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"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

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"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985 (3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

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SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13328

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13329

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

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"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

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SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13330

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13331

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

Mr. HARVEY of Michigan introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"**§ 242. Deprivations of rights under color of law; Conspiracy**

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13332

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

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performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

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supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

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TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13333

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

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JURY SELECTION IN FEDERAL COURTS

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"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

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performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"**§ 1865. Apportionment within district**

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

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SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

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TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction or order requiring posting of a bond to secure compliance with orders of the court.

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"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13334

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

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"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from disorimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13335

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

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SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13336

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1.000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13337

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1.000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13338

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may [illegible]r presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"**§ 242. Deprivations of rights under color of law; Conspiracy**

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

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SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

63-420 O—66——27

89TH CONGRESS
2D SESSION

H. R. 13339

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

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"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

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SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13340

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

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SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13341

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

Mr. REID of New York introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the prccedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13342

IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1966

Mr. SCHWEIKER inintroduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection ( ), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

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SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 13500

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1966

Mrs. MINK introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SECTION 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk, and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including

the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names, race, and sex of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any

particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel, or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names, race, and sex of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records

as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color or sex in such State or local court or that the record-keeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court, and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service laws, appoint and

fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color or sex in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however*, That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

(d) Whenever it is shown that over a period of two years within the area of any State or local court less than one-third of the persons serving on grand and petit juries are of a given sex, it shall be presumed to be systematic exclusion of persons of that sex unless it is shown by the clerk of the court or other appropriate official that the disproportionate ratio is due to the fact that a larger number of the persons of that sex have been excused by the court for cause: *Provided*, That nothing herein shall be construed to require or permit the limitation of either sex to one-third quotas in regard to jury selection: *And provided further*, That in case all or part of the two-year period antedates the effective date of this title, the State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United State District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons

will be excluded from jury service by reason of race or color or sex, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of title 42, United States Code, sections 1974 (a), (b), (c), and (d) shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prosecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to

the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection

(c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts, or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political subdivision exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202(e) (i) or (ii): *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described

in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable

in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General described in section 203 (b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes

unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect to the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other pur-

poses of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners, and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the country or other political subdivision concerned to

consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Title 18, United States Code, section 241, is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein,

or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of

bond to secure compliance with any order of the court, or other order; provided that such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202(d) and if any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding

(civil, criminal, or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising,

attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matter relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

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SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in 29 U.S.C. 161 (1) and (2).

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was

taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any state of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or

death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State, provided that in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 601. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word *"Provided"* to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit;"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701 (c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and (5) of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VII—MISCELLANEOUS

SEC. 701. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 702. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 13626

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SECTION 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk, and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including

the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names, race, and sex of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however,* That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any

particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel, or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names, race, and sex of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records

as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color or sex in such State or local court or that the record-keeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court, and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service laws, appoint and

fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color or sex in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

(d) Whenever it is shown that over a period of two years within the area of any State or local court less than one-third of the persons serving on grand and petit juries are of a given sex, it shall be presumed to be systematic exclusion of persons of that sex unless it is shown by the clerk of the court or other appropriate official that the disproportionate ratio is due to the fact that a larger number of the persons of that sex have been excused by the court for cause: *Provided,* That nothing herein shall be construed to require or permit the limitation of either sex to one-third quotas in regard to jury selection: *And provided further,* That in case all or part of the two-year period antedates the effective date of this title, the State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United State District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons

will be excluded from jury service by reason of race or color or sex, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of title 42, United States Code, sections 1974 (a), (b), (c), and (d) shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prosecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to

the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection

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(c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts, or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political subdivision exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202(e) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described

in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable

in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General described in section 203 (b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes

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unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect to the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other pur-

poses of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners, and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the country or other political subdivision concerned to

consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Title 18, United States Code, section 241, is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein,

or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of

bond to secure compliance with any order of the court, or other order; provided that such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202(d) and if any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding

(civil, criminal, or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising,

attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matter relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

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SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in 29 U.S.C. 161 (1) and (2).

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was

taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any state of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or

death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

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SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State, provided that in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

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TITLE VI—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 601. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701(a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701(b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit;"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701(c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701(c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and (5) of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VII—MISCELLANEOUS

SEC. 701. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 702. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 13941

IN THE HOUSE OF REPRESENTATIVES

MARCH 23, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SECTION 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk, and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including

the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however,* That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably

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required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem."

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service

and the dates thereof, and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court, and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service

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laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however*, That in case all or part of the two-year period antedates the effective date of this Act, the

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State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of title 42, United States Code, sections 1974 (a), (b), (c), and (d) shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prose-

cution of such offenses ir a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (c) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated

against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 301 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202 (e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political sub-

division exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202(e) (i) or (ii): *Provided, however*, That in case all or part of the two-year period, antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become

exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United

States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General de-

scribed in section 208 (b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate; and

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate.

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time

or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the

county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsec-

tion (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. 18 U.S.C. 241 is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, priv-

ilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to pre-

vent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney Gen-

eral for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order; provided that such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202(d) and if any one of the circum-

stances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal, or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly, or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the

President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

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SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission

shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpoena as those granted the National Labor

Relations Board in 29 U.S.C. 161 (1) and (2).

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall

have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any state of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence

of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State, provided that in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award

shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 601. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701(a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701(b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501(c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit;"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701(c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and (5) of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VII—MISCELLANEOUS

SEC. 701. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not

otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 702. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 13991

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1966

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

A BILL

To guarantee equal justice under law.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Law Enforcement Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1861 of title 28, United States Code, is amended to read as follows:

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"§ 1861. Qualifications of Federal jurors

"Any person who is qualified to vote within the judicial district is competent to serve as a grand or petit juror."

SEC. 102. Section 1863 of title 28, United States Code, is amended by adding the following subsection:

"(d) The district judge shall excuse or exclude from jury service any person called as a juror who is—

"(1) exempt under section 1862; or

"(2) unable to speak or understand the English language; or

"(3) unable to read or write the English language, unless such person has completed the sixth grade in an English language school; or

"(4) incapable by reason of mental or physical infirmity from rendering efficient jury service."

SEC. 103. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Method of selecting jurors

"(a) The names of all persons qualified to vote within the judicial district shall be obtained by the clerk of the court or his deputy.

"(b) From the names obtained under subsection (a), the clerk of the court, or his deputy, shall place not less than three hundred names in a jury box, wheel, or similar device. The names to be placed in the jury box, wheel, or

similar device shall be obtained through random selection so as to be without discrimination on the grounds of race, color, sex, political or religious affiliation, or economic or social status. The chief judge of the district shall direct the clerk of the court, or his deputy, in the manner of selection, and the chief judge shall seek the assistance and approval of the Administrative Office of the United States Courts in the manner of selection. The Administrative Office of the United States Courts may call upon the Director of the Bureau of the Census for advice and assistance.

"(c) The clerk of the court, or his deputy, shall publicly draw by chance from the jury box, wheel, or similar device, the names of jurors for service on grand and petit juries.

"(d) Names once drawn for jury service shall not be subject to a redrawing until all other names, obtained under subsection (a), have been drawn.

"(e) The clerk of the court, or his deputy, shall periodically, but no less than once a year, revise the list of names obtained under subsection (a).

"(f) The clerk of the court, or his deputy, shall keep records of the names obtained under subsection (a); the names of persons placed in the jury box, wheel, or similar device; the name, race, and sex of the persons drawn from the jury box, wheel, or similar device; the names of those

performing jury service and the dates thereof; and such additional appropriate records as the chief judge of the district may direct. Such records shall be retained for a period of not less than four years.

"(g) Any of the powers or duties conferred upon the chief judge of a district under this section may be delegated by him to another judge of the district, except that, where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge of the district in this section.

"(h) The judicial conferences of the United States and the circuits shall annually review the operations of juror selection and recordkeeping in order to assure uniformity, efficiency, and compliance with the provisions of this Act. If the chief judge of a circuit determines that the jury selection procedures or recordkeeping requirements set forth in this section are not being fully implemented within a district of the circuit, he shall take charge of the supervision of such procedures or requirements, including the designation of a new clerk or deputy clerks, until such time as he is satisfied that the procedures and requirements will be fully implemented. If a circuit justice of the United States determines that the chief judge of the circuit is not effectively

supervising the juror selection procedures and recordkeeping requirements, either directly or through the chief judge of the district, the circuit justice shall designate another circuit or district judge within the circuit to take charge of the supervision until such time as he is fully satisfied that the procedures and requirements will be fully implemented.

"(i) A person shall be considered qualified to vote under this section and under section 1861 if he is currently registered to vote, placed on a list of eligible voters, or otherwise found qualified to vote in any election held or to be held within the judicial district."

SEC. 104. Section 1865 of title 28, United States Code, is amended to read as follows:

"§ 1865. Apportionment within district

"(a) In accordance with the procedures and requirements of section 1864, grand and petit jurors shall from time to time be selected from such parts of the district as the chief judge of the district directs so as to be most favorable to an impartial trial, and not to incur unnecessary expense or unduly burden the citizens of any part of the district with jury service. To this end, the chief judge may direct the maintenance of separate jury boxes, wheels, or similar devices for some or all the places for holding court in the district.

"(b) Grand and petit jurors summoned for service at one place for holding court in a district may, if public con-

venience so requires and the jurors will not be unduly burdened thereby, be directed to serve at another place in the same district."

SEC. 105. Section 1866 of title 28, United States Code, is repealed and the subsequent sections are renumbered accordingly.

JURY SELECTION IN STATE COURTS

SEC. 107. Section 1443 of title 28, United States Code, is amended by adding "(a)" prior to "Any of the following civil actions", and by adding the following:

"(3) If the recordkeeping requirements of section 108 of this title are not fulfilled; or

"(4) If the procedures for selecting the grand or petit juries under which the defendant was indicted or is to be tried were or are not in conformity with the procedures for selecting Federal juries, unless it is established that the procedures for selecting and the actual selection of the juries in the State or local court assure the prevention of discrimination on the grounds of race, color, or sex.

"(b) Upon timely application, the Attorney General may intervene for presentation of evidence and for argument in actions brought under subparagraphs (3) and (4) of this section."

SEC. 107. Each State or local court shall keep records of

the names of all persons on the jury list for said court; names of those persons placed in the jury box, wheel, or similar device; questionnaires, applications, or documents of any sort used in the selection of jurors; the names and race of the persons drawn from the jury box, wheel, or similar device; the names of those performing jury service and the dates thereof; and such additional appropriate records as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that the procedures for selecting or the selection of juries in a State or local court discriminate on the grounds of race, color, or sex, he may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in his absence the Acting Attorney General), (2) setting forth facts pertaining to such discriminatory procedures or selection, and (3) requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such discriminatory procedures or selection, as he deems necessary to insure the selection of juries on a nondiscriminatory basis.

SEC. 109. The provisions of sections 1974 (a), (b),

(c), and (d) of title 42, United States Code, shall apply with respect to jury records required to be maintained under section 108.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

SEC. 201. Section 241 of title 18, United States Code, is amended to read as follows:

"§ 241. Violations of rights of citizens

"(a) a. Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another—

"(1) on account of such other's race or color, and

"(i) for the purpose, or with the reasonably foreseeable effect of interrupting or denying his free exercise of any right or privilege secured or protected by the Constitution or laws of the United States, or

"(ii) because of his having exercised any such right or privilege, or

"(2) on account or because of such other's efforts or attempts to petition for, or secure recognition of the right to enjoyment of such rights or privileges free from discrimination on account of race or color

shall be punished as provided in section 245 of this chapter.

"(b) If two or more persons conspire to injure, oppress, threaten, or intimidate another in the free exercise or enjoyment of any right or privilege secured to him by the Con-

stitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

They shall be punished as provided in section 245 of this chapter."

SEC. 202. Section 242 of title 18, United States Code, is amended to read as follows:

"§ 242. Deprivations of rights under color of law; Conspiracy

"(a) Whoever, acting under color of law, knowingly deprives or has reasonable grounds to believe that he is depriving another of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or knowingly subjects or has reasonable grounds to believe he is subjecting another to different punishments, pains, or penalties, on account of such other's race or color, or on account of such other's attempts to petition for or secure recognition of the right to enjoyment of such rights, privileges, or immunities free from discrimination on account of race or color, shall be punished as provided in section 245 of this chapter.

"(b) Whoever, acting under color of law or otherwise, conspires to commit acts proscribed by section 241 (a) or 242 (a), shall be punished as provided in section 245."

SEC. 203. Chapter 13 of title 18, United States Code, is amended by adding the following section:

"§ 245. Penalties

"(a) Whoever is guilty of an act proscribed by sections 241 and 242 of this chapter shall be fined not more than $1,000 or imprisoned for not more than one year or both.

"(b) Whoever in the commission of any such act uses a dangerous or deadly weapon, or acts with intent to maim, disfigure, or incapacitate another or with intent to do bodily harm, shall be fined not more than $10,000 or imprisoned for not less than one year nor more than ten years or both.

"(c) Whoever is convicted of any crime prohibited by section 241 or 242 which has resulted in the death of any person shall be fined not more than $10,000 or imprisoned for not less than one year nor more than thirty years or both.

"(d) Whoever is convicted of any crime prohibited by this chapter having been convicted previously thereunder shall not have his sentence suspended or probation granted, and he shall receive a mandatory sentence of not less than one-third of the maximum prison term allowable."

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

SEC. 301. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States on account of such other's race or color, such other person in his own right, or the Attorney General for or in the name of the United States may institute a civil action or other proper proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 302. Whenever there are reasonable grounds to believe that any person is about to engage or continue to engage in any act or practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color, such other person in his own right, or the Attorney General for or in the name of the

United States may institute a civil action or other proceeding for temporary or permanent preventive or mandatory relief, including application for temporary restraining order or preliminary injunction, permanent injunction, or order requiring posting of a bond to secure compliance with orders of the court.

SEC. 303. The district courts of the United States shall have jurisdiction of proceedings instituted under this title and shall exercise the same without regard to whether the party bringing the action shall have exhausted administrative or other remedies that may be provided by law. The United States shall be liable as would be a private person for costs in such proceedings.

TITLE IV—INDEMNITY

SEC. 401. Section 1985(3) of title 42, United States Code, is amended by adding the following sentence at the end thereof: "If, as a result of such conspiracy, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State, under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

SEC. 402. Section 1986 of title 42, United States Code, is amended to read as follows:

"§ 1986. Refusal or neglect to prevent injury or loss of life

"Every person who, having knowledge that any wrongs mentioned in section 1985(3) of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable to the party injured or his legal representative at law or in equity for such injuries or loss of life sustained therefrom and for court costs and reasonable counsel fees. If, as a result of such refusal or neglect, a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life. No action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued."

89TH CONGRESS
2D SESSION

H. R. 14111

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1966

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

A BILL

To assure the fair selection of jurors and enforce the equal right to jury service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Jury Selection Act of 1966".

PROHIBITION OF JURY DISQUALIFICATION BY REASON OF RACE OR COLOR

SEC. 2. No citizen may be disqualified from service as a grand or petit juror in any court of the United States or of any State on account of race or color.

TITLE I—STATE COURTS

DEFINITIONS

SEC. 3. As used in this title—

(1) "Jury court" shall mean a court of any State in which factfinding is or may be done by jury;

(2) "Jury officers" shall mean all persons, including judges, having supervisory authority over, or responsibility in whole or in part for, the compilation of venire lists, selection of veniremen, or impaneling of jurors in or for any jury court;

(3) "Special jury commissioner" shall mean the Federal officer appointed under part 2 of this title;

(4) "County" shall mean county or parish; and

(5) "Shall" is directive; "may" is permissive.

EXEMPTION OF COUNTIES OR COURTS BY THE ATTORNEY GENERAL

SEC. 4. The Attorney General may, by publication in the Federal Register, withdraw certification of any particular county or court under sections 101 or 202, if he is satisfied that, within the five years preceding such withdrawal, disqualifications of veniremen or jurors on account of race or color therein have been few in number and have been promptly and effectively corrected by the State judicial system, that their continuing effect has been eliminated, and that there is no reasonable probability of their recurring in

the future: *Provided,* That the Attorney General shall have no power, prior to or otherwise than by publishing such withdrawal, to stay or mitigate any provision of this title.

PART 1—RECORDS REQUIRED TO BE KEPT BY STATE COURTS

CRITERIA OF APPLICATION

SEC. 101. The Attorney General shall certify and publish in the Federal Register a list of every county in which:

(1) more than 10 per centum of the persons residing therein are nonwhite; and

(2) (A) racial segregation in any public or private establishment or facility or other place was required by the State, or any agency or political subdivision thereof, within five years preceding January 1, 1967; or

(B) determinations, either individually or as a part of a larger political unit, at the time of such certification, require compliance with section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438).

The publication of such certification shall constitute notice to every jury officer of the county of the binding effect of this title upon him and the jury court which he serves.

APPOINTMENT OF STATE RECORDKEEPING OFFICERS

SEC. 102. (a) Within thirty days after the publication of certification pursuant to section 101, each jury court in the county shall appoint one or more supervisors to collect, compile, maintain, and exhibit the information specified in

the forms prepared pursuant to section 103 and shall direct the jury officers to cooperate with the supervisors in these tasks. Such supervisors shall regularly obtain the forms and shall answer them fully from their personal observation, or by attachment of sworn statements from the jury officers. The supervisors shall complete, file, and exhibit the forms according to the regulations made by the Attorney General pursuant to sections 103 and 501, filing the original with the Attorney General and retaining one or more copies which shall, at all reasonable times, be open for public inspection and duplication. These records shall be compiled, kept, and exhibited for five years succeeding the year in which the jury court initiates compliance with this title.

(b) The supervisors shall also keep and exhibit, in the same manner and for the same period, the records of jury selection regularly made by the jury court, including all extant records of jury selection for the past fifteen years.

RECORDS OF JURY SELECTION

SEC. 103. The Administrative Office of the United States Courts shall distribute, upon request of a supervisor appointed under section 102, forms designed to elicit comprehensive specific information concerning the process of jury selection and racial composition of juries in courts bound by this part. Such forms shall include an enumeration, by name, race, and occupation of persons (A) selected for the

venire lists, and (B) persons called for jury duty, and (C) persons impaneled or rejected for jury service, including dates of service or manner of rejection or challenge, and such other information bearing on the composition of juries as the Attorney General shall designate.

STATES REIMBURSED FOR EXPENSES INCURRED BY COMPLIANCE

SEC. 104. The Treasurer of the United States is hereby authorized to pay, upon submission by any supervisor or other authorized representative of a court bound by this part, reasonable expenditures necessitated by compliance therewith. Any refusal to pay such a claim may be questioned only by an action in the Court of Claims.

CRITERIA OF NONCOMPLIANCE

SEC. 105. (a) Neither the necessity of compliance with State law or county ordinance, nor the failure of any person to comply or cooperate in complying with this title, shall excuse any court bound thereby for substantial failure to comply with this title, for the purpose of a determination under section 202 (2) (A).

(b) A jury court shall be deemed to have failed substantially to have complied with this part whenever its records are so deficient as to preclude the making of a determination as to certifiability under section 202 (2) (A).

PART 2—APPOINTMENT OF SPECIAL JURY COMMISSIONERS

COMPILATION OF VENIRE LISTS

SEC. 201. (a) Pursuant to the request of a special jury commissioner, or of a court of the United States in an action under section 304, the Bureau of the Census shall compile a tentative venire list adequate to the needs of the specified jurisdiction: *Provided*, That the Bureau may prepare such a list for any jury court in the United States upon the request of the Attorney General, or of the officers of that court. The names of tentative veniremen shall be obtained under a sampling plan designed to provide a representative cross-section of the jurisdiction without exclusion on the basis of race, color, sex, political or religious affiliation, national origin, or economic or social status.

(b) Upon certification of a county pursuant to section 202, the Civil Service Commission shall appoint one or more special jury commissioners, as it shall deem appropriate, to serve the jury courts of the county. The special jury commissioners shall compile a venire list sufficient to the needs of each court by canvassing, through questionnaire, direct examination, or otherwise, tentative veniremen and accepting those found qualified under State law: *Provided*, That, in counties certified under section 202, State qualifications relating to ownership of property, payment of taxes, registra-

tion or voting in any election, or sex, shall not be enforced to disqualify any person from jury service: *And provided further*, That literacy or superior education or intelligence requirements shall be deemed satisfied by the completion of the sixth primary grade in any English-language public school in, or any private school accredited by, any State or territory or the District of Columbia. Special jury commissioners shall excuse otherwise qualified veniremen, at their request, from jury duty by reason of verified hardship, but, where any substantial number or class or persons excused for hardship would be able to serve if compensated in accordance with section 1871 of title 28 of the United States Code, the special jury commissioner is authorized and directed to make available such compensation. Upon compiling the venire lists, the special jury commissioner shall give notice of their availability by registered mail to each judge of a jury court in the county.

(c) Within twenty days after receipt of such notice, the jury officers shall proceed to select all jurors by lot from the venire list so provided. No juror shall be excused or excluded by jury officers except for prejudice. Special jury commissioners shall be entitled to observe and supervise the application of their venire lists in any court for which they were prepared, and to reasonable access to the current records

of jury selection for such courts. The proceedings of any jury court otherwise conducted shall be null and void: *Provided*, That the verdicts of juries impaneled prior to twenty days after the mailing of such notification shall not be affected by this section: *And provided further*, That this section shall not operate to place any person twice in jeopardy.

CRITERIA OF APPLICATION

SEC. 202. The Attorney General shall certify and publish in the Federal Register a list of every county:

(1) in which more than 10 per centum of the residents are nonwhite; and

(2) (A) within which the per centum of nonwhite residents of jury age is greater than one and one-half times the per centum of veniremen who are nonwhite: *Provided*, That the determination of racial composition of the population shall be made on the basis of estimates submitted by the Bureau of the Census, and the determination of the racial composition of the juries or venire lists may be based on evidence for any twelve months in the previous two years; or

(B) encompassing the jurisdiction of any court which, within five years previous to such certification, was determined by a final judgment of a court of the United States or of the State, to have disqualified jurors or veniremen on account of their race or color; or

(C) bound under part 1, but one or more courts of which have substantially failed to comply therewith; or

(D) subject to a determination pursuant to section 4(b) of the Voting Rights Act of 1965 (79 Stat. 438) which, after the passage of that Act, either individually or as part of a larger political unit, discontinued or forbade the selection of jurors primarily from voter registration lists.

The publication of such certification shall constitute notice to every jury officer of the county of the binding effect of this part upon him and the jury court which he serves.

ADMINISTRATIVE REVIEW OF NEW JURY QUALIFICATIONS

SEC. 203. Any jury qualification or standard, practice, or procedure different from that in force before the effective date of this title, shall have no effect in any county bound by this part, unless it has been submitted by the chief legal officer of the county to the Attorney General and the Attorney General has failed within sixty days after such submission to certify that it has the purpose or will have the effect of denying or abridging the equal right to jury service.

WITHDRAWAL OF SPECIAL JURY COMMISSIONERS

SEC. 204. (a) The Civil Service Commission shall maintain special jury commissioners in the county for a period of three years. This period may be extended to a

total not exceeding ten years upon annual certification of the Attorney General, or, in the absence of such certification, finding by a court of the United States, that their continued presence is needed to assure compliance with section 2.

(b) After the withdrawal of the special jury commissioners, the provisions of part 1 shall be binding upon each jury court within their previous jurisdiction for a period of five years. Substantial failure to comply with that part, or the existence of a statistical discrepancy described in section 202(2)(A), shall be certified and published in the Federal Register by the Attorney General. Such certification shall effect, and such publication shall give notice of, the reapplication of this part to the county, and the jury officers thereof.

RECORDKEEPING BY SPECIAL JURY COMMISSIONERS

SEC. 205. During their terms of service, the special jury commissioners shall obtain the forms issued pursuant to section 103 and shall make, keep, and exhibit the information required by the forms, filing the original with the Attorney General and reporting therein such other information as he may specify.

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PART 3—JUDICIAL REMEDIES AND ENFORCEMENT

JUDICIAL ENFORCEMENT

SEC. 301. (a) Any person mentioned in section 304 may initiate in any United States district court having jurisdiction over the defendant an action to enforce any duty imposed by, or regulation issued pursuant to, this title. The district court shall enforce, without reference to section 2283 of title 28, United States Code, any such duty or regulation, upon receiving proof of its binding application to the defendant: *Provided,* That in the absence of any certification required or authorized by this title, the court shall issue findings to the same effect. The court shall retain jurisdiction for five years after enforcing such duty or regulation, granting such further relief as may be necessary to enforce the provisions of this title or to otherwise assure compliance with section 2.

(b) A pattern or practice of systematic disqualification of grand or petit jurors on account of race or color shall be grounds for removal within section 1443 of title 28, United States Code. A rebuttable presumption of such pattern or practice justifying removal, or affirmative relief within section 304, shall be raised by proof of substantial

statistical disparity between eligible persons of any race or color in such jurisdiction and persons of that race or color actually serving on juries therein. A conclusive presumption of discrimination justifying removal shall be raised by proof that a court bound thereby has substantially failed to comply with part 2.

JUDICIAL REVIEW

SEC. 302. In an action initiated against the United States by the county or State embracing the jurisdiction of any court bound by parts 1 or 2, the United States District Court for the District of Columbia may restrain the application to such court of any provision of those parts, or any certification or regulation made pursuant thereto, upon finding—

(1) that the provision, certification or regulation, or the application thereof, is for any reason invalid; or

(2) that the factual certification affecting that court is inconsistent with the preponderance of the evidence; or

(3) that, within five years preceding the filing of the action any disqualifications of veniremen or jurors on account of their race or color in the jury court have been few in number and have been promptly and effectively corrected by the State judicial system, and that their continuing effect has been eliminated, and that

there is no reasonable probability of their recurring in the future.

Except as otherwise specifically provided in this title, no other court shall have jurisdiction to issue any judgment or order interfering with or hindering the application, execution, enforcement, or effect of parts 1 or 2.

(b) Actions pursuant to this section or section 301 (a) shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. The initiation of such an action shall establish the United States District Court for the District of Columbia as a court with jurisdiction over the affected jury court within section 301 (a).

DEFENDANT'S CHALLENGE TO JURIES IMPANELED UNDER PART 2

SEC. 303. Any defendant criminally arraigned in a jury court bound by part 2 may initiate an action to invalidate the jury in his case, immediately after it is impaneled. Such an action shall be initiated against the jury court and the Attorney General, in the United States district court for the district embracing the jury court, and such initiation shall operate to stay State procedings: *Provided*, That, where the action appears frivolous, it shall be expeditiously dismissed.

Upon proper proof, the district court shall issue a declaratory judgment that the composition of the jury has abridged the plaintiff's rights under the Constitution. After the judgment has become final, the invalid jury shall be dismissed and the trial resumed with a jury in the selection of which the jury officers shall cooperate with the special jury commissioner. No challenge to any jury impaneled consonantly to this title shall otherwise be heard.

INDEPENDENT CAUSE OF ACTION AGAINST JURY EXCLUSION

SEC. 304. The rights created by section 2 may be enforced independently of, or jointly with, any other action created by this or any other Act in any United States district court having jurisdiction over one or more of the defendants. Such actions may be initiated (1) by the Attorney General, or (2) by any person residing within the jurisdiction of a jury court which systematically disqualifies citizens of his race or color as grand or petit jurors, or (3) by any party to jury proceedings in such a jury court. Without regard to section 2283 of title 28, United States Code, all ordinary and extraordinary remedies within the powers of the courts of the United States, including the assignment of

special jury commissioners, shall be granted when necessary to enforce section 2.

ENFORCEMENT OF PROCESS

SEC. 305. Any person or agency authorized by this title to issue subpenas or other process may enforce such process by an action in any United States district court having jurisdiction over the defendant.

PART 4—CRIMINAL ENFORCEMENT

FAILURE TO COMPLY WITH TITLE

SEC. 401. Any supervisor or jury officer bound thereby who shall knowingly fail or refuse to comply with any requirement of this title shall be fined not more than $1,000 or imprisoned for not longer than one year, or both.

FALSE RECORDS OR TESTIMONY; DESTRUCTION OF RECORDS

SEC. 402. Any person, whether or not their lawful or proper custodian, who knowingly destroys, mutilates, conceals, alters, or falsifies, or falsely presents, any record, document, or statement required or authorized by this title, or any subpena or order pursuant thereto, to be made, filed, kept, exhibited, or presented, shall be fined not less than $500 nor more than $1,000 or imprisoned for not more than one year, or both.

INTERFERENCE WITH TITLE, ITS ADMINISTRATORS, OR JURYMEN

SEC. 403. Any person, whether acting under color of law or otherwise, who, by act or threat of physical or economic coercion, intentionally—

(1) hinders the operation or effect of any provision of this title, or of any decree, certification, regulation, finding, or court order issued pursuant thereto, or intimidates any person in or for performing or urging or aiding the performance of any act required or authorized thereby; or

(2) intimidates any person in or for serving as a venireman or juror pursuant to this title or doing or urging or aiding the doing of any act toward or in furtherance of such service

shall be imprisoned for not more than one year or fined not less than $500 nor more than $1,000, or both. If the act or threat was carried out with a deadly weapon, or was intended to cause death or serious bodily harm, he shall be imprisoned for not less than one nor more than ten years. If the act or threat results in death, he shall be imprisoned for any term of years not less than twenty.

CRIMINAL CONSPIRACY OR ATTEMPT

SEC. 404. Any person, whether acting under color of law or otherwise, who conspires or attempts to commit any

crime mentioned in this part, shall be punished as if he had committed that crime.

PREVENTIVE RELIEF; MANDATORY DAMAGES

SEC. 405. (a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in criminal conduct forbidden by this part, the United States district court having jurisdiction over the defendant or his co-conspirators, pursuant to a civil action instituted by the person threatened or aggrieved, or by the Attorney General, may grant preventive relief, including permanent or temporary injunction, restraining order, order for the posting of a compliance bond, or other order.

(b) Whenever any person is proved to have engaged in such criminal conduct, preventive relief, adequate damages, and reasonable court and appellate costs shall (and punitive damages may) be granted to the person aggrieved thereby or his heirs.

(c) In any action under subsection (b), the damages (exclusive of punitive damages) for an act or threat of physical coercion shall be: $1,000 for apprehension or minor injury; $10,000 for maiming or other serious bodily injury; $25,000 for death; or such higher amount as the jury shall fix: *Provided*, That, where the record indicates the damages specified herein to be excessive, they shall be reduced accordingly by the court determining liability.

PART 5—MISCELLANY

ATTORNEY GENERAL TO MAKE REGULATIONS

SEC. 501. Such regulations as the Attorney General shall issue and publish in the Federal Register regulations implementing the provisions and policies of parts 1 and 2 and governing compliance therewith, shall be binding upon every jury court bound by those parts.

JUDICIAL COGNIZANCE OF CERTIFICATIONS

SEC. 502. Except as provided in section 302, every certification made pursuant to this title shall be conclusive upon every court and agency of the United States and of every State. No inference may be drawn from the withdrawal of any certification or from the failure or refusal of any officer or employee of the United States to make any certification or regulation required or authorized by this title.

GENERAL SURVEY OF CONDITIONS; ATTORNEY GENERAL MAY SPECIFY INVESTIGATION OF PARTICULAR AREAS

SEC. 503. The Bureau of the Census, in cooperation with the Administrative Office of the United States Courts, shall conduct a survey and make a report to the President and the Congress within two years following the effective

date of this title concerning racial, economic, and other demographic factors determining the racial composition of juries in the various States, including studies in depth of the past and present practices in areas or courts designated by the Attorney General.

JURY COMMISSIONERS

SEC. 504. Special jury commissioners and other persons deemed necessary to carry out the provisions and purposes of this title shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission and service under this part shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except for the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Special jury commissioners are empowered to subpena persons to testify and present documents under oath.

TITLE II—FEDERAL COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 601. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation, and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury

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commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation, or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as

amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of these performing jury service, and the dates thereof and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any

judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or record-keeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, approve the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner ap-

pointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district

he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 602. Section 1861(2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write".

SEC. 603. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 604. Section 1871 is amended by striking the words "$10.00 per day" and inserting in their place "$15.00 per day or loss of pay, whichever is greater"; and by striking the words "$14.00 for each day" and inserting in their place "$20.00 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10.00 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of

$10.00 per diem" and inserting in their place "jury fees in excess of $15.00 per diem".

TITLE III—GENERAL PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 701. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEPARABILITY PROVISION

SEC. 702. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

89TH CONGRESS
2D SESSION

H. R. 14112

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1966

Mr. BURTON of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To assure the fair selection of jurors and enforce the equal right to jury service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Jury Selection Act of 1966".

TITLE I—STATE COURTS

PROHIBITION OF JURY DISQUALIFICATION BY REASON OF RACE OR COLOR

SEC. 2. No citizen may be disqualified from service as a grand or petit juror in any court of the United States or of any State on account of race or color.

TITLE I—STATE COURTS

DEFINITIONS

SEC. 3. As used in this title—

(1) "Jury court" shall mean a court of any State in which factfinding is or may be done by jury;

(2) "Jury officers" shall mean all persons, including judges, having supervisory authority over, or responsibility in whole or in part for, the compilation of venire lists, selection of veniremen, or impaneling of jurors in or for any jury court;

(3) "Special jury commissioner" shall mean the Federal officer appointed under part 2 of this title;

(4) "County" shall mean county or parish; and

(5) "Shall" is directive; "may" is permissive.

EXEMPTION OF COUNTIES OR COURTS BY THE ATTORNEY GENERAL

SEC. 4. The Attorney General may, by publication in the Federal Register, withdraw certification of any particular county or court under sections 101 or 202, if he is satisfied that, within the five years preceding such withdrawal, disqualifications of veniremen or jurors on account of race or color therein have been few in number and have been promptly and effectively corrected by the State judicial system, that their continuing effect has been eliminated, and that there is no reasonable probability of their recurring in

the future: *Provided*, That the Attorney General shall have no power, prior to or otherwise than by publishing such withdrawal, to stay or mitigate any provision of this title.

PART 1—RECORDS REQUIRED TO BE KEPT BY STATE COURTS

CRITERIA OF APPLICATION

SEC. 101. The Attorney General shall certify and publish in the Federal Register a list of every county in which:

(1) more than 10 per centum of the persons residing therein are nonwhite; and

(2) (A) racial segregation in any public or private establishment or facility or other place was required by the State, or any agency or political subdivision thereof, within five years preceding January 1, 1967; or

(B) determinations, either individually or as a part of a larger political unit, at the time of such certification, require compliance with section 4(a) of the Voting Rights Act of 1965 (79 Stat. 438).

The publication of such certification shall constitute notice to every jury officer of the county of the binding effect of this title upon him and the jury court which he serves.

APPOINTMENT OF STATE RECORDKEEPING OFFICERS

SEC. 102. (a) Within thirty days after the publication of certification pursuant to section 101, each jury court in the county shall appoint one or more supervisors to collect, compile, maintain, and exhibit the information specified in

the forms prepared pursuant to section 103 and shall direct the jury officers to cooperate with the supervisors in these tasks. Such supervisors shall regularly obtain the forms and shall answer them fully from their personal observation, or by attachment of sworn statements from the jury officers. The supervisors shall complete, file, and exhibit the forms according to the regulations made by the Attorney General pursuant to sections 103 and 501, filing the original with the Attorney General and retaining one or more copies which shall, at all reasonable times, be open for public inspection and duplication. These records shall be compiled, kept, and exhibited for five years succeeding the year in which the jury court initiates compliance with this title.

(b) The supervisors shall also keep and exhibit, in the same manner and for the same period, the records of jury selection regularly made by the jury court, including all extant records of jury selection for the past fifteen years.

RECORDS OF JURY SELECTION

SEC. 103. The Administrative Office of the United States Courts shall distribute, upon request of a supervisor appointed under section 102, forms designed to elicit comprehensive specific information concerning the process of jury selection and racial composition of juries in courts bound by this part. Such forms shall include an enumeration, by name, race, and occupation of persons (A) selected for the

venire lists, and (B) persons called for jury duty, and (C) persons impaneled or rejected for jury service, including dates of service or manner of rejection or challenge, and such other information bearing on the composition of juries as the Attorney General shall designate.

STATES REIMBURSED FOR EXPENSES INCURRED BY COMPLIANCE

SEC. 104. The Treasurer of the United States is hereby authorized to pay, upon submission by any supervisor or other authorized representative of a court bound by this part, reasonable expenditures necessitated by compliance therewith. Any refusal to pay such a claim may be questioned only by an action in the Court of Claims.

CRITERIA OF NONCOMPLIANCE

SEC. 105. (a) Neither the necessity of compliance with State law or county ordinance, nor the failure of any person to comply or cooperate in complying with this title, shall excuse any court bound thereby for substantial failure to comply with this title, for the purpose of a determination under section 202(2)(A).

(b) A jury court shall be deemed to have failed substantially to have complied with this part whenever its records are so deficient as to preclude the making of a determination as to certifiability under section 202(2)(A).

PART 2—APPOINTMENT OF SPECIAL JURY COMMISSIONERS

COMPILATION OF VENIRE LISTS

SEC. 201. (a) Pursuant to the request of a special jury commissioner, or of a court of the United States in an action under section 304, the Bureau of the Census shall compile a tentative venire list adequate to the needs of the specified jurisdiction: *Provided*, That the Bureau may prepare such a list for any jury court in the United States upon the request of the Attorney General, or of the officers of that court. The names of tentative veniremen shall be obtained under a sampling plan designed to provide a representative cross-section of the jurisdiction without exclusion on the basis of race, color, sex, political or religious affiliation, national origin, or economic or social status.

(b) Upon certification of a county pursuant to section 202, the Civil Service Commission shall appoint one or more special jury commissioners, as it shall deem appropriate, to serve the jury courts of the county. The special jury commissioners shall compile a venire list sufficient to the needs of each court by canvassing, through questionnaire, direct examination, or otherwise, tentative veniremen and accepting those found qualified under State law: *Provided*, That, in counties certified under section 202 State qualifications relating to ownership of property, payment of taxes, registra-

tion or voting in any election, or sex, shall not be enforced to disqualify any person from jury service: *And provided further*, That literacy or superior education or intelligence requirements shall be deemed satisfied by the completion of the sixth primary grade in any English-language public school in, or any private school accredited by, any State or territory or the District of Columbia. Special jury commissioners shall excuse otherwise qualified veniremen, at their request, from jury duty by reason of verified hardship, but, where any substantial number or class or persons excused for hardship would be able to serve if compensated in accordance with section 1871 of title 28 of the United States Code, the special jury commissioner is authorized and directed to make available such compensation. Upon compiling the venire lists, the special jury commissioner shall give notice of their availability by registered mail to each judge of a jury court in the county.

(c) Within twenty days after receipt of such notice, the jury officers shall proceed to select all jurors by lot from the venire list so provided. No juror shall be excused or excluded by jury officers except for prejudice. Special jury commissioners shall be entitled to observe and supervise the application of their venire lists in any court for which they were prepared, and to reasonable access to the current records

of jury selection for such courts. The proceedings of any jury court otherwise conducted shall be null and void: *Provided*, That the verdicts of juries impaneled prior to twenty days after the mailing of such notification shall not be affected by this section: *And provided further*, That this section shall not operate to place any person twice in jeopardy.

CRITERIA OF APPLICATION

SEC. 202. The Attorney General shall certify and publish in the Federal Register a list of every county:

(1) in which more than 10 per centum of the residents are nonwhite; and

(2) (A) within which the per centum of nonwhite residents of jury age is greater than one and one-half times the per centum of veniremen who are nonwhite: *Provided*, That the determination of racial composition of the population shall be made on the basis of estimates submitted by the Bureau of the Census, and the determination of the racial composition of the juries or venire lists may be based on evidence for any twelve months in the previous two years; or

(B) encompassing the jurisdiction of any court which, within five years previous to such certification, was determined by a final judgment of a court of the United States or of the State, to have disqualified jurors or veniremen on account of their race or color; or

(C) bound under part 1, but one or more courts of which have substantially failed to comply therewith; or

(D) subject to a determination pursuant to section 4(b) of the Voting Rights Act of 1965 (79 Stat. 438) which, after the passage of that Act, either individually or as part of a larger political unit, discontinued or forbade the selection of jurors primarily from voter registration lists.

The publication of such certification shall constitute notice to every jury officer of the county of the binding effect of this part upon him and the jury court which he serves.

ADMINISTRATIVE REVIEW OF NEW JURY QUALIFICATIONS

SEC. 203. Any jury qualification or standard, practice, or procedure different from that in force before the effective date of this title, shall have no effect in any county bound by this part, unless it has been submitted by the chief legal officer of the county to the Attorney General and the Attorney General has failed within sixty days after such submission to certify that it has the purpose or will have the effect of denying or abridging the equal right to jury service.

WITHDRAWAL OF SPECIAL JURY COMMISSIONERS

SEC. 204. (a) The Civil Service Commission shall maintain special jury commissioners in the county for a period of three years. This period may be extended to a

total not exceeding ten years upon annual certification of the Attorney General, or, in the absence of such certification, finding by a court of the United States, that their continued presence is needed to assure compliance with section 2.

(b) After the withdrawal of the special jury commissioners, the provisions of part 1 shall be binding upon each jury court within their previous jurisdiction for a period of five years. Substantial failure to comply with that part, or the existence of a statistical discrepancy described in section 202(2)(A), shall be certified and published in the Federal Register by the Attorney General. Such certification shall effect, and such publication shall give notice of, the reapplication of this part to the county, and the jury officers thereof.

RECORDKEEPING BY SPECIAL JURY COMMISSIONERS

SEC. 205. During their terms of service, the special jury commissioners shall obtain the forms issued pursuant to section 103 and shall make, keep, and exhibit the information required by the forms, filing the original with the Attorney General and reporting therein such other information as he may specify.

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PART 3—JUDICIAL REMEDIES AND ENFORCEMENT

JUDICIAL ENFORCEMENT

SEC. 301. (a) Any person mentioned in section 304 may initiate in any United States district court having jurisdiction over the defendant an action to enforce any duty imposed by, or regulation issued pursuant to, this title. The district court shall enforce, without reference to section 2283 of title 28, United States Code, any such duty or regulation, upon receiving proof of its binding application to the defendant: *Provided*, That in the absence of any certification required or authorized by this title, the court shall issue findings to the same effect. The court shall retain jurisdiction for five years after enforcing such duty or regulation, granting such further relief as may be necessary to enforce the provisions of this title or to otherwise assure compliance with section 2.

(b) A pattern or practice of systematic disqualification of grand or petit jurors on account of race or color shall be grounds for removal within section 1443 of title 28, United States Code. A rebuttable presumption of such pattern or practice justifying removal, or affirmative relief within section 304, shall be raised by proof of substantial

statistical disparity between eligible persons of any race or color in such jurisdiction and persons of that race or color actually serving on juries therein. A conclusive presumption of discrimination justifying removal shall be raised by proof that a court bound thereby has substantially failed to comply with part 2.

JUDICIAL REVIEW

SEC. 302. In an action initiated against the United States by the county or State embracing the jurisdiction of any court bound by parts 1 or 2, the United States District Court for the District of Columbia may restrain the application to such court of any provision of those parts, or any certification or regulation made pursuant thereto, upon finding—

(1) that the provision, certification or regulation, or the application thereof, is for any reason invalid; or

(2) that the factual certification affecting that court is inconsistent with the preponderance of the evidence; or

(3) that, within five years preceding the filing of the action any disqualifications of veniremen or jurors on account of their race or color in the jury court have been few in number and have been promptly and effectively corrected by the State judicial system, and that their continuing effect has been eliminated, and that

there is no reasonable probability of their recurring in the future.

Except as otherwise specifically provided in this title, no other court shall have jurisdiction to issue any judgment or order interfering with or hindering the application, execution, enforcement, or effect of parts 1 or 2.

(b) Actions pursuant to this section or section 301 (a) shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28, United States Code, and any appeal shall lie to the Supreme Court. The initiation of such an action shall establish the United States District Court for the District of Columbia as a court with jurisdiction over the affected jury court within section 301 (a).

DEFENDANT'S CHALLENGE TO JURIES IMPANELED UNDER PART 2

SEC. 303. Any defendant criminally arraigned in a jury court bound by part 2 may initiate an action to invalidate the jury in his case, immediately after it is impaneled. Such an action shall be initiated against the jury court and the Attorney General, in the United States district court for the district embracing the jury court, and such initiation shall operate to stay State procedings: *Provided*, That, where the action appears frivolous, it shall be expeditiously dismissed.

Upon proper proof, the district court shall issue a declaratory judgment that the composition of the jury has abridged the plaintiff's rights under the Constitution. After the judgment has become final, the invalid jury shall be dismissed and the trial resumed with a jury in the selection of which the jury officers shall cooperate with the special jury commissioner. No challenge to any jury impaneled consonantly to this title shall otherwise be heard.

INDEPENDENT CAUSE OF ACTION AGAINST JURY EXCLUSION

SEC. 304. The rights created by section 2 may be enforced independently of, or jointly with, any other action created by this or any other Act in any United States district court having jurisdiction over one or more of the defendants. Such actions may be initiated (1) by the Attorney General, or (2) by any person residing within the jurisdiction of a jury court which systematically disqualifies citizens of his race or color as grand or petit jurors, or (3) by any party to jury proceedings in such a jury court. Without regard to section 2283 of title 28, United States Code, all ordinary and extraordinary remedies within the powers of the courts of the United States, including the assignment of

special jury commissioners, shall be granted when necessary to enforce section 2.

ENFORCEMENT OF PROCESS

SEC. 305. Any person or agency authorized by this title to issue subpenas or other process may enforce such process by an action in any United States district court having jurisdiction over the defendant.

PART 4—CRIMINAL ENFORCEMENT

FAILURE TO COMPLY WITH TITLE

SEC. 401. Any supervisor or jury officer bound thereby who shall knowingly fail or refuse to comply with any requirement of this title shall be fined not more than $1,000 or imprisoned for not longer than one year, or both.

FALSE RECORDS OR TESTIMONY; DESTRUCTION OF RECORDS

SEC. 402. Any person, whether or not their lawful or proper custodian, who knowingly destroys, mutilates, conceals, alters, or falsifies, or falsely presents, any record, document, or statement required or authorized by this title, or any subpena or order pursuant thereto, to be made, filed, kept, exhibited, or presented, shall be fined not less than $500 nor more than $1,000 or imprisoned for not more than one year, or both.

INTERFERENCE WITH TITLE, ITS ADMINISTRATORS, OR JURYMEN

SEC. 403. Any person, whether acting under color of law or otherwise, who, by act or threat of physical or economic coercion, intentionally—

(1) hinders the operation or effect of any provision of this title, or of any decree, certification, regulation, finding, or court order issued pursuant thereto, or intimidates any person in or for performing or urging or aiding the performance of any act required or authorized thereby; or

(2) intimidates any person in or for serving as a venireman or juror pursuant to this title or doing or urging or aiding the doing of any act toward or in furtherance of such service

shall be imprisoned for not more than one year or fined not less than $500 nor more than $1,000, or both. If the act or threat was carried out with a deadly weapon, or was intended to cause death or serious bodily harm, he shall be imprisoned for not less than one nor more than ten years. If the act or threat results in death, he shall be imprisoned for any term of years not less than twenty.

CRIMINAL CONSPIRACY OR ATTEMPT

SEC. 404. Any person, whether acting under color of law or otherwise, who conspires or attempts to commit any

crime mentioned in this part, shall be punished as if he had committed that crime.

PREVENTIVE RELIEF; MANDATORY DAMAGES

SEC. 405. (a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in criminal conduct forbidden by this part, the United States district court having jurisdiction over the defendant or his co-conspirators, pursuant to a civil action instituted by the person threatened or aggrieved, or by the Attorney General, may grant preventive relief, including permanent or temporary injunction, restraining order, order for the posting of a compliance bond, or other order.

(b) Whenever any person is proved to have engaged in such criminal conduct, preventive relief, adequate damages, and reasonable court and appellate costs shall (and punitive damages may) be granted to the person aggrieved thereby or his heirs.

(c) In any action under subsection (b), the damages (exclusive of punitive damages) for an act or threat of physical coercion shall be: $1,000 for apprehension or minor injury; $10,000 for maiming or other serious bodily injury; $25,000 for death; or such higher amount as the jury shall fix: *Provided*, That, where the record indicates the damages specified herein to be excessive, they shall be reduced accordingly by the court determining liability.

PART 5—MISCELLANY

ATTORNEY GENERAL TO MAKE REGULATIONS

SEC. 501. Such regulations as the Attorney General shall issue and publish in the Federal Register regulations implementing the provisions and policies of parts 1 and 2 and governing compliance therewith, shall be binding upon every jury court bound by those parts.

JUDICIAL COGNIZANCE OF CERTIFICATIONS

SEC. 502. Except as provided in section 302, every certification made pursuant to this title shall be conclusive upon every court and agency of the United States and of every State. No inference may be drawn from the withdrawal of any certification or from the failure or refusal of any officer or employee of the United States to make any certification or regulation required or authorized by this title.

GENERAL SURVEY OF CONDITIONS; ATTORNEY GENERAL MAY SPECIFY INVESTIGATION OF PARTICULAR AREAS

SEC. 503. The Bureau of the Census, in cooperation with the Administrative Office of the United States Courts, shall conduct a survey and make a report to the President and the Congress within two years following the effective

date of this title concerning racial, economic, and other demographic factors determining the racial composition of juries in the various States, including studies in depth of the past and present practices in areas or courts designated by the Attorney General.

JURY COMMISSIONERS

SEC. 504. Special jury commissioners and other persons deemed necessary to carry out the provisions and purposes of this title shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission and service under this part shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except for the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Special jury commissioners are empowered to subpena persons to testify and present documents under oath.

TITLE II—FEDERAL COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 601. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation, and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury

commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation, or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as

amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service, and the dates thereof and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any

judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or record-keeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, approve the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner ap-

pointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district

he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 602. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write".

SEC. 603. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 604. Section 1871 is amended by striking the words "$10.00 per day" and inserting in their place "$15.00 per day or loss of pay, whichever is greater"; and by striking the words "$14.00 for each day" and inserting in their place "$20.00 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10.00 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of

$10.00 per diem" and inserting in their place "jury fees in excess of $15.00 per diem".

TITLE III—GENERAL PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 701. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEPARABILITY PROVISION

SEC. 702. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

89TH CONGRESS
2D SESSION

H. R. 14113

IN THE HOUSE OF REPRESENTATIVES

MARCH 29, 1966

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

A BILL

To assure the fair selection of jurors and enforce the equal right to jury service, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Jury Selection Act of 1966".

SEC. 2. No citizen may be disqualified from service as a grand or petit juror in any court of the United States or of any State on account of race or color.

SEC. 3. DEFINITIONS.—As used in this Act—

(1) "Jury court" shall mean a court of any State in which factfinding is or may be done by jury;

(2) "Jury officers" shall mean all persons, including

judges, having supervisory authority over, or responsibility in whole or in part for, the compilation of venire lists, selection of veniremen, or impaneling of jurors in or for any jury court;

(3) "Juror" or "venireman," unless otherwise specified, shall not include a grand juror;

(4) "Special jury commissioner" shall mean the Federal officer appointed under title II of this Act;

(5) "County" shall mean county or parish; and

(6) "Shall" is directive while "may" is permissive.

SEC. 4. EXEMPTION OF COUNTIES OR COURTS BY THE ATTORNEY GENERAL.—The Attorney General may, by publication in the Federal Register, withdraw certification of any particular county or court under sections 101 or 202, if he is satisfied that, within the five years preceding such withdrawal, disqualifications of veniremen or jurors on account of race or color therein have been few in number and have been promptly and effectively corrected by the State judicial system, and that their continuing effect has been eliminated and that there is no reasonable probability of their recurring in the future: *Provided*, That the Attorney General shall have no power, prior to or otherwise than by publishing such withdrawal, to stay or mitigate any provision of this Act.

TITLE I—RECORDS REQUIRED TO BE KEPT BY STATE COURTS

SEC. 101. CRITERIA OF APPLICATION.—The Attorney General shall certify and publish in the Federal Register a list of every county in which—

(1) more than 10 per centum of the persons residing therein are nonwhite; and

(2) (A) racial segregation in any public or private establishment or facility or other place was required by the State or any agency or political subdivision thereof, within five years preceding the effective date of this Act; or

(B) determinations, either individually or as a part of a larger political unit at the time of such certification require compliance with section 4 (a) of Seventy-ninth Statutes at Large, page 437 (Voting Rights Act of 1965). The publication of such certification shall constitute notice to every jury officer of the county of the binding effect of this title upon him and the jury court which he serves.

SEC. 102. APPOINTMENT OF STATE RECORDKEEPING OFFICERS.—(a) Within thirty days after the publication of certification pursuant to section 101, each jury court in the county shall appoint one or more supervisors to collect,

compile, maintain, and exhibit the information specified in the forms prepared pursuant to section 103 and shall direct the jury officers to cooperate with the survivors in these tasks. Such supervisors shall regularly obtain the forms and shall answer them fully from their personal observation, or by attachment of sworn statements from the jury officers. The supervisors shall complete, file, and exhibit the forms according to the regulations made by the Attorney General pursuant to sections 103 and 501, filing the original with the Attorney General and retaining one or more copies which shall, at all reasonable times, be open for public inspection and application. These records shall be compiled, kept, and exhibited for five years succeeding the year in which the certification became effective.

(b) The supervisors shall also keep and exhibit, in the same manner and for the same period, the records of jury selection regularly made by the jury court, including all extant past records of jury selections made within the past fifteen years.

SEC. 103. RECORDS OF JURY SELECTION.—The Administrative Office of the United States Courts shall distribute, upon request of a supervisor appointed under section 102, forms designed to elicit comprehensive specific information concerning the process of jury selection and racial composition of juries in courts bound by this title. Such

forms shall include an enumeration, by name, race, and occupation of persons (A) selected for the venire lists, and (B) whose names are otherwise called for jury duty, and (C) impaneled or rejected for jury service, including dates of service or manner of rejection or challenge, and such other information bearing on the composition of juries as the Attorney General shall designate.

SEC. 104. STATES REIMBURSED FOR EXPENSES INCURRED IN COMPLYING.—The Treasurer of the United States is hereby authorized to pay, upon submission by any supervisor or other authorized representative of a court bound by this title, reasonable expenditures necessitated by compliance therewith. Any refusal to pay such a claim may be questioned only by an action in the Court of Claims.

SEC. 105. CRITERIA OF NONCOMPLIANCE.—(a) Neither the necessity of compliance with State law or county ordinance, nor the failure of any person to comply or cooperate in complying with this Act, shall excuse any court bound thereby for substantial failure to comply with this Act.

(b) A jury court shall be deemed to have failed substantially to have complied with this title whenever its records are so deficient as to preclude the making of a determination as to certifiability under section 202(2)(A).

TITLE II—APPOINTMENT OF SPECIAL JURY COMMISSIONERS

SEC. 201. FEDERAL OFFICERS TO COMPILE VENIRE LISTS.—Upon certification of a county pursuant to section 202, the Civil Service Commission shall appoint one or more special jury commissioners, as it shall deem appropriate, to serve the jury courts of the county. The special jury commissioners shall compile a list of tentative veniremen by random selection from the comprehensive lists supplied to them pursuant to section 502. They shall provide venire lists sufficient to the needs of the various jury courts by canvassing, through questionnaire, direct examination, or otherwise, tentative veniremen and accepting those found qualified under State law: *Provided*, That, in counties certified under section 202, State qualifications relating to ownership of property, payment of taxes, or registration or voting in any election, shall not be used to disqualify any person from jury service: *And provided further*, That literacy or superior education or intelligence requirements shall be deemed satisfied by the completion of the sixth primary grade in any English language public school in, or any private school accredited by, any State or territory or the District of Columbia, special jury commissioners shall excuse otherwise qualified veniremen, at their request, from jury duty by verified reasons of hardship, but, where any sub-

stantial number or class of persons would thereby be excused, the special jury commissioners shall make available compensation according to section 1871 of title 28 of the United States Code. Upon compiling the venire list, the special jury commissioner shall give notice of its availability by registered mail to each judge of a jury court in the county.

(b) Within twenty days after receipt of such notice, the jury officers shall proceed to select all jurors by lot from the venire list so provided. No juror shall be excused or excluded by jury officers except for prejudice. Special jury commissioners shall be entitled to observe and supervise the application of their venire lists in any court for which they were prepared, and to reasonable access to the current records of jury selection for such courts. The proceedings of any jury court otherwise conducted shall be null and void: *Provided*, That the verdicts of juries impaneled prior to twenty days after the mailing of such notification shall not be affected by this section: *And further provided*, That this section shall not operate to place any person twice in jeopardy.

SEC. 202. CRITERIA OF APPLICATION.—The Attorney General shall certify and publish in the Federal Register a list of every county—

(1) in which more than 10 per centum of the residents are nonwhite; and

(2) (A) within which the per centum of eligible nonwhite residents is greater than one and one-half times the per centum of veniremen who are nonwhite: *Provided*, That the determination of racial composition of the population shall be made on the basis of estimates submitted by the Bureau of the Census, and the determination of the racial composition of the venire lists may be based on evidence for any twelve months in the previous two years; or

(2) (B) encompassing the jurisdiction of any court which, within five years previous to such certification, was determined by a final judgment of a court of the United States or of the State, to have disqualified jurors or veniremen on account of their race or color; or

(2) (C) bound under title I, but one or more courts of which have substantially failed to comply therewith; or

(2) (D) subject to a determination pursuant to section 4(b) of Seventy-ninth Statute at Large, page 437 (Voting Rights Act of 1965), which, after the passage of that Act, either individually or as part of a larger political unit, discontinued the selection of jurors from voter registration lists. The publication of such certification shall constitute notice to every jury officer

of the county of the binding effect of this title upon him and the jury court which he serves.

SEC. 203. ADMINISTRATIVE REVIEW OF NEW JURY QUALIFICATIONS.—Any jury qualification or standard, practice, or procedure different from that in force before the effective date of this Act, shall have no effect in any county bound by this title, unless it has been submitted by the chief legal officer of the county to the Attorney General and the Attorney General has failed within sixty days after such submission to certify that it has the purpose or will have the effect of denying or abridging the equal right to jury service.

SEC. 204. WITHDRAWAL OF SPECIAL JURY COMMISSIONERS.—(a) The Civil Service Commission shall maintain special jury commissioners in the county for a period of three years. This period may be extended to a total not exceeding ten years upon annual certification of the Attorney General, or finding by a court of the United States, that their continued presence is needed to assure compliance with section 2.

(b) After the withdrawal of the special jury commissioners, the provisions of title I shall be binding upon each jury court within the county for a period of five years. Substantial failure to comply with that title, or the existence of

a statistical discrepancy described in section 202(2)(A), shall be certified and published in the Federal Register by the Attorney General. Such certification shall effect, and such publication shall give notice of, the reapplication of this title to the county.

SEC. 205. RECORDKEEPING BY SPECIAL JURY COMMISSIONERS.—During their terms of service, the special jury commissioners shall obtain the forms issued pursuant to section 103 and shall make, keep, and exhibit the information required by the forms, filing the original with the Attorney General and reporting therein such other information as he may specify.

TITLE III—JUDICIAL REMEDIES AND ENFORCEMENT

SEC. 301. JUDICIAL ENFORCEMENT OF THE ACT.—(a) Any person mentioned in section 304 may initiate in any United States district court having jurisdiction over the defendant an action to enforce any duty imposed by, or regulation, subpena, or other process issued pursuant to this Act or to void any judgment pursuant to section 201(b). The district court shall enforce, without reference to section 2283 of title 28 of the United States Code, any such duty, regulation, subpena, or other process, upon receiving proof of its binding application to the defendant. Where requested by the plantiff to do so, the court shall retain jurisdiction for five

years after the judgment, granting such further relief as may be necessary to enforce the provisions of this Act or otherwise assure compliance with section 2.

(b) A pattern or practice of systematic disqualification of grand or petit jurors on account of race or color shall be grounds for removal within section 1443 of title 28 of the United States Code. A rebuttable presumption of such pattern or practice justifying removal, or affirmative relief within section 304, shall be raised by proof of substantial statistical disparity between eligible persons of any race or color in such jurisdiction and persons of that race or color actually serving on juries therein. A conclusive presumption of discrimination justifying removal shall be raised by proof that a court bound thereby has substantially failed to comply with title II.

SEC. 302. JUDICIAL REVIEW OF THE ACT.—In an action initiated against the United States by the county or State embracing the jurisdiction of any court bound by title I or II, the United States District Court for the District of Columbia may restrain the application to such court of any provision of those titles, or any certification or regulation made pursuant thereto, upon finding—

(1) that the provision, certification, or regulation, or the application thereof, is for any reason invalid; or

(2) that the factual certification affecting that court

is inconsistent with the preponderance of the evidence; or

(3) that, within five years preceding the filing of the action, any violations of section 2 in the jury court have been few in number and have been promptly and effectively corrected by the State judicial system, and that their continuing effect has been eliminated, and that there is no reasonable probability of their recurring in the future. Except as otherwise specifically provided in this Act, no other court shall have jurisdiction to issue any judgment or order interfering with or hindering the application, execution, enforcement, or effect of title I or II.

(b) Actions pursuant to this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of title 28 of the United States Code and any appeal shall lie to the Supreme Court. The initiation of such an action shall establish the United States District Court for the District of Columbia as a court with jurisdiction over the affected jury court within section 301(a).

SEC. 303. DEFENDANT'S CHALLENGE TO JURIES IN JURY COURTS BOUND BY THE ACT.—Any defendant criminally arraigned in a jury court bound by title II may initiate an action to invalidate the jury in his case, immediately

after it is impaneled. Such an action shall be initiated against the jury court, with notification to the Attorney General, in the United States district court for the district embracing the jurisdiction of the jury court, and such initiation shall operate to stay State proceedings: *Provided*, That, where the action appears frivolous, it shall be expeditiously dismissed. Upon proper proof, the district court shall issue a declaratory judgment that the composition of the jury has abridged the plaintiff's rights under the Constitution.

After the judgment has become final, the invalid jury shall be dismissed and the trial resumed with a jury in the selection of which the jury officers shall cooperate with the special jury commissioners. No challenge to any jury or juror impaneled consonantly to this Act shall otherwise be heard.

SEC. 304. INDEPENDENT CAUSE OF ACTION AGAINST JURY EXCLUSION.—The rights created by section 2 may be enforced independently of, or jointly with, any other action created by this or any other Act in any United States district court having jurisdiction over one or more of the defendants. Such actions may be initiated (i) by the Attorney General, or (ii) by any person residing within the jurisdiction of a jury court which disqualifies citizens of his race or color as grand or petit jurors on that account, or (iii) by any party to jury proceedings in such a jury court.

Without regard to section 2283 of title 28 of the United States Code, all ordinary and extraordinary remedies within the powers of the courts of the United States, including the assignment of special jury commissioners, shall be granted when necessary to enforce section 2.

TITLE IV—CRIMINAL ENFORCEMENT

SEC. 401. FAILURE TO COMPLY WITH THE ACT.—Any supervisor or jury officer bound thereby who shall knowingly fail or refuse to comply with any requirement of this Act shall be fined not more than $1,000 or imprisoned for not longer than one year, or both.

SEC. 402. FALSE RECORDS OF TESTIMONY; DESTRUCTION OF RECORDS.—Any person, whether or not their lawful or proper custodian, who knowingly destroys, mutilates, conceals, alters or falsifies, or falsely presents, any record, document, or statement required or authorized by this Act, or any subpena or order pursuant thereto, to be made, filed, kept, exhibited, or presented, shall be fined not less than $500 nor more than $1,000, or imprisoned for not more than one year, or both.

SEC. 403. INTERFERENCE WITH ACT, ITS ADMINISTRATORS OR JURYMEN.—Any person, whether acting under color of law or otherwise, who, by act or threat of physical or economic coercion, intentionally—

(1) hinders the operation or effect of any provision

of this Act, or of any decree, certification, regulation, finding or court order issued pursuant thereto, or intimidates any person in or for performing or urging or aiding the performance of any act required or authorized thereby; or

(2) intimidates any person in or for serving as a veniremen or juror pursuant to this Act or doing or urging or aiding the doing of any act toward or in furtherance of such service—

shall be imprisoned for not more than one year or fined not less than $500 nor more than $1,000, or both. If the act or threat was carried out with a deadly weapon, or was intended to cause death or serious bodily harm, he shall be imprisoned for not less than one nor more than ten years. If the act or threat results in death, he shall be imprisoned for any term of years not less than twenty.

SEC. 404. CRIMINAL CONSPIRACY OR ATTEMPT.—Any person, whether acting under color of law or otherwise, who conspires or attempts to commit any crime mentioned in this title, shall be punished as if he had committed that crime.

SEC. 405. PREVENTIVE RELIEF; MANDATORY DAMAGES.—(a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in criminal conduct forbidden by this title, the United States district court having jurisdiction over the defendant, pursuant

to a civil action instituted by the person threatened or aggrieved, or by the Attorney General, may grant preventive relief, including permanent or temporary injunction, restraining order, order for the posting of a compliance bond, or other order.

(b) Whenever any person is proved to have engaged in such criminal conduct, preventive relief, adequate damages and reasonable court and appellate costs shall (and punitive damages may) be granted to the person aggrieved thereby or his heirs.

(c) In any action under (b), the damages (exclusive of punitive damages) for an act or threat of physical coercion shall be: $1,000 for apprehension or minor injury; $10,000 for maiming or other serious bodily injury; $25,000 for death; or such higher amount as the jury shall fix: *Provided*, That, where the record indicates the damages specified herein to be excessive, they shall be reduced accordingly by the court determining liability.

TITLE V—MISCELLANY

SEC. 501. ATTORNEY GENERAL TO MAKE REGULATIONS.—The Attorney General shall issue and publish in the Federal Register regulations implementing the provisions and policies of titles I and II and governing compliance therewith.

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SEC. 502. BUREAU OF THE CENSUS TO COMPILE TENTATIVE VENIRE LISTS.—The Bureau of the Census shall, pursuant to this Act or to the reasonable request of any jury officer or the Attorney General, prepare a list substantially comprehensive of every person residing within a particular State court jurisdiction who is not rendered clearly ineligible for service in the jury courts thereof by the age and residence provisions of State law. Such lists may be derived from comparisons of Federal, State, local, or private lists or other information, or, where more convenient, from a special census of the jurisdiction. The Bureau shall receive the cooperation of every department and agency of the United States and may, where necessary, investigate, subpena persons to testify and present lists and other information under oath, notwithstanding any provision of State law to the contrary.

SEC. 503. JUROR COMPENSATION INCREASED.—Section 1871 of title 28 of the United States Code is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "sub-

sistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem."

SEC. 504. JUDICIAL COGNIZANCE OF CERTIFICATIONS.—Except as provided in section 302, every certification made pursuant to this Act shall be conclusive upon every court and agency of the United States and of every State. No inference may be drawn from the failure or refusal of any officer or employee of the United States to make any certification or regulation required or authorized by this Act.

SEC. 505. GENERAL SURVEY OF CONDITIONS; ATTORNEY GENERAL MAY SPECIFY INVESTIGATION OF PARTICULAR AREAS.—The Bureau of the Census, in cooperation with the Administrative Office of the United States Courts, shall conduct a survey and make a report to the President and the Congress within two years of the effective date of this Act concerning racial, economic, and other demographic factors determining the racial composition of juries in the various States, including studies in depth of the past and present practices in areas or courts designated by the Attorney General.

SEC. 506. Special jury commissioners and other persons deemed necessary to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated

without regard to the provisions of any statute administered by the Civil Service Commission and service under this title shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except for the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 1181) prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Special jury commissioners are empowered to subpena persons to testify and present documents under oath.

SEC. 507. There are hereby authorized to be appropriateds such sums as are necessary to carry out the provisions of this Act.

SEC. 508. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

89TH CONGRESS
2D SESSION

H. R. 14369

IN THE HOUSE OF REPRESENTATIVES

APRIL 6, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SECTION 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk, and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel, or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel, or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including

the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel, or similar device, the questionnaires, if any, returned by said persons, the names, race, and sex of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may, on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b) : "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any

particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel, or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names, race, and sex of the persons drawn from the jury box, wheel, or similar device, the names of those performing jury service and the dates thereof, and such additional appropriate records

as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color or sex in such State or local court or that the record-keeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court, and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service laws, appoint and

fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color or sex in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

(d) Whenever it is shown that over a period of two years within the area of any State or local court less than one-third of the persons serving on grand and petit juries are of a given sex, it shall be presumed to be systematic exclusion of persons of that sex unless it is shown by the clerk of the court or other appropriate official that the disproportionate ratio is due to the fact that a larger number of the persons of that sex have been excused by the court for cause: *Provided*, That nothing herein shall be construed to require or permit the limitation of either sex to one-third quotas in regard to jury selection: *And provided further*, That in case all or part of the two-year period antedates the effective date of this title, the State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United State District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons

will be excluded from jury service by reason of race or color or sex, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of title 42, United States Code, sections 1974 (a), (b), (c), and (d) shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prosecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to

the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection

(c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts, or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political subdivision exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202(e) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described

in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable

in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General described in section 203 (b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes

unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect to the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other pur-

poses of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners, and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the country or other political subdivision concerned to

consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Title 18, United States Code, section 241, is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using directly or indirectly, the facilities of interstate commerce, or traveling therein,

or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of

bond to secure compliance with any order of the court, or other order; provided that such other person above mentioned is a person described in subsection 202 (d) (i) or (ii) and any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding

(civil, criminal, or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising,

attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matter relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in 29 U.S.C. 161 (1) and (2).

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was

taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any state of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or

death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State, provided that in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 601. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word *"Provided"* to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit;"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701 (c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and (5) of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VII—MISCELLANEOUS

SEC. 701. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 702. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 14765

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1966

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

A BILL

To assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1966".

TITLE I

SEC. 101. The analysis and sections 1861 and 1863 through 1869 of chapter 121 of title 28, United States Code, are amended to read as follows:

2

"CHAPTER 121—JURIES; TRIAL BY JURY

"Sec.
"1861. Declaration of policy.
"1862. Discrimination prohibited.
"1863. Jury commission.
"1864. Master jury wheel.
"1865. Drawing of names from the master jury wheel.
"1866. Qualifications for jury service.
"1867. Challenging compliance with selection procedures.
"1868. Maintenance and inspection of records.
"1869. Exclusion from jury service.
"1870. Definitions.
"1871. Fees.
"1872. Exemptions.
"1873. Challenges.
"1874. Issues of fact in Supreme Court.
"1875. Admiralty and maritime cases.
"1876. Actions on bonds and specialties.

"§ 1861. Declaration of policy

"It is the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in the district courts of the United States and shall have an obligation to serve as jurors when summoned for that purpose.

"§ 1862. Discrimination prohibited

"No person or class of persons shall be denied the right to serve on grand and petit juries in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

"§ 1863. Jury commission

"(a) There shall be a jury commission for each district

court of the United States composed of the clerk of the court and a citizen appointed by the court as a jury commissioner: *Provided*, That the court may establish a separate jury commission for one or more divisions of the judicial district by appointing an additional citizen as a jury commissioner to serve with the clerk for such division or divisions. The jury commissioner shall during his tenure in office reside in the judicial district or division for which appointed, shall not belong to the same political party as the clerk serving with him, and shall receive $16 per day for each day necessarily employed in the performance of his duties.

"(b) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"§ 1864. Master jury wheel

"(a) Each jury commission shall maintain a master jury wheel and shall place in the master wheel names selected at random from the voter registration lists of persons residing in the judicial district or division it serves: *Provided*, That the judicial council of the circuit, with such advice as the chief judge of the district may offer, shall prescribe some other source or sources of names for the master wheel in

addition to the voter registration lists where necessary, in the judgment of the council, to protect the rights secured by section 1862 of this title.

"(b) The jury commission shall place in the master wheel the names of at least 1 per centum of the total number of persons listed on the voter registration lists for the district or division (or, if sources in addition to voter registration lists have been prescribed pursuant to subsection (a), at least 1 per centum of the total number of persons of voting age residing in the district or division according to the most recent decennial census): *Provided*, That in no event shall the jury commission place in the master wheel the names of fewer than two thousand persons.

"(c) The chief judge of the district shall prescribe, by rule, definite and certain procedures to be followed by the jury commission in making the random selection of names required by subsections (a) and (b) of this section.

"(d) State, local, and Federal officials having custody, possession, or control of voter registration lists or other appropriate records shall make such lists and records available to the jury commission for inspection, reproduction, and copying at all reasonable times as the commission may deem necessary and proper for the performance of its duties under this title. The district courts shall have jurisdiction upon appli-

cation by the Attorney General to compel compliance with this subsection by appropriate process.

"(e) The master jury wheel shall contain names of persons residing in all counties, parishes, or similar political subdivisions within the judicial district or division.

"(f) The jury commission shall in accordance with this section (1) from time to time, as necessary, place additional names in the master wheel and (2) between November 15 and December 31 of each even-numbered year empty and refill the master wheel.

"§ 1865. Drawing of names from the master jury wheel

"(a) From time to time as necessary the jury commission shall publicly draw from the master jury wheel the names of as many persons as may be required for jury service, prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to sections 1867 and 1868 of this title and summon by certified mail the persons whose names are drawn. Each person whose name is drawn, unless he claims exemption from jury service pursuant to section 1872 of this title and subsection (b) of this section, shall appear before the clerk and fill out a juror qualification form to be prescribed by the Administrative Office of the United States Courts in consultation with the Attorney General. The form shall

elicit his name, address, age, sex, education, race, religion, occupation, and citizenship and whether he has any physical or mental infirmity, is able to read, write, speak, and understand the English language, and has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The clerk shall examine the form to determine whether it is filled out completely and responsively and shall call any omissions or apparent errors to the attention of such person who shall make such corrections or additions as may be necessary. If any person summoned is unable to fill out the form, the clerk shall do it for him and indicate on the form the fact that he has done so and the reason. Except as provided in subsection (b) of this section, any person summoned who fails to appear as directed shall be ordered by the court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both.

"(b) Any person summoned who is exempt from jury service pursuant to section 1872 of this title may state the basis for his exemption in the space provided on the sum-

mons and return the summons duly signed to the clerk by mail. Any person who willfully misrepresents his exemption from jury service on a summons may be fined not more than $100 or imprisoned not more than three days, or both.

"§ 1866. Qualifications for jury service

"(a) The jury commission shall determine solely on the basis of information provided on the juror qualification form or the returned summons whether a person is qualified for or exempt from jury service: *Provided,* That such determination shall be made by the court if other objective evidence obtained by the jury commission indicates that a person is not qualified pursuant to subparagraphs (1), (3), or (4) of subsection (b) hereof. The jury commission shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list. Whenever a person is determined to be not qualified for jury service, the jury commission shall note on the space provided on the juror qualification form the specific ground of disqualification.

"(b) In making such determination the jury commission shall deem any person qualified to serve on grand and petit juries in the district court unless he—

"(1) is not a citizen of the United States twenty-

one years old who has resided for a period of one year within the judicial district;

"(2) is unable to read, write, speak, and understand the English language;

"(3) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

"(4) has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(c) The jury commission shall maintain a qualified juror wheel and shall place in such wheel names of persons determined to be qualified as jurors. From time to time, the jury commission shall publicly draw from the qualified juror wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

"§ 1867. Challenging compliance with selection procedures

"(a) In criminal cases, prior to the introduction of evidence at trial, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The defendant shall be entitled to present in support

of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with this title.

"(b) In civil cases, prior to the introduction of evidence at trial, any party may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The moving party shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a jury in conformity with this title.

"(c) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime or a party in a civil case may challenge any jury in his case on the ground that such jury was not selected in conformity with sections 1864, 1865, or 1866 of this title. Nothing in this section shall preclude any persons or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries.

"(d) The contents of any records or papers produced pursuant to subsections (a) or (b) of this section shall not be disclosed, except as may be necessary in the preparation or presentation of the case, until after the master jury wheel has been emptied and refilled pursuant to section 1864(f) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service: *Provided,* That the parties in a case shall be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the pendency of the case. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

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"§ 1868. Maintenance and inspection of records

"After the master jury wheel is emptied and refilled pursuant to section 1864 (f) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the jury commission before the master wheel was emptied shall be preserved by the commission in the custody of the clerk for four years or for such longer period as may be ordered by a court and shall be available for public inspection.

"§ 1869. Exclusion from jury service

"(a) Except as provided in section 1872 of this title, no person or class of persons shall be excluded, excused or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court for not more than six months at a time upon a showing of unusually severe hardship or (2) excluded by the court upon (i) peremptory challenge as provided by law or (ii) a finding that such person may be unable to render impartial jury service or that his service as a juror would disrupt the proceedings. Whenever a person is excused or excluded from jury service, the jury commission shall note in the space provided on his juror qualification form the specific ground of excuse or exclusion.

"(b) In any two-year period, no person shall be re-

quired to (1) serve as a petit juror for more than thirty calendar days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

"§ 1870. Definitions

"For purposes of this chapter—

"(a) 'clerk' and 'clerk of the court' shall mean the clerk of the United States district court or any deputy clerk.

"(b) 'voter registration lists' shall mean the official records maintained by State or local election officials of persons registered to vote in the most recent general election for candidates for Federal office or, in the case of a State which does not require registration as a prerequisite to voting, such other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the lists maintained by the appropriate State or local officials.

"(c) 'division' shall mean one or more divisions of a judicial district established by statute, and, in judicial districts where no divisions are established by statute, shall mean such counties, parishes, or similar

political subdivisions surrounding the places where court is held as the chief judge of the district shall determine.

"(d) 'district court of the United States', 'district court', and 'court' shall mean courts constituted under chapter 5 of title 28, United States Code: *Provided*, That for purposes of sections 1861, 1862, 1867, and 1869 of this chapter, these terms shall include the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia."

FEES

SEC. 102. (a) Section 1871 of title 28, United States Code, is amended by substituting "$20" for "$10" and "$25" for "$14" in the second paragraph, "$16" for "$10" in the third paragraph and "$20" for "$10" in the fourth paragraph.

(b) Section 1821 of title 28, United States Code, is amended by substituting "$20" for "$4", "10 cents" for "8 cents" and "$16" for "$8".

AMENDMENT AND REPEAL

SEC. 103. (a) Sections 1862, 1870, 1872, 1873, and 1874 of title 28, United States Code, are renumbered as sections 1872, 1873, 1874, 1875, and 1876, respectively, of that title.

(b) Sections 13-701, 11-2301 through 2305 (except the last paragraph of section 11-2302), 11-2307 through

2312 and 7-213a of the District of Columbia Code are repealed.

(c) Except for th last paragraph of subsection (a), section 11-2306 of the District of Columbia Code is repealed and a new subsection (b) is added to the section as follows: "(b) The jury commission for the district court for the District of Columbia shall draw from the qualified jury wheel from time to time as may be required the names of persons to serve as jurors in the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia and such persons shall be assigned to jury panels in the General Sessions and Juvenile courts as those courts shall direct."

(d) Section 16-1312 of the District of Columbia Code is amended by substituting "section 1866 of title 28, United States Code" for "section 11-2301" in subsection (a) (1) and by substituting "chapter 121 of title 28, United States Code," for "chapter 23 of title 11" in subsection (c).

(e) Section 22-1414 of the District of Columbia Code is amended by inserting the words "or wheel" immediately following the word "box" each time it appears therein.

EFFECTIVE DATE

SEC. 104. Sections 101 and 103 of this title shall become effective one hundred and twenty days after the date of enactment: *Provided*, That such sections shall not apply

in any case in which an indictment has been returned or petit jury impaneled prior to such effective date.

TITLE II

DISCRIMINATION PROHIBITED

SEC. 201. No person or class of persons shall be denied the right to serve on grand and petit juries in any State court on account of race, color, religion, sex, national origin, or economic status.

SUITS BY THE ATTORNEY GENERAL

SEC. 202. (a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in any act or practice which would deny or abridge any right secured by section 201 of this title, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for an injunction, restraining order, or other order against a State, any political subdivision thereof, or any official of such State or political subdivision. In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether any aggrieved party shall have exhausted any administrative or

other remedies that may be provided by law. Any action pursuant to this section shall be in every way expedited.

APPROPRIATE RELIEF

SEC. 203. If in any proceeding instituted pursuant to this title or any other law authorizing proceedings for injunctive relief, the district court finds that any right secured by section 201 has been denied or abridged, it may, in addition to any other relief, enter an order, effective for such period of time as may be appropriate—

(a) Prohibiting or suspending the use of any qualification for jury service or any basis for excuse, exemption, or exclusion from jury service which—

(1) violates or has been applied in violation of section 201 of this title, or

(2) is susceptible to being applied in violation of section 201 of this title because it vests in jury officials undue discretion to determine whether any person has satisfied such qualification or whether a basis exists for excusing, exempting, or excluding any person from jury service;

(b) Requiring the use of objective criteria to determine whether any person has satisfied any qualification for jury service or whether a basis exists for ex-

causing, exempting, or excluding any person from jury service;

(c) Requiring maintenance of such records or additional records as may be necessary to permit a determination thereafter whether any right secured by section 201 has been denied or abridged; or

(d) Appointing a master to perform such duties of the jury officials as may be necessary to assure that the rights secured by section 201 of this title are not denied or abridged.

DISCOVERY OF EVIDENCE

SEC. 204. In any proceeding instituted pursuant to section 202 of this title or section 1983 of title 42 of the United States Code, or in any criminal proceeding in any State court prior to the introduction of any evidence at trial, or in any habeas corpus, coram nobis, or other collateral proceeding in any court with respect to a judgment of conviction entered after the effective date of this title, wherein it is asserted that any right secured by section 201 of this title has been denied or abridged—

(a) The appropriate State or local officials shall furnish a written statement of jury selection information

subscribed to under oath which shall contain a detailed description of the following:

(1) the nature and location of the sources from which names were obtained for inclusion in the wheel, box, or similar device;

(2) the methods used and the procedures followed in selecting names from the sources referred to in subdivision (1) of this subsection for inclusion in the wheel, box, or similar device;

(3) the methods used for selecting names of prospective jurors from the wheel, box, or similar device for testing or otherwise demonstrating their qualifications for jury service;

(4) the qualifications, tests, standards, criteria, and procedures used in determining whether prospective jurors are qualified to serve as jurors; and

(5) the methods used for summoning or otherwise calling persons for jury service and assigning such person to grand and petit jury panels.

(b) The statement of jury selection information shall be filed with the clerk of the court in which the proceeding is pending, and a copy thereof shall be served upon the attorney for the complaining party. The statement of jury selection information shall constitute evidence on the question whether any right secured by section 201 of

this title has been denied or abridged: *Provided*, that the complaining party shall be entitled to cross-examine any person having knowledge of relevant facts concerning the information to be contained in such statement and to present in addition the testimony of the jury officials, together with any other evidence, and, where there is some evidence of a denial or abridgement of a right secured by section 201 of this title, any relevant records and papers used by jury officials in the performance of their duties which are not public or otherwise available.

(c) If the court determines (1) that there is probable cause to believe that any right secured by section 201 of this title has been denied or abridged and (2) that the records and papers maintained by the State are not sufficient to permit a determination whether such denial or abridgment has occurred, it shall be the responsibility of the appropriate State or local officials to produce additional evidence demonstrating that such denial or abridgement did not occur. When such evidence is not otherwise available, the State shall use such process of the court as may be necessary in order to produce the evidence, including the right to subpena witnesses.

(d) The court may direct that the contents of any records or papers produced pursuant to subsection (b)

of this section shall not be disclosed (except as may be necessary in the preparation and presentation of the case) during such period of time as such records and papers are not available for public inspection under State law: *Provided*, That parties to the proceeding shall be allowed to inspect, reproduce, and copy such records and papers at all reasonable times during the pendency of the case, and that disclosure of the contents of such records and papers by the Attorney General and his representatives shall be governed by subsection (b) of section 205 of this title. Any person who discloses the contents of any records or papers in violation of this subsection may be fined not more than $1,000, or imprisoned not more than one year, or both.

PRESERVATION AND INSPECTION OF RECORDS

SEC. 205. (a) The jury officials in all State courts shall preserve the records and papers prepared or obtained in the performance of their duties for four years after the completion of service by all persons whose consideration for service as jurors was the subject of such records and papers. Any person, whether or not a jury official, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by this subsection to be preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) Any record or paper required by subsection (a) of this section to be preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying by the Attorney General or his representative. During such period of time as such records and papers are not available for public inspection under State law, unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose the contents of any record or paper produced pursuant to this title except to Congress and any committee thereof, governmental agencies, and in the preparation and presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

DEFINITIONS

SEC. 206. For purposes of this title—

(a) "State court" shall mean any court of any State, county, parish, city, town, municipality or other political subdivision of any State;

(b) "jury official" shall mean any person or group of persons, including judicial officers, who select, summon, or impanel persons to serve as grand or petit jurors in any State court;

(c) "wheel, box, or similar device" shall include a file, list, or other compilation of names of persons prepared by a jury official;

(d) "political subdivision" shall mean any county, parish, city, town, municipality, or other territorial subdivision of a State.

EFFECT ON EXISTING LAWS

SEC. 207. The remedies provided in this title shall not preclude any person, the United States, or any State or local agency from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries in any State court.

EFFECTIVE DATE

SEC. 208. This title shall become effective one hundred and twenty days after the date of its enactment: *Provided*, That the provisions of this title shall not apply in any case in which an indictment has been returned or a petit jury impaneled prior to such effective date.

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TITLE III

SEC. 301. Title III of the Civil Rights Act of 1964 (78 Stat. 246; 42 U.S.C. 2000b–2000b–3), is amended to read as follows:

"TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

"SEC. 301. The Attorney General may institute, in the name of the United States, a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, whenever he has reasonable grounds to believe that—

"(a) Any person acting under color of law has denied, or attempted or threatened to deny, any other person, on account of his race or color, the equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

"(b) Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to,

or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State of subdivision thereof.

"SEC. 302. In any proceeding under section 301 the United States shall be liable for costs the same as a private citizen.

"SEC. 303. As used in this title, 'public school' and 'public college' shall have the same meanings as in section 401 (c) of title IV of this Act.

"SEC. 304. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.

"SEC. 305. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility."

SEC. 302. Sections 407 through 410 of the Civil Rights Act of 1964 (78 Stat. 248–249; 42 U.S.C. 2000c–6—2000c–9) are hereby repealed.

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TITLE IV

POLICY

SEC. 401. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 402. For purposes of this title—

(a) "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure or portion thereof.

(c) "discriminatory housing practice" means an act that is unlawful under section 403 or 404.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 403. It shall be unlawful for the owner lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) To refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available.

(e) To deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 404. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 405. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by section 403 or 404.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 406. (a) The rights granted by sections 403, 404, and 405 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 405 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, restraining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court may allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 406 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public

importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ASSISTANCE BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 408. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 409. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 410. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 411. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE V

INTERFERENCE WITH RIGHTS

SEC. 501. Whoever, whether or not acting under color of law, by force or threat of force—

(a) injures, intimidates, or interferes with, or

attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is engaging or seeking to engage in

(1) voting or qualifying to vote in any primary, special, or general election;

(2) enrolling in or attending any public school or public college;

(3) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(4) applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the services of any employment agency;

(5) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease or occupation of any dwelling;

(6) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(7) using any vehicle, terminal, or facility of any common carrier by motor, rail, water or air;

(8) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(9) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments; or

(b) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person (1) to discourage such person or any other person or any class of persons from participating or seeking to

participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or (2) because he has so participated or sought to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(c) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account or race, color, religion, or national origin, or because he has afforded another person or class of persons equal treatment in so participating or seeking to so participate—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

AMENDMENTS

SEC. 502. (a) Section 241 of title 18, United States Code, is amended by striking out the final paragraph thereof and substituting the following:

"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

(b) Section 242 of title 18, United States Code, is amended by striking out the period at the end thereof and adding the following: "; and if death results shall be subject to imprisonment for any term of years or for life."

(c) Subsections (a) and (c) of section 12 of the Voting Rights Act of 1965 (79 Stat. 443, 444) are amended by striking out the words "or (b)" following the words "11 (a)."

TITLE VI—MISCELLANEOUS

AUTHORIZATION FOR APPROPRIATIONS

SEC. 601. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 602. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

89TH CONGRESS
2D SESSION

H. R. 14770

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, civil rights procedures, amendment of the school desegregation laws, and prohibition of racial discrimination in housing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Enforcement Act of 1966".

TABLE OF CONTENTS

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly

qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who

may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service, and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may on its own motion, or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for

clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however,* That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861(2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking

the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all person on the jury list for said court, names of those persons placed in the jury box, wheel or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service and the date thereof and such additional appropriate records as the judge or judges or said court may direct. Such records shall be retained for a period of not less than four years.

JURY DISCRIMINATION

SEC. 106. (a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from

grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. Review of the decisions of the Federal district court shall be had in accordance with subsection (d) of section 101 as conformed to the procedures of this section. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director, may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may

call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make applica-

tion for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, the selection of, or challenges to, individual jury members or panel, or the operation in any way of the court system, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this Act, he is hereby directed to bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court shall grant such temporary and final relief as is necessary to prevent such circumvention of this Act.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority consti-

tutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of subsections (a), (b), (c), and (d) of section 1974 of title 42, United States Code, shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prosecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only

if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject

to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated against in any manner in connection with the services or facilities of, State or local jails, prisons, police sta-

tions, courts or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or sytematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202 (e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political subdivision exceeds by one-third or more the ratio which the

number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202 (c) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information. When the statement of twenty persons is filed as set forth in subsection (b) below, the Attorney General shall forthwith commence prosecution.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arrangement, in the district court, there is filed with the district court a certificate of the Attorney General of the United States or a statement by twenty persons who liv within the county or similar political subdivision and are members of the groups described in section 202 (d) (i) or

(ii), that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate or statement, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate or statement, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate or statement. The certificate of the Attorney General or the statement of twenty persons shall not be subject to review by any court.

(c) If the certificate of the Attorney General or the statement of twenty persons described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General or the statement of twenty persons described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act.

Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

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REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General or the statement of twenty persons described in section 20[illegible](b) of this Act, which certificate or statement shall identify the prosecution to be removed. The filing of this certificate or statement, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of

this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate; and

(iii) the certificate of the Attorney General or the statement of twenty persons shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole,

and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members

of the Commission or its staff; the person or persons thus designated shall have the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other

statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. (a) Whoever, whether or not acting under color of law, by force or threat of force—

(1) injures, intimidates, or interferes with or attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is engaging or seeking to engage in—

(A) voting or qualifying to vote in any primary, special, or general election;

(B) enrolling in or attending any public school or public college;

(C) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(D) applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the service of any employment agency;

(E) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease, or occupation of any dwelling;

(F) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(G) using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(H) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(I) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of

any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishment; or

(2) Injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person—

(A) to discourage such person or any other person or any class of persons from participating or seeking to participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or

(B) because he has so participated or sought to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(3) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account of race, color, religion, or national origin, or because he has

afforded another person or class of persons equal treatment in so participating or seeking to so participate shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(b) (1) Section 241 of title 18, United States Code, is amended by striking out the final paragraph thereof and substituting the following:

"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

(2) Section 242 of title 18, United States Code, is amended by striking out the period at the end thereof and adding the following: "; and if death results shall be subject to imprisonment for any term of years or for life."

TITLE III—PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person, because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his

own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order: *Provided*, That such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (*f*) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed

by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the

expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted, or (ii) by any act, the purpose or design of which is to intimidate him or any other person from

seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hear-

ing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in subsections (1) and (2) of section 161 of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the

Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be

given to the chief executive or principal legal officer of such State or political subdivision.

(c) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount

of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except

that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentional causes grave bodily injury or death to another or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on

behalf of the person or persons so injured or on behalf of the deceased, or by twenty persons described by section 202 (d) (i) who live in the county or like political subdivision where the injury occurred, requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge and if after such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (here-

after referred to as the "respondent") a copy of the complaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence the Commission shall find that the respondent has engaged in the acts or omissions described in section 601, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary, (2) removing respondent from office, and (3) disqualifying respondent from holding said or any other office for such period of time not exceeding ten years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or re-

moval from office is not warranted, but that acts of violence have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602 (e). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in

the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the

court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission which shall file in the court a transcript of the

entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint and no appeal shall lie from said order of dismissal.

SEC. 605. In any action commenced pursuant to this

title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88–352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701(a) as follows:

"The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701(b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501(c)

of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701(c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701(c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and 5 of section 710(e) and on lines 2 and 7 of section 713(b).

TITLE VIII—AMENDMENTS TO VOTING RIGHTS ACT OF 1965

SEC. 801. Section 14 of the Voting Rights Act of 1965 is amended by adding the following subsection:

"(e) The phrase 'voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to

voting' shall include (1) any reapportionment, realinement, or redistricting of any election district, (2) any prerequisite or qualification for being (or primary or other process for choosing) a candidate in any election, including any primary, special, or general election or election for party office, and (3) all time limitations for voter registration, qualification as a candidate, dates of holding any election (as defined in '(2)' above), and any other time limitation with respect to the election process."

SEC. 802. Section 6 of the Voting Rights Act of 1965 (79 Stat. 437) is amended to read as follows:

"SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable

to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, or (c) unless a declaratory judgment has been rendered under section 4(a), complaints under oath have been filed with the Civil Service Commission from twenty or more residents of such political subdivision alleging that they have been or are being denied the right to vote on account of race or color, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Whenever five or more such complaints are filed with the Commission from any incorporated municipality or similar area of compact population, an examiner shall be placed in such area. Whenever forty or more such complaints are filed from any such political subdivision or ten or more from any such area, then if requested in such complaints, examiners shall conduct door-to-door registration. As used in this section 'have been or are being denied the right to vote on account of race or color' includes harassment, intimidation, unreasonable registration hours, locations, or other registration conditions and registration periods limited other than to forty-five days prior

to an election. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths."

TITLE IX—FEDERAL BOND CHARTERS

SEC. 901. The Federal Deposit Insurance Corporation is hereby authorized to issue, suspend, or revoke charters to corporations to issue bail, appearance, appeal, or other bonds that may be incident to proceedings coming within the provisions of this Act. Such corporations, to the extent using powers granted by such charters, shall be subject to supervision and to regulations issued by the Federal Deposit Insurance Corporation.

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TITLE X—CIVIL RIGHTS PROCEDURE

FINDINGS AND PURPOSE

SEC. 1001. (a) The Congress has over the last century adopted legislation declaring, protecting, and granting various civil rights to citizens. It is the sense of Congress that some citizens seeking to avail themselves of these declared rights have been subjected to lengthy and expensive criminal prosecutions instituted to deter them from attempting to obtain their civil rights. It is further the sense of Congress that the proper means to correct this unlawful activity is to vest appropriate jurisdiction in the district courts of the United States.

(b) It is hereby declared to be the policy of Congress and the purpose of this title to promote the general welfare by preventing reprisals against those who seek to end discrimination on account of race, color, religion, or national origin prohibited by the Constitution or laws of the United States.

REMOVAL OF CAUSES

SEC. 1002. (a) Section 1443 of title 28 of the United States Code is amended by substituting a semicolon for the period at the end of subsection (2) and by adding at the end thereof the following new subsections:

"(3) For any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act

of 1964, or of any other right granted, secured, or protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or

"(4) For an exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceably assemble secured by the Constitution or laws of the United States when committed in furtherance of any right of the nature described in subsection (3) of this section."

(b) Subsection (d) of section 1447 of title 28 of the United States Code is amended to read as follows:

"(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be appealable as a final decision under section 1291 and an order denying remand of a case removed pursuant to section 1443 shall be appealable as an injunction of proceedings in the State court under paragraph (1) of subsection (a) of section 1292."

INJUNCTION OF STATE PROCEEDINGS

SEC. 1003. Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by inserting "(a)" at the begin-

ning of the section and by adding at the end thereof the following new subsections:

"(b) Such redress shall include the grant of an injunction to stay a proceeding in a State court where such proceeding was instituted for:

"(1) Any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act of 1964, or of any other right granted, secured, or protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or

"(2) Any exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceably assemble secured by the Constitution or laws of the United States, when committed in furtherance of any right of the nature described in subparagraph (1) of this subsection; and where:

"(i) An issue determinative of the proceeding in favor of the party seeking the injunction has been decided in favor of his contention in a final decision in another proceeding arising out of a like factual situation;

"(ii) the statute, ordinance, administrative regulation, or other authority for the proceeding has been declared unconstitutional in a final decision in another proceeding;

"(iii) The statute, ordinance, administrative regulation,

or other authority for the proceeding is, on its face, an unconstitutional abridgment of the rights to freedom of speech or of the press or of the people to peaceably assemble; or

"(iv) The proceeding was instituted for the purpose of discouraging the parties or others from exercising rights of freedom of speech or of the press or of the people to peaceably assemble.

"(c) In an action seeking an injunction under subsection (b) the court shall not deny or defer relief on the ground that a defense or remedy in the State courts is available."

TITLE XI—PUBLIC SCHOOL DESEGREGATION PROCEDURE—AND PROHIBITION OF DUAL SCHOOL SYSTEMS, GERRYMANDERING, AND OTHER METHODS OF PROMOTING SEGREGATION

SEC. 1101. Title III of the Civil Rights Act of 1964 (78 Stat. 246; 42 U.S.C. 2000b—2000b-3) is amended to read as follows:

"TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

"SEC. 301. The Attorney General may institute, in the name of the United States, a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, whenever he has reasonable grounds to believe that:

"(a) Any person acting under color of law has denied,

or attempted or threatened to deny, any other person, on account of his race or color, the equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

"(b) Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced, or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof.

"SEC. 302. In any proceeding under section 301 the United States shall be liable for costs the same as a private citizen.

"SEC. 303. As used in this title, 'public school' and 'public college' shall have the same meanings as in section 401 (c) of title IV of this Act.

"SEC. 304. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.

"SEC. 305. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility."

SEC. 1102. The following new section is added to title IV of the Civil Rights Act of 1964 (78 Stat. 246):

"SEC. 411. Nothing in this title, title III, or title VI shall be construed to—

"(a) permit assignment of pupils from the same geographical area to different schools wherever such assignment results in racial imbalance;

"(b) permit drawing or continuing in force of school district lines or other methods of pupil assignment to achieve or perpetuate racial imbalance, unless such lines or other methods are affirmatively shown by the school board to be (1) reasonable, fair, and rational and (2) not based upon race or color."

TITLE XII—PROHIBITION OF HOUSING DISCRIMINATON

POLICY

SEC. 1201. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race. color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 1202. For purposes of this title—

(a) "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure or portion thereof.

(c) "discriminatory housing practice" means an act that is unlawful under sections 1203 or 1204.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 1203. It shall be unlawful for the owner, lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) to refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make

unavailable or deny, a dwelling to any person because of race, color, religion, or national origin;

(b) to discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin;

(c) to print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination;

(d) to represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available;

(e) to deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 1204. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 1205. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by section 1203 or 1204.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 1206. (a) The rights granted by sections 1203, 1204, and 1205 may be enforced by civil actions in appropriate United States district courts without regard to the amount

in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 1205 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, restraining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court shall allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 1207. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title he may bring a civil action in any appropriate United States

district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 1206 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ENFORCEMENT BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 1208. No person violating sections 1201, 1203, 1204, or 1205 of this title shall be entitled to benefits of any Federal program directly or indirectly concerning the sale, rental, construction, management, or financing of housing.

SEC. 1209. The Secretary of Housing and Urban Development shall issue regulations to enforce section 1208. Such regulations shall include: (1) a specification of the agency programs covered, (2) the agency procedures for enforcement, (3) the length and degree of the sanctions imposed for noncompliance in accordance with section 1208,

and (4) sufficiently broad placement of responsibility to secure prompt and effective compliance upon institutions, agencies, or other economic organizations dealing with housing.

SEC. 1210. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 1211. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 1212. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 1213. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE XIII—MISCELLANEOUS

SEC. 1301. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or

color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 1302. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 14775

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 1966

Mr. REID of New York introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To confer jurisdiction upon the district courts of the United States over certain classes of removed cases and to provide injunctive relief in certain cases, and for other purposes.

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

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress has over the last century adopted legislation declaring, protecting, and granting various civil rights to citizens. It is the sense of Congress that some citizens seeking to avail themselves of these declared rights have been subjected to lengthy and expensive criminal

prosecutions instituted to deter them from attempting to obtain their civil rights. It is further the sense of Congress that the proper means to correct this unlawful activity is to vest appropriate jurisdiction in the district courts of the United States.

(b) It is hereby declared to be the policy of Congress and the purpose of this legislation to promote the general welfare by preventing reprisals against those who seek to end discrimination on account of race, color, religion, or national origin prohibited by the Constitution or laws of the United States.

REMOVAL OF CAUSES

SEC. 3. (a) Section 1443 of title 28 of the United States Code is amended by substituting a semicolon for the period at the end of subsection (2) and by adding at the end thereof the following new subsections:

"(3) For any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act of 1964, or of any other right granted, secured, or protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or

"(4) For any exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceably assemble secured by the Constitution or laws

of the United States when committed in furtherance of any right of the nature described in subsection (3) of this section."

(b) Subsection (d) of section 1447 of title 28 of the United States Code is amended to read as follows:

"(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be appealable as a final decision under section 1291 and an order denying remand of a case removed pursuant to section 1443 shall be appealable as an injunction of proceedings in the State court under paragraph (1) of subsection (a) of section 1292."

INJUNCTION OF STATE PROCEEDINGS

SEC. 4. Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by inserting "(a)" at the beginning of the section and by adding at the end thereof the following new subsections:

"(b) Such redress shall include the grant of an injunction to stay a proceeding in a State court where such proceeding was instituted for—

"(1) any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act of 1964, or of any other right granted, secured, or

protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or

"(2) any exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceably assemble secured by the Constitution or laws of the United States, when committed in furtherance of any right of the nature described in subparagraph (1) of this subsection;

and where—

"(i) An issue determinative of the proceeding in favor of the party seeking the injunction has been decided in favor of his contention in a final decision in another proceeding arising out of a like factual situation;

"(ii) The statute, ordinance, administrative regulation, or other authority for the proceeding has been declared unconstitutional in a final decision in another proceeding;

"(iii) The statute, ordinance, administrative regulation, or other authority for the proceeding is, on its face, an unconstitutional abridgment of the rights to freedom of speech or of the press or of the people to peaceably assemble; or

"(iv) The proceeding was instituted for the purpose of discouraging the parties or others from exercis-

ing rights of freedom of speech or of the press or of the people to peaceably assemble.

"(c) In an action seeking an injunction under subsection (b) the court shall not deny or defer relief on the ground that a defense or remedy in the State courts is available."

89TH CONGRESS
2D SESSION

H. R. 14836

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 1966

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

A BILL

The Civil Rights Protection Act of 1966.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966".

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation, and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than 300 qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, includ-

ing the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel or similar device, the questionnaires, if any, returned by said person, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service, and the dates thereof and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located, shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the Court of Appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

(e) RETURN OF JURY SUPERVISION.—The Court of Appeals may, on its own motion or on application of the chief judge of the judicial district, approve the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the Court of Appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of district courts while absent from his designated post of duty on official business.

(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section.

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in

any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10.00 per day" and inserting in their place "$15.00 per day or loss of pay, whichever is greater"; and by striking the words "$14.00 for each day" and inserting in their place "$20.00 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10.00 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10.00 per diem" and inserting in their place "jury fees in excess of $15.00 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service, and the dates thereof and such additional appropriate records

as the judge or judges of said court may direct. Such records shall be retained for a period of not less than four years.

SEC. 106. JURY DISCRIMINATION.—

(a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service laws,

appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 percent of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the record keeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of title 42, United States Code, section 1974(a), (b), (c), and (d), shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prosecution

of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is—

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are: that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) Systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges preemptory or for cause, or otherwise; or

(ii) Systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected; or

(iii) Systematically segregated in, or discriminated against in any manner in connection with the serv-

ices or facilities of, State or local jails, prisons, police stations, court or other public buildings related to the administration of justice; or

(iv) Systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) Systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202 (e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or political subdivision exceeds by one-third or more the ratio which the

number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202 (e) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment in the district court, there is filed with th district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become

exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment, in the district court the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any

case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by Section 201. The authority given federal executive, administrative and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by Section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in

the district court of the certificate of the Attorney General described in section 203(b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) The jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate; and

(ii) No State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate.

(iii) The certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a

Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners,

and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the

Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Title 18, United States Code, section 241, is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) Willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or because of his having so exercised the same; or

(2) Intentionally commits an assault or an assault and battery upon any person exercising, attempting to

exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) Intentionally commits an assault or an assault and battery upon any person using, directly, or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities, shall upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both, except that if in the course of the act or acts for which he is convicted he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the high-

way or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—CIVIL PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such

other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order; provided that such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202(d) and if any one

of the circumstances specified in section 202 (c) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal, or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnifica-

tion Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have

the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted or (ii) by any act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing

thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing: *Provided*, That any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same power of investigation and subpena as those granted the National Labor Relations Board in 29 U.S.C. 161 (1) and (2).

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall

have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the

record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall

constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent; and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That, in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining

whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentionally causes grave bodily injury or death to another or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on behalf of the person or persons so injured or on behalf of the deceased requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge, and if after such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (hereafter referred to as the "respondent") a copy of the complaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence, the Commission shall find that the respondent has engaged in

the acts or omissions charged in the complaint, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary; (2) removing respondent from office; and (3) disqualifying respondent from holding said or any other office for such period of time not exceeding ten years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or removal from office is not warranted, but that acts of violence have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just

and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602 (e). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the

failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States Court of Appeals, if application was made to the district

court as hereinabove provided, and by the Supreme Court of the United States as provided in title 28, United States Code, section 1254.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission, which shall file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint; and no appeal shall lie from said order of dismissal.

SEC. 605. In any action commenced pursuant to this title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows: "The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word "*Provided*" to read as follows:

"The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more

employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701 (c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701 (c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706 (e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707 (a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707 (a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709 (a) on lines

1 and 5 of section 710(c) and on lines 2 and 7 of section
2 713(b).

TITLE VIII—FAIR HOUSING

POLICY

SEC. 801. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 802. For purposes of this title—

(a) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "Dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or portion thereof.

(c) "Discriminatory housing practice" means an act that is unlawful under section 803 or 804.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 803. It shall be unlawful for the owner, lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) To refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color,

religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available.

(e) To deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 804. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin or such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 805. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by section 403 or 404.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 806. (a) The rights granted by sections 403, 404, and 405 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 405 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, re-

straining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court may allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 807. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 406 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ASSISTANCE BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 808. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 809. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of

a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 810. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 811. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE IX—MISCELLANEOUS

SEC. 901. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or

employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 902. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 14865

IN THE HOUSE OF REPRESENTATIVES

MAY 4, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Protection Act of 1966."

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a

sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, in-

cluding the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service, and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States

court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may on its own motion or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis

shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for clerks of districts courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b): "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in

any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all persons on the jury list for said court, names of those persons placed in the jury box, wheel or similiar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service and the date thereof and such additional appropriate records as the judge or judges or said court may direct. Such

records shall be retained for a period of not less than four years.

JURY DISCRIMINATION

SEC. 106. (a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director may, in accordance with civil service

laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the

State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make application for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, or the selection of, or challenges to, individual jury members or panel, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this title, he may bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court may grant such temporary or final relief as may be necessary to prevent such circumvention of this title.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority constitutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of subsections (a), (b), (c), and (d) of section 1974 of title 42, United States Code, shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prose-

cution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated

against in any manner in connection with the services or facilities of, State or local jails, prisons, police stations, courts or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or systematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202(e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political sub-

division exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202 (e) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arraignment, in the district court, there is filed with the district court a certificate of the Attorney General of the United States that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate, the jurisdiction given by section 201 shall become exclusive of

the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate. The certificate of the Attorney General shall not be subject to review by any court.

(c) If the certificate of the Attorney General described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act, Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the

United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General

described in section 203(b) of this Act, which certificate shall identify the prosecution to be removed. The filing of this certificate, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate; and

(iii) the certificate of the Attorney General shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a

Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole, and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

(c) Sections 201 through 205, inclusive, shall become inoperative on and after January 1, 1975.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed

findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members of the Commission or its staff; the person or persons thus designated shall have all the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its de-

tailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. Section 241 of title 18, United States Code, is amended to read as follows:

"(a) Whoever, whether acting under color of law or otherwise—

"(1) willfully injures, oppresses, threatens, or intimidates any person in the free exercise or enjoyment of any right, privilege, or immunity granted, secured, or

protected by the Constitution or laws of the United States, or because of his having so exercised the same;

"(2) intentionally commits an assault or an assault and battery upon any person exercising, attempting to exercise, or advocating the exercise of, any right, privilege, or immunity secured or protected against discrimination on the grounds of race or color by the Constitution or laws of the United States; or

"(3) intentionally commits an assault or an assault and battery upon any person using, directly or indirectly, the facilities of interstate commerce, or traveling therein, or upon any person where the assailant uses, directly or indirectly, any facility of interstate commerce, or anything that has moved in interstate commerce, in the commission of the assault or assault and battery, when the purpose or reasonably foreseeable effect of such assault or assault and battery is to prevent any person or class of persons from exercising or advocating equal rights or opportunities free from discrimination on the grounds of race or color, or to intimidate any person or class of persons in the exercise or advocacy of such rights or opportunities; shall upon conviction thereof be fined not more than $1,000 or imprisoned for not more than one year, or both; except that if in the course of the act or acts for which he is convicted

he inflicts death or grave bodily injury, he shall be fined not more than $10,000 and imprisoned for not more than twenty years, or both.

"(b) If two or more persons go in disguise on the highway or on the premises of another, with intent to prevent or hinder the free exercise or enjoyment of any right, privilege, or immunity covered by subsection (a) of this section, they shall, upon conviction, be subject to the penalties in subsection (a) of this section."

TITLE III—PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person, because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any

other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order: *Provided*, That such other person above mentioned is a person described in subsection 202 (d) (i) or (ii) and any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

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TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States

against abridgement or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted, or (ii) by any act, the purpose or design

of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not

in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in subsections (1) and (2) of section 161 of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the politicial subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected

by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentionally causes grave bodily injury or death to another or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public

officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on behalf of the person or persons so injured or on behalf of the deceased requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge and if after such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (hereafter referred to as the "respondent") a copy of the com-

plaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence the Commission shall find that the respondent has engaged in the acts or omissions charged in the complaint, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary, (2) removing respondent from office, and (3) disqualifying respondent from holding said or any other office for such period of time not exceeding ten (10) years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or removal from office is not warranted, but that acts of violence

have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602 (c). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in the proceeding, including the pleadings and testimony upon

which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission which shall file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered

and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint and no appeal shall lie from said order of dismissal.

SEC. 605. In any action commenced pursuant to this title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States,

a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows:

"The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word "*Provided*" to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c) of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

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(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701(c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701(c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and 5 of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VIII—MISCELLANEOUS

SEC. 801. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race

or color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 802. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

89TH CONGRESS
2D SESSION

H. R. 14971

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 1966

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

A BILL

To provide against discrimination in housing.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

POLICY

SECTION 1. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 2. For purposes of this Act—

(a) "person" includes one or more individuals, corpora-

tions, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure, or portion thereof.

(c) "discriminatory housing practice" means an act that is unlawful under section 3 or 4.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 3. It shall be unlawful for the owner lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) To refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make

unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available.

(e) To deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any

multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 4. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 5. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person

in the exercise or enjoyment of any right granted by section 3 or 4.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 6. (a) The rights granted by sections 3, 4, and 5 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 5 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, re-

straining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court may allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 7. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this Act he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsble for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this Act.

(b) Whenever an action under section 6 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public

importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ASSISTANCE BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 8. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating

to housing and urban development in a manner affirmatively to further the policies of this Act.

EFFECT ON STATE LAWS

SEC. 9. Nothing in this Act shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this Act shall be effective, that grants, guarantees, or protects the same rights as are granted by this Act; but any law that purports to require or permit any action that would be a discriminatory housing practice under this Act shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 10. All cases of criminal contempt arising under the provisions of this Act shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 11. Nothing in this Act shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

89TH CONGRESS
2D SESSION

H. R. 14972

IN THE HOUSE OF REPRESENTATIVES

MAY 10, 1966

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

A BILL

To protect against violence and intimidation in the exercise of civil rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I

INTERFERENCE WITH RIGHTS

SEC. 101. Whoever, whether or not acting under color of law, by force or threat of force—

(a) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is engaging or seeking to engage in, or seeking to encourage or assist others in engaging in—

(1) voting or qualifying to vote in any primary, special, or general election;

(2) enrolling in or attending any public school or public college;

(3) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(4) applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the services of any employment agency;

(5) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease or occupation of any dwelling;

(6) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(7) using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(8) participating in or enjoying the benefits of

any program or activity receiving Federal financial assistance; or

(9) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments; or

(b) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person (1) to discourage such person or any other person or any class of persons from participating or seeking to participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or (2) because he has so participated or sought

to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(c) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account or race, color, religion, or national origin, or because he has afforded another person or class of persons equal treatment in so participating or seeking to so participate—

shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

TITLE II—CRIMINAL PENALTIES FOR CERTAIN CIVIL RIGHTS VIOLATIONS

SEC. 201. Section 241 of title 18, United States Code, is amended by deleting the period at the end thereof and inserting the following: "; and if personal injury results they shall be fined not more than $10,000 or imprisoned not more than twenty years, or both; and if death results they

shall be subject to imprisonment for any term of years or for life."

SEC. 202. Section 242 of title 18, United States Code, is amended by deleting the period at the end thereof and inserting the following: "; and if personal injury results shall be subject to imprisonment for not more than twenty years or a fine of not more than $10,000, or both; and if death results shall be subject to imprisonment for any term of years or for life."

TITLE III—CIVIL INDEMNIFICATION

SEC. 301. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President, with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor

was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 302. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 303. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 304. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race, color, religion, or national origin, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted or (ii) by any

act, the purpose or design of which is to intimidate him or any other person from seeking or advocating equality of persons or opportunity free from discrimination based on race, color, religion, or national origin.

SEC. 305. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission many request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 306. If, after such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 307; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 307. (a) Any hearing may be conducted by the

Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hearing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee, or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same power of investigation and subpena as those granted the National Labor Relations Board in section 161, subsections (1) and (2) of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 308. (a) After hearing, the Board, member, or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 304, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 304, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 309. (a) In the event that the investigation of the complaint or the hearing thereof indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was

taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 310. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 311. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 312. (a) In any instance in which the injury or death for which an award is made results in whole or in

part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 309, the findings of fact as made, modified, or approved, by the Board pursuant to section 308 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 313. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate,

or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 314. All complaints must be filed within six months of the injury for which an award is sought, except that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 315. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

89TH CONGRESS
2D SESSION

H. R. 15003

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 1966

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

A BILL

To assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1966".

TITLE I

SEC. 101. The analysis and sections 1861 and 1863 through 1869 of chapter 121 of title 28, United States Code, are amended to read as follows:

2

"CHAPTER 121—JURIES; TRIAL BY JURY

"Sec.
"1861. Declaration of policy.
"1862. Discrimination prohibited.
"1863. Jury commission.
"1864. Master jury wheel.
"1865. Drawing of names from the master jury wheel.
"1866. Qualifications for jury service.
"1867. Challenging compliance with selection procedures.
"1868. Maintenance and inspection of records.
"1869. Exclusion from jury service.
"1870. Definitions.
"1871. Fees.
"1872. Exemptions.
"1873. Challenges.
"1874. Issues of fact in Supreme Court.
"1875. Admiralty and maritime cases.
"1876. Actions on bonds and specialties.

"§ 1861. Declaration of policy

"It is the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in the district courts of the United States and shall have an obligation to serve as jurors when summoned for that purpose.

"§ 1862. Discrimination prohibited

"No person or class of persons shall be denied the right to serve on grand and petit juries in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

"§ 1863. Jury commission

"(a) There shall be a jury commission for each district

court of the United States composed of the clerk of the court and a citizen appointed by the court as a jury commissioner: *Provided*, That the court may establish a separate jury commission for one or more divisions of the judicial district by appointing an additional citizen as a jury commissioner to serve with the clerk for such division or divisions. The jury commissioner shall during his tenure in office reside in the judicial district or division for which appointed, shall not belong to the same political party as the clerk serving with him, and shall receive $16 per day for each day necessarily employed in the performance of his duties.

"(b) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"**§ 1864. Master jury wheel**

"(a) Each jury commission shall maintain a master jury wheel and shall place in the master wheel names selected at random from the voter registration lists of persons residing in the judicial district or division it serves: *Provided*, That the judicial council of the circuit, with such advice as the chief judge of the district may offer, shall prescribe some other source or sources of names for the master wheel in

addition to the voter registration lists where necessary, in the judgment of the council, to protect the rights secured by section 1862 of this title.

"(b) The jury commission shall place in the master wheel the names of at least 1 per centum of the total number of persons listed on the voter registration lists for the district or division (or, if sources in addition to voter registration lists have been prescribed pursuant to subsection (a), at least 1 per centum of the total number of persons of voting age residing in the district or division according to the most recent decennial census): *Provided*, That in no event shall the jury commission place in the master wheel the names of fewer than two thousand persons.

"(c) The chief judge of the district shall prescribe, by rule, definite and certain procedures to be followed by the jury commission in making the random selection of names required by subsections (a) and (b) of this section.

"(d) State, local, and Federal officials having custody, possession, or control of voter registration lists or other appropriate records shall make such lists and records available to the jury commission for inspection, reproduction, and copying at all reasonable times as the commission may deem necessary and proper for the performance of its duties under this title. The district courts shall have jurisdiction upon appli-

cation by the Attorney General to compel compliance with this subsection by appropriate process.

"(e) The master jury wheel shall contain names of persons residing in all counties, parishes, or similar political subdivisions within the judicial district or division.

"(f) The jury commission shall in accordance with this section (1) from time to time, as necessary, place additional names in the master wheel and (2) between November 15 and December 31 of each even-numbered year empty and refill the master wheel.

"§ 1865. Drawing of names from the master jury wheel

"(a) From time to time as necessary the jury commission shall publicly draw from the master jury wheel the names of as many persons as may be required for jury service, prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to sections 1867 and 1868 of this title and summon by certified mail the persons whose names are drawn. Each person whose name is drawn, unless he claims exemption from jury service pursuant to section 1872 of this title and subsection (b) of this section, shall appear before the clerk and fill out a juror qualification form to be prescribed by the Administrative Office of the United States Courts in consultation with the Attorney General. The form shall

elicit his name, address, age, sex, education, race, religion, occupation, and citizenship and whether he has any physical or mental infirmity, is able to read, write, speak, and understand the English language, and has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The clerk shall examine the form to determine whether it is filled out completely and responsively and shall call any omissions or apparent errors to the attention of such person who shall make such corrections or additions as may be necessary. If any person summoned is unable to fill out the form, the clerk shall do it for him and indicate on the form the fact that he has done so and the reason. Except as provided in subsection (b) of this section, any person summoned who fails to appear as directed shall be ordered by the court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both.

"(b) Any person summoned who is exempt from jury service pursuant to section 1872 of this title may state the basis for his exemption in the space provided on the sum-

mons and return the summons duly signed to the clerk by mail. Any person who willfully misrepresents his exemption from jury service on a summons may be fined not more than $100 or imprisoned not more than three days, or both.

"§ 1866. Qualifications for jury service

"(a) The jury commission shall determine solely on the basis of information provided on the juror qualification form or the returned summons whether a person is qualified for or exempt from jury service: *Provided*, That such determination shall be made by the court if other objective evidence obtained by the jury commission indicates that a person is not qualified pursuant to subparagraphs (1), (3), or (4) of subsection (b) hereof. The jury commission shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list. Whenever a person is determined to be not qualified for jury service, the jury commission shall note on the space provided on the juror qualification form the specific ground of disqualification.

"(b) In making such determination the jury commission shall deem any person qualified to serve on grand and petit juries in the district court unless he—

"(1) is not a citizen of the United States twenty-

one years old who has resided for a period of one year within the judicial district;

"(2) is unable to read, write, speak, and understand the English language;

"(3) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

"(4) has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(c) The jury commission shall maintain a qualified juror wheel and shall place in such wheel names of persons determined to be qualified as jurors. From time to time, the jury commission shall publicly draw from the qualified juror wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

"**§ 1867. Challenging compliance with selection procedures**

"(a) In criminal cases, prior to the introduction of evidence at trial, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The defendant shall be entitled to present in support

of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with this title.

"(b) In civil cases, prior to the introduction of evidence at trial, any party may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The moving party shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a jury in conformity with this title.

"(c) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime or a party in a civil case may challenge any jury in his case on the ground that such jury was not selected in conformity with sections 1864, 1865, or 1866 of this title. Nothing in this section shall preclude any persons or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries.

"(d) The contents of any records or papers produced pursuant to subsections (a) or (b) of this section shall not be disclosed, except as may be necessary in the preparation or presentation of the case, until after the master jury wheel has been emptied and refilled pursuant to section 1864 (f) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service: *Provided*, That the parties in a case shall be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the pendency of the case. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

"§ 1868. Maintenance and inspection of records

"After the master jury wheel is emptied and refilled pursuant to section 1864 (f) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the jury commission before the master wheel was emptied shall be preserved by the commission in the custody of the clerk for four years or for such longer period as may be ordered by a court and shall be available for public inspection.

"§ 1869. Exclusion from jury service

"(a) Except as provided in section 1872 of this title, no person or class of persons shall be excluded, excused or exempt from service as jurors: *Provided*, That any person summoned for jury service may be (1) excused by the court for not more than six months at a time upon a showing of unusually severe hardship or (2) excluded by the court upon (i) peremptory challenge as provided by law or (ii) a finding that such person may be unable to render impartial jury service or that his service as a juror would disrupt the proceedings. Whenever a person is excused or excluded from jury service, the jury commission shall note in the space provided on his juror qualification form the specific ground of excuse or exclusion.

"(b) In any two-year period, no person shall be re-

quired to (1) serve as a petit juror for more than thirty calendar days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

"§ 1870. Definitions

"For purposes of this chapter—

"(a) 'clerk' and 'clerk of the court' shall mean the clerk of the United States district court or any deputy clerk.

"(b) 'voter registration lists' shall mean the official records maintained by State or local election officials of persons registered to vote in the most recent general election for candidates for Federal office or, in the case of a State which does not require registration as a prerequisite to voting, such other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the lists maintained by the appropriate State or local officials.

"(c) 'division' shall mean one or more divisions of a judicial district established by statute, and, in judicial districts where no divisions are established by statute, shall mean such counties, parishes, or similar

political subdivisions surrounding the places where court is held as the chief judge of the district shall determine.

"(d) 'district court of the United States', 'district court', and 'court' shall mean courts constituted under chapter 5 of title 28, United States Code: *Provided*, That for purposes of sections 1861, 1862, 1867, and 1869 of this chapter, these terms shall include the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia."

FEES

SEC. 102. (a) Section 1871 of title 28, United States Code, is amended by substituting "$20" for "$10" and "$25" for "$14" in the second paragraph, "$16" for "$10" in the third paragraph and "$20" for "$10" in the fourth paragraph.

(b) Section 1821 of title 28, United States Code, is amended by substituting "$20" for "$4", "10 cents" for "8 cents" and "$16" for "$8".

AMENDMENT AND REPEAL

SEC. 103. (a) Sections 1862, 1870, 1872, 1873, and 1874 of title 28, United States Code, are renumbered as sections 1872, 1873, 1874, 1875, and 1876, respectively, of that title.

(b) Sections 13-701, 11-2301 through 2305 (except the last paragraph of section 11-2302), 11-2307 through

2312 and 7-213a of the District of Columbia Code are repealed.

(c) Except for the last paragraph of subsection (a), section 11-2306 of the District of Columbia Code is repealed and a new subsection (b) is added to the section as follows: "(b) The jury commission for the district court for the District of Columbia shall draw from the qualified jury wheel from time to time as may be required the names of persons to serve as jurors in the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia and such persons shall be assigned to jury panels in the General Sessions and Juvenile courts as those courts shall direct."

(d) Section 16-1312 of the District of Columbia Code is amended by substituting "section 1866 of title 28, United States Code" for "section 11-2301" in subsection (a) (1) and by substituting "chapter 121 of title 28, United States Code," for "chapter 23 of title 11" in subsection (c).

(e) Section 22-1414 of the District of Columbia Code is amended by inserting the words "or wheel" immediately following the word "box" each time it appears therein.

EFFECTIVE DATE

SEC. 104. Sections 101 and 103 of this title shall become effective one hundred and twenty days after the date of enactment: *Provided,* That such sections shall not apply

in any case in which an indictment has been returned or petit jury impaneled prior to such effective date.

TITLE II

DISCRIMINATION PROHIBITED

SEC. 201. No person or class of persons shall be denied the right to serve on grand and petit juries in any State court on account of race, color, religion, sex, national origin, or economic status.

SUITS BY THE ATTORNEY GENERAL

SEC. 202. (a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in any act or practice which would deny or abridge any right secured by section 201 of this title, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for an injunction, restraining order, or other order against a State, any political subdivision thereof, or any official of such State or political subdivision. In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether any aggrieved party shall have exhausted any administrative or

other remedies that may be provided by law. Any action pursuant to this section shall be in every way expedited.

APPROPRIATE RELIEF

SEC. 203. If in any proceeding instituted pursuant to this title or any other law authorizing proceedings for injunctive relief, the district court finds that any right secured by section 201 has been denied or abridged, it may, in addition to any other relief, enter an order, effective for such period of time as may be appropriate—

(a) Prohibiting or suspending the use of any qualification for jury service or any basis for excuse, exemption, or exclusion from jury service which—

(1) violates or has been applied in violation of section 201 of this title, or

(2) is susceptible to being applied in violation of section 201 of this title because it vests in jury officials undue discretion to determine whether any person has satisfied such qualification or whether a basis exists for excusing, exempting, or excluding any person from jury service;

(b) Requiring the use of objective criteria to determine whether any person has satisfied any qualification for jury service or whether a basis exists for ex-

cusing, exempting, or excluding any person from jury service;

(c) Requiring maintenance of such records or additional records as may be necessary to permit a determination thereafter whether any right secured by section 201 has been denied or abridged; or

(d) Appointing a master to perform such duties of the jury officials as may be necessary to assure that the rights secured by section 201 of this title are not denied or abridged.

DISCOVERY OF EVIDENCE

SEC. 204. In any proceeding instituted pursuant to section 202 of this title or section 1983 of title 42 of the United States Code, or in any criminal proceeding in any State court prior to the introduction of any evidence at trial, or in any habeas corpus, coram nobis, or other collateral proceeding in any court with respect to a judgment of conviction entered after the effective date of this title, wherein it is asserted that any right secured by section 201 of this title has been denied or abridged—

(a) The appropriate State or local officials shall furnish a written statement of jury selection information

subscribed to under oath which shall contain a detailed description of the following:

(1) the nature and location of the sources from which names were obtained for inclusion in the wheel, box, or similar device;

(2) the methods used and the procedures followed in selecting names from the sources referred to in subdivision (1) of this subsection for inclusion in the wheel, box, or similar device;

(3) the methods used for selecting names of prospective jurors from the wheel, box, or similar device for testing or otherwise demonstrating their qualifications for jury service;

(4) the qualifications, tests, standards, criteria, and procedures used in determining whether prospective jurors are qualified to serve as jurors; and

(5) the methods used for summoning or otherwise calling persons for jury service and assigning such person to grand and petit jury panels.

(b) The statement of jury selection information shall be filed with the clerk of the court in which the proceeding is pending, and a copy thereof shall be served upon the attorney for the complaining party. The statement of jury selection information shall constitute evidence on the question whether any right secured by section 201 of

this title has been denied or abridged: *Provided*, that the complaining party shall be entitled to cross-examine any person having knowledge of relevant facts concerning the information to be contained in such statement and to present in addition the testimony of the jury officials, together with any other evidence, and, where there is some evidence of a denial or abridgement of a right secured by section 201 of this title, any relevant records and papers used by jury officials in the performance of their duties which are not public or otherwise available.

(c) If the court determines (1) that there is probable cause to believe that any right secured by section 201 of this title has been denied or abridged and (2) that the records and papers maintained by the State are not sufficient to permit a determination whether such denial or abridgment has occurred, it shall be the responsibility of the appropriate State or local officials to produce additional evidence demonstrating that such denial or abridgement did not occur. When such evidence is not otherwise available, the State shall use such process of the court as may be necessary in order to produce the evidence, including the right to subpena witnesses.

(d) The court may direct that the contents of any records or papers produced pursuant to subsection (b)

of this section shall not be disclosed (except as may be necessary in the preparation and presentation of the case) during such period of time as such records and papers are not available for public inspection under State law: *Provided*, That parties to the proceeding shall be allowed to inspect, reproduce, and copy such records and papers at all reasonable times during the pendency of the case, and that disclosure of the contents of such records and papers by the Attorney General and his representatives shall be governed by subsection (b) of section 205 of this title. Any person who discloses the contents of any records or papers in violation of this subsection may be fined not more than $1,000, or imprisoned not more than one year, or both.

PRESERVATION AND INSPECTION OF RECORDS

SEC. 205. (a) The jury officials in all State courts shall preserve the records and papers prepared or obtained in the performance of their duties for four years after the completion of service by all persons whose consideration for service as jurors was the subject of such records and papers. Any person, whether or not a jury official, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by this subsection to be preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(b) Any record or paper required by subsection (a) of this section to be preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying by the Attorney General or his representative. During such period of time as such records and papers are not available for public inspection under State law, unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose the contents of any record or paper produced pursuant to this title except to Congress and any committee thereof, governmental agencies, and in the preparation and presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

DEFINITIONS

SEC. 206. For purposes of this title—

(a) "State court" shall mean any court of any State, county, parish, city, town, municipality or other political subdivision of any State;

(b) "jury official" shall mean any person or group of persons, including judicial officers, who select, summon, or impanel persons to serve as grand or petit jurors in any State court;

(c) "wheel, box, or similar device" shall include a file, list, or other compilation of names of persons prepared by a jury official;

(d) "political subdivision" shall mean any county, parish, city, town, municipality, or other territorial subdivision of a State.

EFFECT ON EXISTING LAWS

SEC. 207. The remedies provided in this title shall not preclude any person, the United States, or any State or local agency from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries in any State court.

EFFECTIVE DATE

SEC. 208. This title shall become effective one hundred and twenty days after the date of its enactment: *Provided*, That the provisions of this title shall not apply in any case in which an indictment has been returned or a petit jury impaneled prior to such effective date.

TITLE III

SEC. 301. Title III of the Civil Rights Act of 1964 (78 Stat. 246; 42 U.S.C. 2000b–2000b–3), is amended to read as follows:

"TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

"SEC. 301. The Attorney General may institute, in the name of the United States, a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, whenever he has reasonable grounds to believe that—

"(a) Any person acting under color of law has denied, or attempted or threatened to deny, any other person, on account of his race or color, the equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

"(b) Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to,

or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State of subdivision thereof.

"SEC. 302. In any proceeding under section 301 the United States shall be liable for costs the same as a private citizen.

"SEC. 303. As used in this title, 'public school' and 'public college' shall have the same meanings as in section 401 (c) of title IV of this Act.

"SEC. 304. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.

"SEC. 305. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility."

SEC. 302. Sections 407 through 410 of the Civil Rights Act of 1964 (78 Stat. 248–249; 42 U.S.C. 2000c-6—2000c-9) are hereby repealed.

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TITLE IV

POLICY

SEC. 401. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 402. For purposes of this title—

(a) "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure or portion thereof.

(c) "discriminatory housing practice" means an act that is unlawful under section 403 or 404.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 403. It shall be unlawful for the owner lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) To refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available.

(e) To deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 404. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 405. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by section 403 or 404.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 406. (a) The rights granted by sections 403, 404, and 405 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 405 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, restraining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court may allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 406 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public

importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ASSISTANCE BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 408. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 409. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 410. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 411. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE V

INTERFERENCE WITH RIGHTS

SEC. 501. Whoever, whether or not acting under color of law, by force or threat of force—

(a) injures, intimidates, or interferes with, or

attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is engaging or seeking to engage in

(1) voting or qualifying to vote in any primary, special, or general election;

(2) enrolling in or attending any public school or public college;

(3) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(4) applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the services of any employment agency;

(5) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease or occupation of any dwelling;

(6) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(7) using any vehicle, terminal, or facility of any common carrier by motor, rail, water or air;

(8) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(9) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments; or

(b) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person (1) to discourage such person or any other person or any class of persons from participating or seeking to

participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or (2) because he has so participated or sought to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(c) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account or race, color, religion, or national origin, or because he has afforded another person or class of persons equal treatment in so participating or seeking to so participate—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

AMENDMENTS

SEC. 502. (a) Section 241 of title 18, United States Code, is amended by striking out the final paragraph thereof and substituting the following:

"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

(b) Section 242 of title 18, United States Code, is amended by striking out the period at the end thereof and adding the following: "; and if death results shall be subject to imprisonment for any term of years or for life."

(c) Subsections (a) and (c) of section 12 of the Voting Rights Act of 1965 (79 Stat. 443, 444) are amended by striking out the words "or (b)" following the words "11(a)."

TITLE VI—MISCELLANEOUS

AUTHORIZATION FOR APPROPRIATIONS

SEC. 601. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 602. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

89TH CONGRESS
2D SESSION

H. R. 15064

IN THE HOUSE OF REPRESENTATIVES

MAY 16, 1966

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

A BILL

To assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1966".

TITLE I

SEC. 101. The analysis and sections 1861 and 1863 through 1869 of chapter 121 of title 28, United States Code, are amended to read as follows:

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"CHAPTER 121—JURIES; TRIAL BY JURY

"Sec.
"1861. Declaration of policy.
"1862. Discrimination prohibited.
"1863. Jury commission.
"1864. Master jury wheel.
"1865. Drawing of names from the master jury wheel.
"1866. Qualifications for jury service.
"1867. Challenging compliance with selection procedures.
"1868. Maintenance and inspection of records.
"1869. Exclusion from jury service.
"1870. Definitions.
"1871. Fees.
"1872. Exemptions.
"1873. Challenges.
"1874. Issues of fact in Supreme Court.
"1875. Admiralty and maritime cases.
"1876. Actions on bonds and specialties.

"§ 1861. Declaration of policy

"It is the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in the district courts of the United States and shall have an obligation to serve as jurors when summoned for that purpose.

"§ 1862. Discrimination prohibited

"No person or class of persons shall be denied the right to serve on grand and petit juries in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

"§ 1863. Jury commission

"(a) There shall be a jury commission for each district

court of the United States composed of the clerk of the court and a citizen appointed by the court as a jury commissioner: *Provided*, That the court may establish a separate jury commission for one or more divisions of the judicial district by appointing an additional citizen as a jury commissioner to serve with the clerk for such division or divisions. The jury commissioner shall during his tenure in office reside in the judicial district or division for which appointed, shall not belong to the same political party as the clerk serving with him, and shall receive $16 per day for each day necessarily employed in the performance of his duties.

"(b) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"§ 1864. Master jury wheel

"(a) Each jury commission shall maintain a master jury wheel and shall place in the master wheel names selected at random from the voter registration lists of persons residing in the judicial district or division it serves: *Provided*, That the judicial council of the circuit, with such advice as the chief judge of the district may offer, shall prescribe some other source or sources of names for the master wheel in

addition to the voter registration lists where necessary, in the judgment of the council, to protect the rights secured by section 1862 of this title.

"(b) The jury commission shall place in the master wheel the names of at least 1 per centum of the total number of persons listed on the voter registration lists for the district or division (or, if sources in addition to voter registration lists have been prescribed pursuant to subsection (a), at least 1 per centum of the total number of persons of voting age residing in the district or division according to the most recent decennial census) : *Provided,* That in no event shall the jury commission place in the master wheel the names of fewer than two thousand persons.

"(c) The chief judge of the district shall prescribe, by rule, definite and certain procedures to be followed by the jury commission in making the random selection of names required by subsections (a) and (b) of this section.

"(d) State, local, and Federal officials having custody, possession, or control of voter registration lists or other appropriate records shall make such lists and records available to the jury commission for inspection, reproduction, and copying at all reasonable times as the commission may deem necessary and proper for the performance of its duties under this title. The district courts shall have jurisdiction upon appli-

cation by the Attorney General to compel compliance with this subsection by appropriate process.

"(e) The master jury wheel shall contain names of persons residing in all counties, parishes, or similar political subdivisions within the judicial district or division.

"(f) The jury commission shall in accordance with this section (1) from time to time, as necessary, place additional names in the master wheel and (2) between November 15 and December 31 of each even-numbered year empty and refill the master wheel.

"§ 1865. Drawing of names from the master jury wheel

"(a) From time to time as necessary the jury commission shall publicly draw from the master jury wheel the names of as many persons as may be required for jury service, prepare an alphabetical list of the names drawn, which list shall not be disclosed to any person except pursuant to sections 1867 and 1868 of this title and summon by certified mail the persons whose names are drawn. Each person whose name is drawn, unless he claims exemption from jury service pursuant to section 1872 of this title and subsection (b) of this section, shall appear before the clerk and fill out a juror qualification form to be prescribed by the Administrative Office of the United States Courts in consultation with the Attorney General. The form shall

elicit his name, address, age, sex, education, race, religion, occupation, and citizenship and whether he has any physical or mental infirmity, is able to read, write, speak, and understand the English language, and has been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty. The clerk shall examine the form to determine whether it is filled out completely and responsively and shall call any omissions or apparent errors to the attention of such person who shall make such corrections or additions as may be necessary. If any person summoned is unable to fill out the form, the clerk shall do it for him and indicate on the form the fact that he has done so and the reason. Except as provided in subsection (b) of this section, any person summoned who fails to appear as directed shall be ordered by the court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or who fails to show good cause for noncompliance with the summons may be fined not more than $100 or imprisoned not more than three days, or both.

"(b) Any person summoned who is exempt from jury service pursuant to section 1872 of this title may state the basis for his exemption in the space provided on the sum-

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mons and return the summons duly signed to the clerk by mail. Any person who willfully misrepresents his exemption from jury service on a summons may be fined not more than $100 or imprisoned not more than three days, or both.

"§ 1866. Qualifications for jury service

"(a) The jury commission shall determine solely on the basis of information provided on the juror qualification form or the returned summons whether a person is qualified for or exempt from jury service: *Provided,* That such determination shall be made by the court if other objective evidence obtained by the jury commission indicates that a person is not qualified pursuant to subparagraphs (1), (3), or (4) of subsection (b) hereof. The jury commission shall enter such determination in the space provided on the juror qualification form and the alphabetical list of names drawn from the master jury wheel. If a person did not appear in response to a summons, such fact shall be noted on said list. Whenever a person is determined to be not qualified for jury service, the jury commission shall note on the space provided on the juror qualification form the specific ground of disqualification.

"(b) In making such determination the jury commission shall deem any person qualified to serve on grand and petit juries in the district court unless he—

"(1) is not a citizen of the United States twenty-

one years old who has resided for a period of one year within the judicial district;

"(2) is unable to read, write, speak, and understand the English language;

"(3) is incapable, by reason of mental or physical infirmity, to render efficient jury service; or

"(4) has been convicted in a State or Federal court of record of a crime punishable by imprisonment for more than one year and his civil rights have not been restored by pardon or amnesty.

"(c) The jury commission shall maintain a qualified juror wheel and shall place in such wheel names of persons determined to be qualified as jurors. From time to time, the jury commission shall publicly draw from the qualified juror wheel such number of names of persons as may be required for assignment to grand and petit jury panels. The jury commission or the clerk shall prepare a separate list of names of persons assigned to each grand and petit jury panel.

"§ 1867. Challenging compliance with selection procedures

"(a) In criminal cases, prior to the introduction of evidence at trial, the defendant may move to dismiss the indictment or stay the proceedings against him on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The defendant shall be entitled to present in support

of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with this title.

"(b) In civil cases, prior to the introduction of evidence at trial, any party may move to stay the proceedings on the ground of failure to comply with sections 1864, 1865, or 1866 of this title. The moving party shall be entitled to present in support of such motion the testimony of the jury commission together with other evidence and, where there is some evidence that there has been a failure to comply with sections 1864, 1865, or 1866, any relevant records and papers used by the jury commission in the performance of its duties which are not public or otherwise available. If the court determines that there has been a failure to comply with sections 1864, 1865, or 1866, the court shall stay the proceedings pending the selection of a jury in conformity with this title.

"(c) The procedures prescribed by this section shall be the exclusive means by which a person accused of a Federal crime or a party in a civil case may challenge any jury in his case on the ground that such jury was not selected in conformity with sections 1864, 1865, or 1866 of this title. Nothing in this section shall preclude any persons or the United States from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries.

"(d) The contents of any records or papers produced pursuant to subsections (a) or (b) of this section shall not be disclosed, except as may be necessary in the preparation or presentation of the case, until after the master jury wheel has been emptied and refilled pursuant to section 1864 (f) of this title and all persons selected to serve as jurors before the master wheel was emptied have completed such service: *Provided*, That the parties in a case shall be allowed to inspect, reproduce and copy such records or papers at all reasonable times during the pendency of the case. Any person who discloses the contents of any record or paper in violation of this subsection may be fined not more than $1,000 or imprisoned not more than one year, or both.

"§ 1868. Maintenance and inspection of records

"After the master jury wheel is emptied and refilled pursuant to section 1864 (f) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the jury commission before the master wheel was emptied shall be preserved by the commission in the custody of the clerk for four years or for such longer period as may be ordered by a court and shall be available for public inspection.

"§ 1869. Exclusion from jury service

"(a) Except as provided in section 1872 of this title, no person or class of persons shall be excluded, excused or exempt from service as jurors: *Provided,* That any person summoned for jury service may be (1) excused by the court for not more than six months at a time upon a showing of unusually severe hardship or (2) excluded by the court upon (i) peremptory challenge as provided by law or (ii) a finding that such person may be unable to render impartial jury service or that his service as a juror would disrupt the proceedings. Whenever a person is excused or excluded from jury service, the jury commission shall note in the space provided on his juror qualification form the specific ground of excuse or exclusion.

"(b) In any two-year period, no person shall be re-

quired to (1) serve as a petit juror for more than thirty calendar days, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

"§ 1870. Definitions

"For purposes of this chapter—

"(a) 'clerk' and 'clerk of the court' shall mean the clerk of the United States district court or any deputy clerk.

"(b) 'voter registration lists' shall mean the official records maintained by State or local election officials of persons registered to vote in the most recent general election for candidates for Federal office or, in the case of a State which does not require registration as a prerequisite to voting, such other official lists of persons qualified to vote in such election. The term shall also include the list of eligible voters maintained by any Federal examiner pursuant to the Voting Rights Act of 1965 where the names on such list have not been included on the lists maintained by the appropriate State or local officials.

"(c) 'division' shall mean one or more divisions of a judicial district established by statute, and, in judicial districts where no divisions are established by statute, shall mean such counties, parishes, or similar

political subdivisions surrounding the places where court is held as the chief judge of the district shall determine.

"(d) 'district court of the United States', 'district court', and 'court' shall mean courts constituted under chapter 5 of title 28, United States Code: *Provided*, That for purposes of sections 1861, 1862, 1867, and 1869 of this chapter, these terms shall include the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia."

FEES

SEC. 102. (a) Section 1871 of title 28, United States Code, is amended by substituting "$20" for "$10" and "$25" for "$14" in the second paragraph, "$16" for "$10" in the third paragraph and "$20" for "$10" in the fourth paragraph.

(b) Section 1821 of title 28, United States Code, is amended by substituting "$20" for "$4", "10 cents" for "8 cents" and "$16" for "$8".

AMENDMENT AND REPEAL

SEC. 103. (a) Sections 1862, 1870, 1872, 1873, and 1874 of title 28, United States Code, are renumbered as sections 1872, 1873, 1874, 1875, and 1876, respectively, of that title.

(b) Sections 13-701, 11-2301 through 2305 (except the last paragraph of section 11-2302), 11-2307 through

2312 and 7-213a of the District of Columbia Code are repealed.

(c) Except for the last paragraph of subsection (a), section 11-2306 of the District of Columbia Code is repealed and a new subsection (b) is added to the section as follows: "(b) The jury commission for the district court for the District of Columbia shall draw from the qualified jury wheel from time to time as may be required the names of persons to serve as jurors in the District of Columbia Court of General Sessions and the Juvenile Court of the District of Columbia and such persons shall be assigned to jury panels in the General Sessions and Juvenile courts as those courts shall direct."

(d) Section 16-1312 of the District of Columbia Code is amended by substituting "section 1866 of title 28, United States Code" for "section 11-2301" in subsection (a) (1) and by substituting "chapter 121 of title 28, United States Code," for "chapter 23 of title 11" in subsection (c).

(e) Section 22-1414 of the District of Columbia Code is amended by inserting the words "or wheel" immediately following the word "box" each time it appears therein.

EFFECTIVE DATE

SEC. 104. Sections 101 and 103 of this title shall become effective one hundred and twenty days after the date of enactment: *Provided*, That such sections shall not apply

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in any case in which an indictment has been returned or petit jury impaneled prior to such effective date.

TITLE II

DISCRIMINATION PROHIBITED

SEC. 201. No person or class of persons shall be denied the right to serve on grand and petit juries in any State court on account of race, color, religion, sex, national origin, or economic status.

SUITS BY THE ATTORNEY GENERAL

SEC. 202. (a) Whenever there are reasonable grounds to believe that any person has engaged or is about to engage in any act or practice which would deny or abridge any right secured by section 201 of this title, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for an injunction, restraining order, or other order against a State, any political subdivision thereof, or any official of such State or political subdivision. In any proceeding hereunder, the United States shall be liable for costs the same as a private person.

(b) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether any aggrieved party shall have exhausted any administrative or

other remedies that may be provided by law. Any action pursuant to this section shall be in every way expedited.

APPROPRIATE RELIEF

SEC. 203. If in any proceeding instituted pursuant to this title or any other law authorizing proceedings for injunctive relief, the district court finds that any right secured by section 201 has been denied or abridged, it may, in addition to any other relief, enter an order, effective for such period of time as may be appropriate—

(a) Prohibiting or suspending the use of any qualification for jury service or any basis for excuse, exemption, or exclusion from jury service which—

(1) violates or has been applied in violation of section 201 of this title, or

(2) is susceptible to being applied in violation of section 201 of this title because it vests in jury officials undue discretion to determine whether any person has satisfied such qualification or whether a basis exists for excusing, exempting, or excluding any person from jury service;

(b) Requiring the use of objective criteria to determine whether any person has satisfied any qualification for jury service or whether a basis exists for ex-

causing, exempting, or excluding any person from jury service;

(c) Requiring maintenance of such records or additional records as may be necessary to permit a determination thereafter whether any right secured by section 201 has been denied or abridged; or

(d) Appointing a master to perform such duties of the jury officials as may be necessary to assure that the rights secured by section 201 of this title are not denied or abridged.

DISCOVERY OF EVIDENCE

SEC. 204. In any proceeding instituted pursuant to section 202 of this title or section 1983 of title 42 of the United States Code, or in any criminal proceeding in any State court prior to the introduction of any evidence at trial, or in any habeas corpus, coram nobis, or other collateral proceeding in any court with respect to a judgment of conviction entered after the effective date of this title, wherein it is asserted that any right secured by section 201 of this title has been denied or abridged—

(a) The appropriate State or local officials shall furnish a written statement of jury selection information

subscribed to under oath which shall contain a detailed description of the following:

(1) the nature and location of the sources from which names were obtained for inclusion in the wheel, box, or similar device;

(2) the methods used and the procedures followed in selecting names from the sources referred to in subdivision (1) of this subsection for inclusion in the wheel, box, or similar device;

(3) the methods used for selecting names of prospective jurors from the wheel, box, or similar device for testing or otherwise demonstrating their qualifications for jury service;

(4) the qualifications, tests, standards, criteria, and procedures used in determining whether prospective jurors are qualified to serve as jurors; and

(5) the methods used for summoning or otherwise calling persons for jury service and assigning such person to grand and petit jury panels.

(b) The statement of jury selection information shall be filed with the clerk of the court in which the proceeding is pending, and a copy thereof shall be served upon the attorney for the complaining party. The statement of jury selection information shall constitute evidence on the question whether any right secured by section 201 of

this title has been denied or abridged: *Provided*, that the complaining party shall be entitled to cross-examine any person having knowledge of relevant facts concerning the information to be contained in such statement and to present in addition the testimony of the jury officials, together with any other evidence, and, where there is some evidence of a denial or abridgement of a right secured by section 201 of this title, any relevant records and papers used by jury officials in the performance of their duties which are not public or otherwise available.

(c) If the court determines (1) that there is probable cause to believe that any right secured by section 201 of this title has been denied or abridged and (2) that the records and papers maintained by the State are not sufficient to permit a determination whether such denial or abridgment has occurred, it shall be the responsibility of the appropriate State or local officials to produce additional evidence demonstrating that such denial or abridgement did not occur. When such evidence is not otherwise available, the State shall use such process of the court as may be necessary in order to produce the evidence, including the right to subpena witnesses.

(d) The court may direct that the contents of any records or papers produced pursuant to subsection (b)

of this section shall not be disclosed (except as may be necessary in the preparation and presentation of the case) during such period of time as such records and papers are not available for public inspection under State law: *Provided*, That parties to the proceeding shall be allowed to inspect, reproduce, and copy such records and papers at all reasonable times during the pendency of the case, and that disclosure of the contents of such records and papers by the Attorney General and his representatives shall be governed by subsection (b) of section 205 of this title. Any person who discloses the contents of any records or papers in violation of this subsection may be fined not more than $1,000, or imprisoned not more than one year, or both.

PRESERVATION AND INSPECTION OF RECORDS

SEC. 205. (a) The jury officials in all State courts shall preserve the records and papers prepared or obtained in the performance of their duties for four years after the completion of service by all persons whose consideration for service as jurors was the subject of such records and papers. Any person, whether or not a jury official, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by this subsection to be preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

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(b) Any record or paper required by subsection (a) of this section to be preserved shall, upon demand in writing by the Attorney General or his representative directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying by the Attorney General or his representative. During such period of time as such records and papers are not available for public inspection under State law, unless otherwise ordered by a court of the United States, neither the Attorney General nor any employee of the Department of Justice, nor any other representative of the Attorney General, shall disclose the contents of any record or paper produced pursuant to this title except to Congress and any committee thereof, governmental agencies, and in the preparation and presentation of any case or proceeding before any court or grand jury. The United States district court for the district in which a record or paper so demanded is located, shall have jurisdiction by appropriate process to compel the production of such record or paper.

DEFINITIONS

SEC. 206. For purposes of this title—

(a) "State court" shall mean any court of any State, county, parish, city, town, municipality or other political subdivision of any State;

(b) "jury official" shall mean any person or group of persons, including judicial officers, who select, summon, or impanel persons to serve as grand or petit jurors in any State court;

(c) "wheel, box, or similar device" shall include a file, list, or other compilation of names of persons prepared by a jury official;

(d) "political subdivision" shall mean any county, parish, city, town, municipality, or other territorial subdivision of a State.

EFFECT ON EXISTING LAWS

SEC. 207. The remedies provided in this title shall not preclude any person, the United States, or any State or local agency from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, or economic status in the selection of persons for service on grand or petit juries in any State court.

EFFECTIVE DATE

SEC. 208. This title shall become effective one hundred and twenty days after the date of its enactment: *Provided*, That the provisions of this title shall not apply in any case in which an indictment has been returned or a petit jury impaneled prior to such effective date.

TITLE III

SEC. 301. Title III of the Civil Rights Act of 1964 (78 Stat. 246; 42 U.S.C. 2000b–2000b–3), is amended to read as follows:

"TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

"SEC. 301. The Attorney General may institute, in the name of the United States, a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, whenever he has reasonable grounds to believe that—

"(a) Any person acting under color of law has denied, or attempted or threatened to deny, any other person, on account of his race or color, the equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

"(b) Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to,

or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State of subdivision thereof.

"SEC. 302. In any proceeding under section 301 the United States shall be liable for costs the same as a private citizen.

"SEC. 303. As used in this title, 'public school' and 'public college' shall have the same meanings as in section 401 (c) of title IV of this Act.

"SEC. 304. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.

"SEC. 305. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility."

SEC. 302. Sections 407 through 410 of the Civil Rights Act of 1964 (78 Stat. 248–249; 42 U.S.C. 2000c–6—2000c–9) are hereby repealed.

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TITLE IV

POLICY

SEC. 401. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 402. For purposes of this title—

(a) "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure or portion thereof.

(c) "discriminatory housing practice" means an act that is unlawful under section 403 or 404.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 403. It shall be unlawful for the owner lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) To refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, or national origin.

(b) To discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin.

(c) To print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination.

(d) To represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available.

(e) To deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 404. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 405. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by section 403 or 404.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 406. (a) The rights granted by sections 403, 404, and 405 may be enforced by civil actions in appropriate United States district courts without regard to the amount in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 405 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

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(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, restraining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court may allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 407. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title he may bring a civil action in any appropriate United States district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 406 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public

importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ASSISTANCE BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 408. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 409. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 410. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 411. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE V

INTERFERENCE WITH RIGHTS

SEC. 501. Whoever, whether or not acting under color of law, by force or threat of force—

(a) injures, intimidates, or interferes with, or

attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is engaging or seeking to engage in

(1) voting or qualifying to vote in any primary, special, or general election;

(2) enrolling in or attending any public school or public college;

(3) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(4) applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the services of any employment agency;

(5) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale, rental, lease or occupation of any dwelling;

(6) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(7) using any vehicle, terminal, or facility of any common carrier by motor, rail, water or air;

(8) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(9) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishments; or

(b) injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person (1) to discourage such person or any other person or any class of persons from participating or seeking to

participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or (2) because he has so participated or sought to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(c) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account or race, color, religion, or national origin, or because he has afforded another person or class of persons equal treatment in so participating or seeking to so participate—

Shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

AMENDMENTS

SEC. 502. (a) Section 241 of title 18, United States Code, is amended by striking out the final paragraph thereof and substituting the following:

"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

(b) Section 242 of title 18, United States Code, is amended by striking out the period at the end thereof and adding the following: "; and if death results shall be subject to imprisonment for any term of years or for life."

(c) Subsections (a) and (c) of section 12 of the Voting Rights Act of 1965 (79 Stat. 443, 444) are amended by striking out the words "or (b)" following the words "11(a)."

TITLE VI—MISCELLANEOUS

AUTHORIZATION FOR APPROPRIATIONS

SEC. 601. There are hereby authorized to be appropriated such sums as are necessary to carry out the provisions of this Act.

SEPARABILITY

SEC. 602. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

89TH CONGRESS
2D SESSION

H. R. 15128

IN THE HOUSE OF REPRESENTATIVES

MAY 18, 1966

Mr. EDWARDS of California introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

Providing for fair jury selection in State courts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Fair Jury Selection Act".

PART I—GENERAL

SECTION 1. No citizen shall be excluded or disqualified from service as a grand or petit juror because of race or color, religion, sex, national origin, or economic status.

SEC. 2. As used in this Act—

(1) "Jury court" shall mean a court of any State or political subdivision thereof in which factfinding is or may be done by jury;

(2) "Jury officers" shall mean all persons, including judges, having supervisory authority over, or responsibility in whole or in part for, the compilation of grand or petit venire lists, selection of grand or petit veniremen, or calling or impaneling of grand or petit jurors in or for any grand jury or jury court;

(3) "Special jury commissioner" shall mean the Federal officer appointed under part II of this title to serve any grand jury or jury court;

(4) "County" shall mean county or parish; and

(5) "Shall" is directive; "may" is permissive.

SEC. 3. The Attorney General shall issue and publish in the Federal Register regulations (1) implementing the provisions of parts II and III and governing compliance therewith, and (2) for the direction of the special jury commissioners.

SEC. 4. The Bureau of the Census, in cooperation with the Administrative Office of the United States Courts, shall conduct a survey and make a report to the President and the Congress within two years of the effective date of this Act concerning racial, economic, and other demographic factors affecting the racial composition of grand or petit juries in the various States, including studies in depth of the past and present practices in areas or courts designated by the Attorney General.

PART II—RECORDS REQUIRED TO BE KEPT BY STATE COURTS

SEC. 5. The Administrative Office of the United States Courts shall prepare and distribute forms designed to elicit comprehensive specific information concerning the process of selection and racial composition of grand and petit juries. Such forms shall make provision for an enumeration, by name, race, and occupation, of persons (A) selected for the grand and petit jury venire lists, and persons (B) whose names are called for grand or petit jury duty, and persons (C) who are impaneled, excused, or rejected for grand or petit jury service, including dates of service and reasons for service and reasons for excuse, exclusion, or challenge, and such other information bearing on the composition of grand or petit juries as the Attorney General shall direct.

SEC. 6. (a) The jury officers in a county more than 10 per centum of the residents of which were nonwhite as of the most recent decennial census shall obtain for each term or session of each grand jury and jury court the forms made available pursuant to section 5 and complete them consistently with the regulations made by the Attorney General pursuant to section 3. Each county shall retain the completed forms relating to any particular term or session for five years after their completion, maintaining at

least one copy open at all reasonable times for public inspection and duplication.

(b) Each county shall for the same period maintain open for public inspection and duplication all records of grand and petit jury selection including all extant records for the past fifteen years.

(c) Upon the request of the Attorney General published in the Federal Register, the jury officers in any particular State or county shall return duplicates of the forms and records required by subsections (a) and (b) to the Department of Justice.

SEC. 7. The Treasurer of the United States is hereby authorized to pay, upon submission by any authorized representative of a county, grand jury, or jury court bound by this part, reasonable expenditures necessitated by compliance therewith. Any refusal to pay such a claim may be questioned only by an action in the Court of Claims.

SEC. 8. (a) Neither the necessity of compliance with State or local law, nor the failure of any person to comply or cooperate in complying with this title shall excuse any county, grand jury, or jury court bound thereby for substantial failure to comply with this title.

(b) A county, grand jury, or jury court shall be deemed to have failed substantially to have complied with this part whenever its records are so deficient as to preclude the

making of a determination as to certifiability under section 11.

PART III—APPOINTMENT OF SPECIAL JURY COMMISSIONERS

SEC. 9. Upon certification of a county pursuant to section 11, the Administrative Office of the United States Courts shall appoint one or more special jury commissioners, as it shall deem appropriate to serve the needs of the county. The special jury commissioners shall compile venire lists sufficient to the needs of each grand jury or jury court of the county by canvassing, through questionnaire, direct examination or otherwise, the tentative veniremen listed pursuant to section 12 and accepting those found qualified under State or local law: *Provided*, That in counties certified under section 11, State or local qualifications relating to ownership of property, payment of taxes, registration or voting in any election, or sex, shall not be enforced to disqualify any person from jury service: *And provided further*, That literacy or superior education or intelligence requirements shall be deemed satisfied by the completion of the sixth primary grade in any English language public school in, or any private school accredited by, any State or territory or the District of Columbia. Special jury commissioners shall excuse otherwise qualified veniremen from jury duty because of

verified hardship or physical disability, but where any substantial number or class of persons excused for hardship would be able to serve if compensated in accordance with section 1871 of title 28 of the United States Code, the special jury commissioners are authorized and directed to make available such compensation. Upon compiling the venire lists, the special jury commissioner shall give notice of their availability by registered mail to each presiding officer or judge of a grand jury or jury court in the county.

SEC. 10. Within twenty days after receipt of notice under section 9 the jury officers shall proceed to select all grand or petit jurors by lot from the grand or petit jury venire lists so provided. No grand or petit veniremen or juror shall be excluded or excused by any jury officer: *Provided*, That the presiding officer or judge of the grand jury or jury court may exclude grand or petit jurors for prejudice or on the basis of a newly developed physical disability or hardship. Special jury commissioners shall be entitled to observe and supervise the application of their venire lists in any grand jury or jury court for which the lists were prepared, and to reasonable access to the current records of jury selection for such grand juries or jury courts. The proceedings of any grand jury or jury court otherwise convened or constituted shall be null and void: *Provided*, That the verdicts of petit juries impaneled prior to twenty

days after the mailing of such notice shall not be affected by this section: *And provided further*, That this section shall not operate to place any person twice in jeopardy.

CRITERIA OF APPLICATION

SEC. 11. (a) Upon receiving proof thereof, the Attorney General shall certify with respect to juries, and publish by State or county in the Federal Register, a list of every county—

(1) in which more than 10 per centum of the residents are nonwhite; and

(2) (A) within which the per centum of nonwhite residents of jury age is more than one and one-half times the per centum of veniremen who are nonwhite: *Provided*, That the determination of the racial composition of the population shall be made on the basis of estimates submitted by the Bureau of the Census, and the determination of the racial composition of the venire lists may be based on evidence for any twelve months in the previous two years; or

(B) wherein there has been a substantial failure to comply with any requirement of part II; or

(C) which encompasses the jurisdiction of any grand jury or jury court which within five years previous to such certification, was determined by a final

judgment of a court of the United States or of the State to have disqualified or excluded potential grand or petit jurors or veniremen on account of their race or color; or

(D) within which, or within any State as to which, there has been within five years previous to such certification a final judgment of voting discrimination pursuant to chapter 20 of title 42 of the United States Code: *Provided*, That such judgments shall be considered only with reference to counties which, at the time of the judgment, selected jurors wholly or primarily from voting rolls.

(b) The publication of certification pursuant to subsection (a) shall constitute notice to every jury officer within the listed area of the binding effect of this part on him and the grand jury or jury court which he serves.

(c) The Attorney General may, by publication in the Federal Register, withdraw certification of any particular county or court under this section if he is satisfied that, within the previous five years discrepancies between the per centum of nonwhite residents of the jurisdiction and the per centum of nonwhite grand jurors or veniremen was due to the equal application of nondiscriminatory qualifications or to random variation: *Provided*, That the Attorney General shall have no power, prior to or otherwise than by

publishing such withdrawal, to stay or mitigate any provision of this Act.

SEC. 12. Pursuant to the request of a special jury commissioner, or of a court of the United States in fashioning remedies under section 17, the Administrative Office of the United States Courts with the advice and assistance of the Bureau of the Census shall compile a tentative grand or petit jury venire list adequate to the needs of the specified jurisdiction: *Provided*, That the Administrative Office may prepare such a list for any grand jury or jury court in the United States upon the request of its officers or of the Attorney General. The names of tentative grand or petit jury veniremen shall be obtained under a plan designed to provide a representative cross section of the jurisdiction without exclusion on the basis of race, color, sex, political or religious affiliation, national origin, or economic or social status.

ADMINISTRATIVE REVIEW OF NEW JURY QUALIFICATIONS

SEC. 13. (a) Any grand or petit jury qualification or standard, practice, or procedure, enacted by the State or any political subdivision thereof, different from that in force at the effective date of this Act, shall have no effect in any county bound by this part, unless it has been submitted by the chief legal officer of the county to the Attorney General

and the Attorney General has failed within ninety days after such submission to certify that it has the purpose or will have the effect of denying or abridging the equal right to grand or petit jury service.

(b) The Administrative Office of the United States Courts shall maintain special jury commissioners in the county for a period of three years. This period may be extended to a total not exceeding ten years upon annual certification of the Attorney General, or finding by a court of the United States, that their continued presence is needed to assure compliance with section 1: *Provided,* That after the withdrawal of special jury commissioners, the county shall be subject to recertification according to the provisions of section 11.

SEC. 14. Special jury commissioners and other persons deemed necessary to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission and service under this title shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except for the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided,* That the Commission is authorized, after consulting the head of the appropriate department or agency,

to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Special jury commissioners are empowered to subpena persons to testify and present documents under oath.

PART IV—JUDICIAL REMEDIES AND ENFORCEMENT

SEC. 15. (a) The rights created by section 1 may be enforced independently of, or jointly with, any other action created by this or any other Act in any United States district court having jurisdiction over one or more of the defendants. Such actions may be initiated (i) by the Attorney General, or (ii) by any person residing within the jurisdiction of, or (iii) by any litigant in any State court. Without regard to section 2283 of title 28 of the United States Code, all ordinary and extraordinary remedies within the powers of the courts of the United States, including the assignment of special jury commissioners, shall be granted when necessary to enforce section 1.

(b) Any person mentioned in section 15(a) may initiate in any United States district court having jurisdiction over the defendant an action to enforce any duty or civil sanction imposed by, or regulation issued pursuant to, this Act. The district court shall enforce, without reference to section 2283 of title 28 of the United States Code, any such duty, sanction, or regulation, upon receiving proof of its binding application to the defendant: *Provided*, That in the

absence of any certification required or authorized by this Act, the court shall issue findings to the same effect. The court shall retain jurisdiction for five years after enforcing such duty or regulation, granting such further relief as may be necessary to enforce the provisions of this Act or to otherwise assure compliance with section 1.

(c) A pattern or practice of systematic exclusion or disqualification of grand or petit jurors on account of race or color shall be grounds for removal within section 1443 of title 28 of the United States Code. A conclusive presumption of discrimination justifying removal shall be raised by proof that a court bound thereby has substantially and continually failed to comply with part III.

JUDICIAL REVIEW OF THE ACT

SEC. 16. The State or political subdivision thereof embracing the jurisdiction of a grand jury or jury court bound by part III may initiate an action in the United States District Court for the District of Columbia to restrain the application to such grand jury or jury court of any provision of that part, or any certification or regulation made pursuant thereto. Such relief shall be granted upon finding—

(1) that the provision, certification, or regulation, or the application thereof, is for any reason invalid; or

(2) that the factual certification affecting the county

is inconsistent with the preponderance of the evidence; or

(3) that, within the previous five years, any discrepancy between the per centum of nonwhite residents of the jurisdiction and the per centum of nonwhite grand jurors or veniremen was due to the equal application of nondiscriminatory qualifications or to random variation. Except as otherwise specifically provided in this Act, no other court shall have jurisdiction to issue any judgment or order interfering with or hindering the application, execution, enforcement, or effect of part III.

FAILURE TO COMPLY WITH THE ACT

SEC. 17. Any county official or jury officer bound thereby who shall knowingly fail or refuse to comply with any requirement of this title shall be fined not more than $1,000 or imprisoned for not longer than one year, or both.

FALSE RECORDS OR TESTIMONY; DESTRUCTION OF RECORDS

SEC. 18. Any person, whether or not their lawful or proper custodian, who knowingly destroys, mutilates, conceals, alters, or falsifies, or falsely presents, any record, document, or statement required or authorized by this Act or any request, subpena, or order pursuant thereto, shall be fined not less than $500 nor more than $1,000, or imprisoned for not more than one year, or both.

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SEC. 19. Any person or agency authorized by this Act to issue subpenas or other process may enforce such process by an action in any United States district court having jurisdiction over the defendant.

SEC. 20. Except as provided in section 16, every certification made pursuant to this Act shall be conclusive upon every court and agency of the United States and every State. No inference may be drawn from the withdrawal of any certification or the failure or refusal of any officer or employee of the United States to make any certification or regulation required or authorized by this title.

89TH CONGRESS
2D SESSION

H. R. 15171

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 1966

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

A BILL

Providing for jury selection in Federal and State courts, prosecution and removal to Federal courts, civil preventive relief, civil indemnification, civil rights procedures, amendment of the school desegregation laws, and prohibition of racial discrimination in housing, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as "The Civil Rights Enforcement Act of 1966".

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TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

JURY SELECTION IN FEDERAL COURTS

SEC. 101. Section 1864 of title 28, United States Code, is amended to read as follows:

"§ 1864. Duties, compensation and methods of selecting and drawing jurors

"(a) JURY COMMISSION.—A jury commission shall be established in each judicial district, consisting of the clerk of the court or a duly qualified deputy clerk acting for the clerk and one or more jury commissioners, appointed by the district court. The jury commissioner shall be a citizen of the United States of good standing, a resident of the district, and, at the time of his appointment, shall not be a member of the same political party as the clerk of the court or a duly

qualified deputy clerk acting for the clerk. If more than one jury commissioner is appointed, each may be designated to serve in one or more of the places where court is held, and the clerk and the jury commissioner so designated shall constitute the jury commission for that part of the district. In the event that a jury commissioner is unable for any reason to perform his duties, another jury commissioner may be appointed, as provided herein, to act in his place until he is able to resume his duties.

"(b) JURY SELECTION.—

"(i) In the performance of its duties, the jury commission shall act under the direction and supervision of the chief judge of the district.

"(ii) The names of persons who may be called for grand or petit jury service shall be obtained under a sampling plan prepared by the jury commission with the approval of the chief judge and designed to provide a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation or economic or social status. The plan for obtaining such names and the method for carrying out such plan shall be prepared in consultation with and approved by the Director of the Administrative Office of the United States Courts, who

may call upon the Director of the Bureau of the Census for advice and assistance.

"(iii) From the names obtained under subsection (ii) of this subsection, the names of not less than three hundred qualified persons, publicly drawn by chance, shall be placed in the jury box, wheel or similar device.

"(iv) The names of jurors for service on grand and petit juries shall be publicly drawn by chance from the jury box, wheel or similar device.

"(v) In determining whether persons whose names are to be placed in the jury box, wheel, or similar device are qualified as jurors under section 1861 of title 28, as amended, the jury commission may use such questionnaires and other means as the chief judge, with the approval of the Director of the Administrative Office of the United States Courts, may deem appropriate, including the administration of oaths. The questionnaires may be filled out by the individual or by another on his behalf. With the approval of the chief judge, the jury commission may designate deputy clerks and other employees in the office of the clerk of the court to assist the commission in the performance of its duties, and to perform under its direction such of the detailed duties of the commission as in the opinion of the chief judge could be assigned to them.

"(c) RECORDS.—The jury commission shall keep records of the names obtained under subsection (b) (ii) of this section, the names of persons placed in the jury box, wheel or similar device, the questionnaires, if any, returned by said persons, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service, and the dates thereof, and such additional appropriate records as the chief judge may direct. Such records shall be retained for a period of not less than four years.

"(d) ENFORCEMENT BY COURT OF APPEALS.—On application of any citizen residing in, or litigant in, any judicial district or of the Attorney General of the United States, alleging that the jury selection procedures or recordkeeping requirements set forth in subsections (b) and (c) of this section are not being fully implemented, the United States court of appeals for the judicial circuit in which said judicial district is located shall, upon a showing thereof, appoint jury commissioners responsible to said court of appeals and direct such jury commissioners in the selection of juries and the keeping of records in accordance with such subsections (b) and (c) of this section. Where evidence is required for a determination by the court of appeals, the court may hear the evidence itself or appoint a master to act for it in accordance with law.

"(e) RETURN OF JURY SUPERVISION.—The court of appeals may on its own motion, or on application of the chief judge of the judicial district, direct the return of supervision and control of the jury selection procedures to the chief judge and to the jury commission for said judicial district at any time when the court of appeals finds that there is reasonable cause to believe that the jury selection procedures and recordkeeping requirements prescribed in subsections (b) and (c) of this section will be fully implemented.

"(f) COMPENSATION.—Each jury commissioner appointed on a part-time basis shall be compensated for his services at the rate of $25 per day for each day in which he actually and necessarily is engaged in the performance of his official duties, to be paid upon certificate of the chief judge of the district.

"Each jury commissioner appointed on a full-time basis shall receive a salary to be fixed from time to time by the Judicial Conference of the United States at a rate which, in the opinion of the Judicial Conference, corresponds to that provided by the Classification Act of 1949, as amended, for positions in the executive branch with comparable responsibilities.

"Each jury commissioner shall receive his traveling and subsistence expenses within the limitations prescribed for

clerks of district courts while absent from his designated post of duty on official business.

"(g) DELEGATION.—Any of the powers or duties conferred upon the chief judge under this section may be delegated by him to another judge of the district: *Provided, however*, That where part of a district by agreement or order of court is assigned to one particular judge and he customarily holds court there, as to such part of the district he shall perform the functions and fulfill the duties conferred upon the chief judge in this section."

SEC. 102. Section 1861 (2) setting forth qualifications of Federal jurors is amended by striking out the words "read" and "write."

SEC. 103. Section 1863 is amended by adding the following sentence to subsection (b) : "If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

SEC. 104. Section 1871 is amended by striking the words "$10 per day" and inserting in their place "$15 per day or loss of pay, whichever is greater"; and by striking

the words "$14 for each day" and inserting in their place "$20 per day or loss of pay, whichever is greater for each day"; and by striking the words "subsistence of $10 per day shall be allowed" and inserting in their place "subsistence allowance given to Federal employees shall be allowed"; and by striking the words "jury fees in excess of $10 per diem" and inserting in their place "jury fees in excess of $15 per diem".

JURY SELECTION IN STATE COURTS

SEC. 105. RECORDS.—Each State or local court shall keep records of the names of all person on the jury list for said court, names of those persons placed in the jury box, wheel or similar device, questionnaires, applications, or documents of any sort used in the selection of jurors, the names and race of the persons drawn from the jury box, wheel or similar device, the names of those performing jury service and the date thereof and such additional appropriate records as the judge or judges or said court may direct. Such records shall be retained for a period of not less than four years.

JURY DISCRIMINATION

SEC. 106. (a) On application of any citizen residing within the area of, or any litigant in, any State or local court, or of the Attorney General of the United States, alleging that persons have been systematically excluded from

grand or petit juries on grounds of race or color in such State or local court or that the recordkeeping requirements of section 105 are not being fully implemented, the Federal district court for the district in which said State or local court is located shall, upon a showing thereof, direct the Director of the Administrative Office of the United States Courts, directly or through subordinate officials, to assume responsibility for the selection and administration of juries in that State or local court and the Director shall administer and supervise the selection of juries in accordance with the procedures set forth in subsections (b) and (c) of section 101. Review of the decisions of the Federal district court shall be had in accordance with subsection (d) of section 101 as conformed to the procedures of this section. The Director may, if practical, use the Federal list or part thereof of jurors for the area in which said State or local court is located. The Director shall act without regard to State and local laws and regulations applicable to jury selection and service in said State or local court and all judges therein shall apply Federal law governing jury selection and service. The Director, may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys and employees, and make such expenditures, as may be necessary to carry out his duties under this section. The Director may

call upon the Director of the Bureau of the Census for advice and assistance in carrying out his duties.

(b) Any final judgment of any Federal or State court within five years prior to the filing of the application in the district court and whether prior to or after the effective date of this Act, determining that there has been systematic exclusion from jury service on grounds of race or color in any State or local court, shall establish such exclusion unless the State or local court, through its clerk or other appropriate official, satisfies the district court that such exclusion no longer exists.

(c) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the area of any State or local court bears to the total population of that area exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, this shall be deemed to establish systematic exclusion on grounds of race or color: *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the State or local court, through its clerk or other appropriate official, shall be given the opportunity to demonstrate that such exclusion no longer exists.

SEC. 107. The State or local court may make applica-

tion for reinstatement of State procedures to the United States District Court for the District of Columbia which may approve the reinstatement of said procedures if it finds that there is no longer reasonable cause to believe that persons will be excluded from jury service by reason of race or color, or that there will be continued failure to keep records.

SEC. 108. Whenever the Attorney General has reasonable cause to believe that any change in the qualifications, standards, or limitations on the right to a jury trial, operation of the jury system, the selection of, or challenges to, individual jury members or panel, or the operation in any way of the court system, for any case or class of cases in any State or local court different from those in force and effect on January 1, 1966, will have the purpose or effect of circumventing this Act, he is hereby directed to bring an action in the Federal district court for the district in which such State or local court is located to enjoin such change in qualifications, standards, limitations, operation, selection, or challenge and the district court shall grant such temporary and final relief as is necessary to prevent such circumvention of this Act.

GENERAL

SEC. 109. Sections 106(c) and 202(f)(ii) shall not apply in any area unless a racial or color minority consti-

tutes at least 10 per centum of the total population of the area.

SEC. 110. Any person who willfully fails to comply with the recordkeeping requirements of this title shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 111. The provisions of subsections (a), (b), (c), and (d) of section 1974 of title 42, United States Code, shall apply with respect to jury records required to be maintained under this title.

SEC. 112. This title shall become effective ninety days after the date of its enactment.

TITLE II—PROSECUTION IN AND REMOVAL TO FEDERAL COURTS

FEDERAL TRIAL OF STATE OFFENSES

SEC. 201. The district courts of the United States shall have original jurisdiction, concurrent with the courts of the States, of all prosecutions for offenses (whether felonies, misdemeanors, or other offenses) defined by the laws of the State or of any subdivision of the State where acts or omissions constituting the charged offense occur, whenever prosecution of such offenses in a Federal district court is necessary and proper to assure equal protection of the laws.

SEC. 202. (a) Objection to the jurisdiction of the district court conferred by section 201 shall be entertained only

if made before trial and in the manner authorized by the Federal Rules of Criminal Procedure in effect at the time of the objection. If such objection is not made before trial, the jurisdiction of the district court shall not thereafter be questioned in any manner or by any court.

(b) In the event of a properly presented objection to the jurisdiction of the district court under section 201, the question whether the prosecution of the charged offense in a Federal district is necessary and proper to assure equal protection of the laws shall be promptly decided by the district court sitting without jury, and its decision sustaining or overruling the objection shall be reviewable by interlocutory appeal to the court of appeals within ten days after the entry of the order.

(c) If any one of the circumstances specified in subsection (d) of this section and any one of the circumstances specified in subsection (e) of this section are established by a preponderance of the evidence, the district court shall find that prosecution of the charged offense in a Federal district court is necessary and proper to assure equal protection of the laws.

(d) The circumstances first referred to in subsection (c) of this section are that the victim of the offense is:

(i) A member of a racial or color group subject

to the discrimination set forth in subsection (e) of this section; or

(ii) A person who, by words or action, was advocating or supporting at or near the time of the offense the exercise or enjoyment by any member or members of such group of equal protection of the laws.

(e) The circumstances second referred to in subsection (c) of this section are that in any county or other political subdivision, where, under applicable State law the offense might be tried, the members of any racial or color group are—

(i) systematically excluded from actual service on grand or petit juries in the State or local courts, whether their absence be caused by exclusion from the venires, or by excuses or challenges peremptory or for cause, or otherwise;

(ii) systematically denied in any manner the franchise in elections at which any prosecuting official or judge in the county or other political subdivision, or any official who appoints any such prosecuting official or judge, is elected;

(iii) systematically segregated in, or discriminated against in any manner in connection with the services or facilities of, State or local jails, prisons, police sta-

tions, courts or other public buildings related to the administration of justice;

(iv) systematically subjected to harsher punishment upon conviction of crime than those to which persons generally convicted of crime are subjected; or

(v) systematically subjected to more onerous terms or conditions of bail or conditional release than those to which defendants generally are subjected.

(f) (i) Any final judgment of any Federal or State court within five years prior to the commencement of the prosecution under section 201 determining that there has been, on grounds of race or color, systematic exclusion from jury service in the State or local courts of the county or other political subdivision, or sytematic denial of the franchise in any election in the county or other State political subdivision shall establish the circumstance described in subsection 202 (e) (i) or (ii), as the case may be, unless the defendant satisfies the court that the circumstances described in said subsection (i) or (ii) no longer exist.

(ii) Whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political subdivision exceeds by one-third or more the ratio which the

number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote, this shall be deemed to establish the circumstances described in subsection 202 (c) (i) or (ii) : *Provided, however,* That in case all or part of the two-year period antedates the effective date of this Act, the defendant shall be given the opportunity to demonstrate that such exclusion from juries or franchise no longer exists.

SEC. 203. (a) Prosecutions under the jurisdiction conferred by section 201 shall be commenced by indictment by a Federal grand jury in all cases in which the Constitution requires that prosecution be by indictment; in other cases, prosecution may be by indictment or by information. When the statement of twenty persons is filed as set forth in subsection (b) below, the Attorney General shall forthwith commence prosecution.

(b) The district court shall not proceed in the exercise of jurisdiction conferred by section 201 unless, at or prior to final arrangement, in the district court, there is filed with the district court a certificate of the Attorney General of the United States or a statement by twenty persons who liv within the county or similar political subdivision and are members of the groups described in section 202 (d) (i) or

(ii), that prosecution of the cause by the United States in a Federal district court would fulfill the responsibility of the United States Government to assure equal protection of the laws. Upon the filing of such a certificate or statement, the jurisdiction given by section 201 shall become exclusive of the courts of any State, and the prosecution shall thereafter be conducted exclusively by the Attorney General of the United States or his designate. Upon the filing of the certificate or statement, no State court shall have or retain jurisdiction of any offense charged against the defendant prosecution for which would constitute jeopardy in respect of the offense described in the certificate or statement. The certificate of the Attorney General or the statement of twenty persons shall not be subject to review by any court.

(c) If the certificate of the Attorney General or the statement of twenty persons described in subsection (b) of this section is not filed at or prior to final arraignment in the district court, the district court shall dismiss the prosecution without prejudice.

(d) Notwithstanding the certificate of the Attorney General or the statement of twenty persons described in subsection (b) of this section has not yet been filed and no judicial finding has yet been made sustaining the jurisdiction of a Federal court under section 201 of this Act.

Federal judicial, executive, administrative, and law enforcement officers and agencies, including but not limited to Federal judges, commissioners, marshals, grand juries, prosecuting attorneys, and the Federal Bureau of Investigation may exercise all powers given them by the laws of the United States in order to prevent and investigate any offense within the jurisdiction conferred by section 201 and to apprehend and prosecute the offender or offenders. In any case where such powers by the general laws of the United States are restricted to felonies, the same powers may be exercised in cases involving misdemeanors or other offenses within the jurisdiction conferred by section 201. The authority given Federal executive, administrative, and law enforcement officers and agencies under this subsection shall be exercised subject to the direction of the Attorney General of the United States, but if the delay of their exercise until a direction of the Attorney General is received is impracticable in order effectively to prevent or investigate any offense within the jurisdiction given by section 201 of this Act or to apprehend or prosecute the offender or offenders, they may be exercised without direction of the Attorney General. The Attorney General is authorized to issue rules and regulations for the implementation of this subsection.

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REMOVAL BY THE ATTORNEY GENERAL

SEC. 204. (a) Where a prosecution has been commenced in any court of a State in respect of any offense within the jurisdiction conferred by section 201 of this Act, the United States may at any time before jeopardy attaches remove the prosecution for trial to the district court for the district embracing the place wherein the prosecution is pending.

(b) Such removal shall be instituted by the filing in the district court of the certificate of the Attorney General or the statement of twenty persons described in section 203(b) of this Act, which certificate or statement shall identify the prosecution to be removed. The filing of this certificate or statement, together with the filing of a copy thereof with the judge or clerk of the State court in which the prosecution is pending (which filing may precede or follow or be contemporaneous with the filing of the certificate in the district court) shall effect the removal, and the jurisdiction of the State court shall thereupon terminate and all State court proceedings thereafter shall be null and void for all purposes unless and until the case is remanded. Following removal under this section:

(i) the jurisdiction conferred by subsection (a) of

this section shall be exclusive of the courts of any State, and the prosecution shall be conducted exclusively by the Attorney General or his designate;

(ii) no State court shall have or retain jurisdiction of any offense charged against the defendant, prosecution for which would constitute jeopardy in respect of the offense described in the certificate; and

(iii) the certificate of the Attorney General or the statement of twenty persons shall not be subject to review by any court.

(c) Where the offense charged is one required by the Constitution to be prosecuted by indictment and no such indictment was returned prior to removal, indictment by a Federal grand jury shall be required within a reasonable time or the proceeding shall be remanded to the State court.

SEC. 205. (a) The Federal Rules of Criminal Procedure shall apply to proceedings under sections 201 through 204.

(b) Any person convicted in proceedings under sections 201 through 204 shall be sentenced to the fine, term of imprisonment, or both, prescribed by the State law applicable to the offense of which he is convicted. For all other purposes of imposition or execution of sentence, including but not limited to the payment of fine, custody, probation, parole,

and pardon, he shall be treated as a person convicted and sentenced under the criminal laws of the United States.

INVESTIGATION OF JURY EXCLUSION

SEC. 206. (a) The United States Commission on Civil Rights shall investigate the service on grand and petit juries by members of racial or color groups in the State and local courts of any county or other political subdivision in which it believes that there may be disparate treatment of members of different racial or color groups.

(b) Before publishing the results of any such investigation, the Commission shall furnish a copy of its proposed findings to the State or local court, the jury commissioners and any other officials responsible for jury selection in the county or other political subdivision concerned and shall give them an opportunity to controvert any of the proposed findings. Upon consideration of their responses and such consultation with the affected commissioners and officials as may be indicated, the Commission may revise its proposed findings. If any of those proposed findings remain controverted, the Commission shall cause a public hearing to be held in the county or other political subdivision concerned to consider the remaining issues of fact. Such hearing may be held by the Commission or by a person or persons designated by it who may but need not be a member or members

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of the Commission or its staff; the person or persons thus designated shall have the powers the Commission would have in regard to the conduct of such a hearing. If any such hearing is not held by the Commission itself, the person or persons conducting it shall prepare a report which shall be forwarded to the Commission together with such comments thereon as local officials may make and with the record of the hearing. The Commission shall thereafter publish its findings and a detailed summary of the data on which those findings are based. Judicial notice of the findings of the Commission and the data contained in its detailed summary shall be taken in any judicial proceeding in any court.

(c) In any action or proceeding under this Act, the Commission's findings and summary of data under subsection (b) of this section shall constitute evidence of the facts presented therein and, except to the extent that the party controverting those facts satisfies the court, by evidence on the record as a whole, that particular findings or data are not correct, the courts shall accept the Commission's findings and data as adequately probative of all the facts contained therein and shall make its findings in accordance therewith.

(d) In proceedings under this section, the Commission shall have all the powers granted it under all other

statutes; and the powers conferred on it by this section are in addition to its powers under such other statutes.

FEDERAL OFFENSES

SEC. 207. (a) Whoever, whether or not acting under color of law, by force or threat of force—

(1) injures, intimidates, or interferes with or attempts to injure, intimidate, or interfere with any person because of his race, color, religion, or national origin while he is engaging or seeking to engage in—

(A) voting or qualifying to vote in any primary, special, or general election;

(B) enrolling in or attending any public school or public college;

(C) participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States or by any State or subdivision thereof;

(D) applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency of the United States or any State or subdivision thereof, or of joining or using the services or advantages of any labor organization or using the service of any employment agency;

(E) selling, purchasing, renting, leasing, occupying, or contracting or negotiating for the sale rental, lease, or occupation of any dwelling;

(F) serving, or attending upon any court in connection with possible service, as a grand or petit juror in any court of the United States or of any State;

(G) using any vehicle, terminal, or facility of any common carrier by motor, rail, water, or air;

(H) participating in or enjoying the benefits of any program or activity receiving Federal financial assistance; or

(I) enjoying the goods, services, facilities, privileges, advantages, or accommodations of any inn, hotel, motel, or other establishment which provides lodging to transient guests, or of any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, or of any gasoline station, or of any motion picture house, theater, concert hall, sports arena, stadium, or any other place of exhibition or entertainment, or of any other establishment which serves the public and which is located within the premises of

any of the aforesaid establishments or within the premises of which is physically located any of the aforesaid establishment; or

(2) Injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with any person—

(A) to discourage such person or any other person or any class of persons from participating or seeking to participate in any such benefits or activities without discrimination on account of race, color, religion, or national origin, or

(B) because he has so participated or sought to so participate, or urged or aided others to so participate, or engaged in speech or peaceful assembly opposing any denial of the opportunity to so participate; or

(3) injures, intimidates, interferes with, or attempts to injure, intimidate, or interfere with any public official or other person to discourage him from affording another person or any class of persons equal treatment in participating or seeking to participate in any of such benefits or activities without discrimination on account of race, color, religion, or natonal origin, or because he has

afforded another person or class of persons equal treatment in so participating or seeking to so participate shall be fined not more than $1,000 or imprisoned not more than one year, or both; and if bodily injury results shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results shall be subject to imprisonment for any term of years or for life.

(b) (1) Section 241 of title 18, United States Code, is amended by striking out the final paragraph thereof and substituting the following:

"They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life."

(2) Section 242 of title 18, United States Code, is amended by striking out the period at the end thereof and adding the following: "; and if death results shall be subject to imprisonment for any term of years or for life."

TITLE III—PREVENTIVE RELIEF

SEC. 301. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person, because of race or color, of any right, privilege, or immunity, granted, secured, or protected by the Constitution or laws of the United States, such other person in his

own right or the Attorney General for or in the name of the United States, may institute a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of a bond to secure compliance with any order of the court, or other order.

SEC. 302. Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of, or hinder him in the exercise of, the right to speak, assemble, petition, or otherwise express himself for the purpose of advocating equality of persons or opportunity free from discrimination because of race or color, such other person in his own right, or the Attorney General for or in the name of the United States, may institute a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, order requiring the posting of bond to secure compliance with any order of the court, or other order: *Provided,* That such other person above mentioned is a person described in subsection 202(d) (i) or (ii) and any one of the circumstances specified in section 202(e) is established by a preponderance of the evidence. The provisions of section 202(f) shall be applicable in proceedings under this section.

SEC. 303. In any proceeding under this section the United States shall be liable for costs the same as a private person. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this title and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

TITLE IV—REMOVAL BY CERTAIN DEFENDANTS

SEC. 401. Any defendant in a criminal action or in a civil or criminal contempt action in a State or local court may remove said action to the district court of the United States for the district embracing the place wherein it is pending if the defendant is a person described in either subsection (i) or (ii) of section 202 (d) and if any one of the circumstances specified in section 202 (e) is established by a preponderance of the evidence. The provisions of section 202 (f) shall be applicable in proceedings under this section.

SEC. 402. Any defendant in any action or proceeding (civil, criminal or otherwise) in a State or local court may remove said action or proceeding to the district court of the United States for the district embracing the place wherein it is pending if the action or proceeding is maintained for or on account of any act or omission in the exercise of the freedoms of speech, of the press, of assembly or of petition guaranteed

by the Constitution or laws of the United States for the purpose of advocating or supporting racial equality or of protesting the denial of racial equality; or any act or omission protected by the Constitution or laws of the United States against abridgment or interference by reason of race or color.

SEC. 403. The procedures set forth in sections 1446 and 1447 of title 28 shall be applicable to removal and remand under this section, except that any order of remand shall be reviewable by appeal or otherwise.

TITLE V—CIVIL INDEMNIFICATION

SEC. 501. (a) There is hereby established within the United States Commission on Civil Rights an Indemnification Board, hereafter referred to as the Board. The Board shall be composed of three members, appointed by the President with the advice and consent of the Senate. The President shall designate one member as Chairman. No more than two members of the Board may be of the same political party.

(b) The term of office of each member of the Board shall be five years, beginning with the effective date of this Act, except of those members first appointed, one shall serve for five years, one for three years, and one for one year. Any member appointed to fill a vacancy occurring prior to the

expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term.

(c) The Chairman shall be compensated at the rate of $25,000 per annum, and the other members at a rate of $24,000 per annum.

(d) Two members shall constitute a quorum for the transaction of business.

SEC. 502. The Board may, in accordance with civil service laws, appoint and fix the compensation of such officers, attorneys, and employees, and make such expenditures, as may be necessary to carry out its functions.

SEC. 503. The Board shall make such rules and regulations as shall be necessary and proper to carry out its functions.

SEC. 504. The Commission on Civil Rights shall have the authority and duty to receive and investigate or have investigated written complaints from or on behalf of any person injured in his person or property or deprived of his life (i) because of race or color, while lawfully exercising, attempting to exercise, or advocating, or assisting another in the exercise of, any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, or for having so exercised, attempted, advocated, or assisted, or (ii) by any act, the purpose or design of which is to intimidate him or any other person from

seeking or advocating equality of persons or opportunity free from discrimination based on race or color.

SEC. 505. (a) The Commission on Civil Rights may request and the Department of Justice shall make available any investigative reports that the Department of Justice has that are relevant to the complaint and investigation.

(b) The Commission may request and the Attorney General is authorized to direct that additional investigation of matters relevant to the complaint be conducted by the Federal Bureau of Investigation.

(c) The Commission shall supply copies of all of its investigative reports to the Attorney General.

SEC. 506. If, fter such investigation, the Commission shall determine that probable cause exists for crediting the complaint, it shall direct the Board to conduct a hearing thereon as provided in section 507; if, however, the Commission shall determine that probable cause does not exist or that no substantial damage has occurred, it shall dismiss the complaint.

SEC. 507. (a) Any hearing may be conducted by the Board or any member of the Board designated by the Chairman.

(b) In the event the Board determines that because of the number of complaints or for other valid reasons it is not in the interest of justice for it or a member to conduct a hear-

ing, it may designate an agent or employee of the Board or a person not associated with the Board to conduct the hearing, provided any such agent, employee or other person so designated shall be a member of the bar of the highest court of one of the States of the United States.

(c) Any person not an agent or employee of the Board shall be reimbursed for services rendered in connection with such hearing as determined by the Board, subject to approval of the Civil Service Commission.

(d) The Board or any member or hearing officer may administer oaths or affirmations.

(e) The Board shall have the same powers of investigation and subpena as those granted the National Labor Relations Board in subsections (1) and (2) of section 161 of title 29, United States Code.

(f) A full record shall be made and kept of all hearings conducted.

SEC. 508. (a) After hearing, the Board, member or hearing officer conducting the hearing shall make findings of fact based upon the record.

(b) After a hearing conducted by the Board, it shall, if it finds that any complainant has suffered injury referred to in section 504, make a monetary award of indemnification to compensate such complainant for such injury.

(c) After a hearing conducted by a member of the

Board or hearing officer, he shall, if he finds that any complainant has suffered injury referred to in section 504, make a recommendation of an award of indemnification. All such recommendations shall be reviewed by the Board. Upon review, the Board shall review the findings of fact and shall affirm, reject, or modify findings and such recommendations and enter or deny an award.

(d) All awards made hereunder shall include reasonable attorney's fees.

SEC. 509. (a) In the event that the investigation of the complaint or the hearing thereon indicates the person or persons responsible for the injury for which an award is sought, such person or persons shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(b) In the event that such investigation or hearing indicates that the injury resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be notified and shall have a reasonable opportunity to intervene in the hearing and to be fully heard.

(c) Notice under this section may be by personal service or by registered mail.

(d) Notice to a State or political subdivision may be

given to the chief executive or principal legal officer of such State or political subdivision.

(e) The Board shall, if necessary to secure a full hearing for any intervenor, continue the hearing from time to time.

SEC. 510. The United States may, on the motion of the Attorney General, intervene at any stage of the hearing or appeal.

SEC. 511. (a) The complainant or any intervenor may obtain a review of the final decision of the Board in the United States Court of Appeals for the District of Columbia or the court of appeals for the judicial circuit in which the injury occurred or the person seeking review resides.

(b) Such review shall be made on the basis of the record before the Board, and the findings of the Board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

SEC. 512. (a) In any instance in which the injury or death for which an award is made results in whole or in part from action taken under color of law, or from action whether or not taken under color of law which in any way impedes or infringes upon the exercise or advocacy of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, the United States shall have a cause of action for recovery of the amount

of such award against the person or persons responsible for the injury for which the award is made.

(b) If the injury for which an award is made resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury.

(c) In any case brought under this section against anyone notified under section 509, the findings of fact as made, modified, or approved, by the Board pursuant to section 508 shall be admissible and shall constitute prima facie evidence of the facts determined by the findings, and the award of indemnification shall be admissible and shall constitute prima facie evidence of the damages suffered by the complainant.

(d) The district courts of the United States shall have jurisdiction to hear cases brought under this section.

SEC. 513. (a) In the event the person injured dies, a complaint may be filed by any representative of his estate, or by his or her spouse, child, or dependent and the Board shall determine to whom any award shall be made.

(b) In the event of the inability or incapacity of the person injured to file a complaint, it may be filed by his or her spouse, child, dependent, or counsel.

SEC. 514. All complaints must be filed within six months of the injury for which an award is sought, except

that where the injury results in death, the complaint may be filed within twelve months of death.

SEC. 515. Nothing herein shall deny to any person the right to pursue any action or remedy granted him under any other law of the United States or any State: *Provided*, That in the event that any person receives in any other action an award of damages for which an award of indemnification has been made under this title, the United States shall have a lien against such award in the amount of the award of indemnification. In the event such other award is made prior to the award of indemnification, the amount of such other award shall be considered by the Board in determining whether to make an award and, if so, the amount of the award.

TITLE VI—REMOVAL OF STATE OR LOCAL POLICE OFFICIALS FOR GROSS VIOLATIONS OF CIVIL RIGHTS

SEC. 601. (a) Whenever any sheriff, constable, or other State or local police officer misuses or abuses his official powers in disregard of his constitutional duty and intentional causes grave bodily injury or death to another or others because of their race or color, or whenever such officer having the authority or responsibility to do so willfully neglects to prevent such acts of violence by public officials or private individuals, written complaint under oath may be filed with the Civil Service Commission by or on

behalf of the person or persons so injured or on behalf of the deceased, or by twenty persons described by section 202 (d) (i) who live in the county or like political subdivision where the injury occurred, requesting the suspension or removal of said officer from office or such other relief as may be necessary to effectuate the policies of this title. The complaint shall also set forth in detail the acts or omissions charged to said officer which form the basis for the requested relief.

(b) Whenever a complaint is filed as provided in subsection (a) of this section, the Civil Service Commission may, in its discretion, permit the Attorney General to intervene in such proceeding if he certifies that the prosecution of the complaint is of general public importance.

(c) The Attorney General may file a complaint under this title if he certifies to the Civil Service Commission that the filing and prosecution of the complaint is of general public importance.

SEC. 602. (a) Whenever a complaint has been filed as provided in section 601, the Civil Service Commission shall notify the officer named in the complaint of the nature of the charge, and shall investigate the charge and if after such preliminary investigation the Commission shall determine that probable cause exists for crediting the complaint, the Commission shall cause to be served upon said officer (here-

after referred to as the "respondent") a copy of the complaint and a notice of hearing before the Commission at a place and time therein fixed not less than fifteen days after service of such complaint and notice.

(b) The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

(c) The Commission shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer.

(d) All testimony shall be taken under oath.

(e) If, upon the preponderance of the evidence the Commission shall find that the respondent has engaged in the acts or omissions described in section 601, the Commission shall state its findings of fact and shall issue and cause to be served on the respondent such order as may be appropriate which may include orders (1) suspending respondent from office for such period of time as the Commission may deem necessary, (2) removing respondent from office, and (3) disqualifying respondent from holding said or any other office for such period of time not exceeding ten years as in the judgment of the Commission may be necessary to effectuate the policies of this title.

(f) If the Commission shall find that suspension or re-

moval from office is not warranted, but that acts of violence have occurred or there are reasonable grounds to believe that such acts are likely to occur, the Commission may refer the entire record of the proceeding to the Attorney General with a recommendation that the Attorney General institute action under title III of this Act.

(g) In any action instituted by the Attorney General pursuant to subsection (f) of this section, the Attorney General may file in the district court of the United States for the district in which the respondent resides the certified transcript of the record of the proceedings before the Commission and the court after causing notice thereof to be served upon the respondent shall have jurisdiction of the proceeding and shall have power to grant such relief as it deems just and proper upon the record set forth in the transcript. The court, however, may on its own motion or upon application by either party, take additional evidence before entering an order granting or denying the relief requested.

SEC. 603. (a) (1) The Commission shall have power to petition the United States court of appeals for the judicial circuit wherein the respondent resides, or if the court of appeals is in vacation, any district court within the circuit, for the enforcement of any order issued pursuant to section 602 (e). The Commission shall certify and file in the court to which petition is made a transcript of the entire record in

the proceeding, including the pleadings and testimony upon which such order was entered and the findings and the order of the Commission.

(2) Upon such filing the court shall cause notice thereof to be served upon such respondent and thereupon the court shall have jurisdiction of the proceeding and of the question determined therein and shall have power to grant such temporary relief as it deems just and proper and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(3) No objection that has not been urged before the Commission, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances.

(4) The findings of the Commission with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

(5) If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Commission, the

court may order such additional evidence to be taken before the Commission, and to be made a part of the transcript.

(6) The Commission may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and its recommendations, if any, for the modification or setting aside of its original order.

(7) The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals, if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States as provided in section 1254 of title 28, United States Code.

(b) Any person aggrieved by a final order of the Commission may obtain a review of such order in any United States court of appeals for the judicial circuit wherein such person resides or the Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Commission be modified or set aside. A copy of such petition shall be forthwith served upon the Commission which shall file in the court a transcript of the

entire record in the proceeding, including the pleadings and testimony upon which the order complained of was entered and the findings and order of the Commission. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Commission under subsection (a), and shall have the same exclusive jurisdiction to grant to the petitioners or to the Commission such temporary relief as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Commission.

(c) The commencement of proceedings under this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

(d) Upon the filing of any petition under this section, it shall be the duty of the chief judge of the court of appeals to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited.

SEC. 604. If after preliminary investigation or during the hearing, the Commission shall find that a complaint filed under this title lacks probable cause, it shall dismiss the complaint and no appeal shall lie from said order of dismissal.

SEC. 605. In any action commenced pursuant to this

title, the Commission or the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, and the United States shall be liable for costs the same as a private person.

TITLE VII—AMENDMENT TO TITLE VII OF 1964 ACT

SEC. 701. Title VII of Public Law 88-352 (the Civil Rights Act of 1964) is amended as follows:

(a) Add a new paragraph to section 701 (a) as follows:

"The term 'governmental unit' means a State or a political subdivision thereof or an agency of one or more States or political subdivisions."

(b) Amend so much of section 701 (b) as appears before the word *"Provided"* to read as follows: "The term 'employer' means: (1) a person engaged in an industry affecting commerce who has twenty-five or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (i) the United States, a corporation wholly owned by the Government of the United States, or an Indian tribe, (ii) a bona fide membership club (other than a labor organization) which is exempt from taxation under section 501 (c)

of the Internal Revenue Code of 1954; (2) a governmental unit and any agent of such governmental unit:"

(c) Add the words "or governmental unit" following the word "person" wherever it appears in section 701(c).

(d) Delete the phrase "or an agency of a State or political subdivision of a State," from section 701(c).

(e) Add a comma and the following language after the word "charge" on line 9 of section 706(e): "unless the respondent is a State."

(f) Insert the words "or governmental unit" in section 707(a) following the word "persons" on lines 2 and 12 of such subsection.

(g) Insert the words "for or in the name of the United States" following the word "action" on line 6 of section 707(a).

(h) Insert the words "or governmental unit" following the word "person" on line 4 of section 709(a) on lines 1 and 5 of section 710(c) and on lines 2 and 7 of section 713(b).

TITLE VIII—AMENDMENTS TO VOTING RIGHTS ACT OF 1965

SEC. 801. Section 14 of the Voting Rights Act of 1965 is amended by adding the following subsection:

"(e) The phrase 'voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to

voting' shall include (1) any reapportionment, realinement, or redistricting of any election district, (2) any prerequisite or qualification for being (or primary or other process for choosing) a candidate in any election, including any primary, special, or general election or election for party office, and (3) all time limitations for voter registration, qualification as a candidate, dates of holding any election (as defined in '(2)' above), and any other time limitation with respect to the election process."

SEC. 802. Section 6 of the Voting Rights Act of 1965 (79 Stat. 437) is amended to read as follows:

"SEC. 6. Whenever (a) a court has authorized the appointment of examiners pursuant to the provisions of section 3(a), (b) unless a declaratory judgment has been rendered under section 4(a), the Attorney General certifies with respect to any political subdivision named in, or included within the scope of, determinations made under section 4(b) that (1) he has received complaints in writing from twenty or more residents of such political subdivision alleging that they have been denied the right to vote under color of law on account of race or color, and that he believes such complaints to be meritorious, or (2) that in his judgment (considering, among other factors, whether the ratio of nonwhite persons to white persons registered to vote within such subdivision appears to him to be reasonably attributable

to violations of the fifteenth amendment or whether substantial evidence exists that bona fide efforts are being made within such subdivision to comply with the fifteenth amendment), the appointment of examiners is otherwise necessary to enforce the guarantees of the fifteenth amendment, or (c) unless a declaratory judgment has been rendered under section 4(a), complaints under oath have been filed with the Civil Service Commission from twenty or more residents of such political subdivision alleging that they have been or are being denied the right to vote on account of race or color, the Civil Service Commission shall appoint as many examiners for such subdivision as it may deem appropriate to prepare and maintain lists of persons eligible to vote in Federal, State, and local elections. Whenever five or more such complaints are filed with the Commission from any incorporated municipality or similar area of compact population, an examiner shall be placed in such area. Whenever forty or more such complaints are filed from any such political subdivision or ten or more from any such area, then if requested in such complaints, examiners shall conduct door-to-door registration. As used in this section 'have been or are being denied the right to vote on account of race or color' includes harassment, intimidation, unreasonable registration hours, locations, or other registration conditions and registration periods limited other than to forty-five days prior

to an election. Such examiners, hearing officers provided for in section 9(a), and other persons deemed necessary by the Commission to carry out the provisions and purposes of this Act shall be appointed, compensated, and separated without regard to the provisions of any statute administered by the Civil Service Commission, and service under this Act shall not be considered employment for the purposes of any statute administered by the Civil Service Commission, except the provisions of section 9 of the Act of August 2, 1939, as amended (5 U.S.C. 118i), prohibiting partisan political activity: *Provided*, That the Commission is authorized, after consulting the head of the appropriate department or agency, to designate suitable persons in the official service of the United States, with their consent, to serve in these positions. Examiners and hearing officers shall have the power to administer oaths."

TITLE IX—FEDERAL BOND CHARTERS

SEC. 901. The Federal Deposit Insurance Corporation is hereby authorized to issue, suspend, or revoke charters to corporations to issue bail, appearance, appeal, or other bonds that may be incident to proceedings coming within the provisions of this Act. Such corporations, to the extent using powers granted by such charters, shall be subject to supervision and to regulations issued by the Federal Deposit Insurance Corporation.

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TITLE X—CIVIL RIGHTS PROCEDURE

FINDINGS AND PURPOSE

SEC. 1001. (a) The Congress has over the last century adopted legislation declaring, protecting, and granting various civil rights to citizens. It is the sense of Congress that some citizens seeking to avail themselves of these declared rights have been subjected to lengthy and expensive criminal prosecutions instituted to deter them from attempting to obtain their civil rights. It is further the sense of Congress that the proper means to correct this unlawful activity is to vest appropriate jurisdiction in the district courts of the United States.

(b) It is hereby declared to be the policy of Congress and the purpose of this title to promote the general welfare by preventing reprisals against those who seek to end discrimination on account of race, color, religion, or national origin prohibited by the Constitution or laws of the United States.

REMOVAL OF CAUSES

SEC. 1002. (a) Section 1443 of title 28 of the United States Code is amended by substituting a semicolon for the period at the end of subsection (2) and by adding at the end thereof the following new subsections:

"(3) For any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act

of 1964, or of any other right granted, secured, or protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or

"(4) For an exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceably assemble secured by the Constitution or laws of the United States when committed in furtherance of any right of the nature described in subsection (3) of this section."

(b) Subsection (d) of section 1447 of title 28 of the United States Code is amended to read as follows:

"(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be appealable as a final decision under section 1291 and an order denying remand of a case removed pursuant to section 1443 shall be appealable as an injunction of proceedings in the State court under paragraph (1) of subsection (a) of section 1292."

INJUNCTION OF STATE PROCEEDINGS

SEC. 1003. Section 1979 of the Revised Statutes (42 U.S.C. 1983) is amended by inserting "(a)" at the begin-

ning of the section and by adding at the end thereof the following new subsections:

"(b) Such redress shall include the grant of an injunction to stay a proceeding in a State court where such proceeding was instituted for:

"(1) Any exercise, or attempted exercise, of any right granted, secured, or protected by the Civil Rights Act of 1964, or of any other right granted, secured, or protected by the Constitution or laws of the United States against the denial of equal protection of the laws on account of race, color, religion, or national origin; or

"(2) Any exercise, or attempted exercise, of any right to freedom of speech or of the press or of the people to peaceably assemble secured by the Constitution or laws of the United States, when committed in furtherance of any right of the nature described in subparagraph (1) of this subsection; and where:

"(i) An issue determinative of the proceeding in favor of the party seeking the injunction has been decided in favor of his contention in a final decision in another proceeding arising out of a like factual situation;

"(ii) the statute, ordinance, administrative regulation, or other authority for the proceeding has been declared unconstitutional in a final decision in another proceeding;

"(iii) The statute, ordinance, administrative regulation,

or other authority for the proceeding is, on its face, an unconstitutional abridgment of the rights to freedom of speech or of the press or of the people to peaceably assemble; or

"(iv) The proceeding was instituted for the purpose of discouraging the parties or others from exercising rights of freedom of speech or of the press or of the people to peaceably assemble.

"(c) In an action seeking an injunction under subsection (b) the court shall not deny or defer relief on the ground that a defense or remedy in the State courts is available."

TITLE XI—PUBLIC SCHOOL DESEGREGATION PROCEDURE—AND PROHIBITION OF DUAL SCHOOL SYSTEMS, GERRYMANDERING, AND OTHER METHODS OF PROMOTING SEGREGATION

SEC. 1101. Title III of the Civil Rights Act of 1964 (78 Stat. 246; 42 U.S.C. 2000b—2000b-3) is amended to read as follows:

"TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

"SEC. 301. The Attorney General may institute, in the name of the United States, a civil action or other proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order, whenever he has reasonable grounds to believe that:

"(a) Any person acting under color of law has denied,

or attempted or threatened to deny, any other person, on account of his race or color, the equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof, or

"(b) Any person, whether acting under color of law or otherwise, has intimidated, threatened, coerced, or interfered with, or has attempted or threatens to intimidate, threaten, coerce, or interfere with any other person in the exercise or enjoyment of any right to, or on account of his having exercised or enjoyed any right to, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right to equal protection of the laws with respect to any public school or public college, or any public facility which is owned, operated, or managed by or on behalf of any State or subdivision thereof.

"SEC. 302. In any proceeding under section 301 the United States shall be liable for costs the same as a private citizen.

"SEC. 303. As used in this title, 'public school' and 'public college' shall have the same meanings as in section 401 (c) of title IV of this Act.

"SEC. 304. The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this title.

"SEC. 305. Nothing in this title shall affect adversely the right of any person to sue for or obtain relief in any court against discrimination in public education or any public facility."

SEC. 1102. The following new section is added to title IV of the Civil Rights Act of 1964 (78 Stat. 246):

"SEC. 411. Nothing in this title, title III, or title VI shall be construed to—

"(a) permit assignment of pupils from the same geographical area to different schools wherever such assignment results in racial imbalance;

"(b) permit drawing or continuing in force of school district lines or other methods of pupil assignment to achieve or perpetuate racial imbalance, unless such lines or other methods are affirmatively shown by the school board to be (1) reasonable, fair, and rational and (2) not based upon race or color."

TITLE XII—PROHIBITION OF HOUSING DISCRIMINATON

POLICY

SEC. 1201. It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation.

DEFINITIONS

SEC. 1202. For purposes of this title—

(a) "person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, receivers, and fiduciaries.

(b) "dwelling" includes (1) any building or structure, or portion thereof, whether in existence or under construction, which is in, or is designed, intended, or arranged for, residential use by one or more individuals or families and (2) any vacant land that is offered for sale or lease for the construction or location of any such building, structure or portion thereof.

(c) "discriminatory housing practice" means an act that is unlawful under sections 1203 or 1204.

PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

SEC. 1203. It shall be unlawful for the owner, lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease, or manage, a dwelling, or for any person who is a real estate broker or salesman, or employee or agent of a real estate broker or salesman—

(a) to refuse to sell, rent, or lease, refuse to negotiate for the sale, rental, or lease of, or otherwise make

unavailable or deny, a dwelling to any person because of race, color, religion, or national origin:

(b) to discriminate against any person in the terms, conditions, or privileges of sale, rental, or lease of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, or national origin;

(c) to print or publish or cause to be printed or published any notice, statement, or advertisement, with respect to the sale, rental, or lease of a dwelling that indicates any preference, limitation, or discrimination based on race, color, religion, or national origin, or an intention to make any such preference, limitation, or discrimination;

(d) to represent to any person because of race, color, religion, or national origin that any dwelling is not available for inspection, sale, rental, or lease when such dwelling is in fact so available;

(e) to deny to any person because of race, color, religion, or national origin, or because of the race, color, religion, or national origin of the person he represents or may represent, access to or participation in any multiple-listing service or other service or facilities related to the business of selling or renting dwellings.

PREVENTION OF DISCRIMINATION IN THE FINANCING OF HOUSING

SEC. 1204. It shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other person that makes mortgage or other loans for the purchase, construction, improvement, or repair or maintenance of dwellings to deny such a loan to a person applying therefor, or discriminate against him in the fixing of the downpayment, interest rate, duration, or other terms or conditions of such a loan, because of the race, color, religion, or national origin of such person, or of any member, stockholder, director, officer, or employee of such person, or of the prospective occupants, lessees, or tenants of the dwelling or dwellings in relation to which the application for a loan is made.

INTERFERENCE, COERCION, OR INTIMIDATION

SEC. 1205. No person shall intimidate, threaten, coerce, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted by section 1203 or 1204.

ENFORCEMENT BY PRIVATE PERSONS

SEC. 1206. (a) The rights granted by sections 1203, 1204, and 1205 may be enforced by civil actions in appropriate United States district courts without regard to the amount

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in controversy and in appropriate State or local courts of general jurisdiction. A civil action shall be commenced within six months after the alleged discriminatory housing practice or violation of section 1205 occurred.

(b) Upon application by the plaintiff and in such circumstances as the court may deem just, a court of the United States in which a civil action under this section has been brought may appoint an attorney for the plaintiff and may authorize the commencement of a civil action without the payment of fees, costs, or security. A court of a State or subdivision thereof may do likewise to the extent not inconsistent with the law or procedures of the State or subdivision.

(c) The court may grant such relief as it deems appropriate, including a permanent or temporary injunction, restraining order, or other order, and may award damages to the plaintiff, including damages for humiliation and mental pain and suffering, and up to $500 punitive damages.

(d) The court shall allow a prevailing plaintiff a reasonable attorney's fee as part of the costs.

ENFORCEMENT BY THE ATTORNEY GENERAL

SEC. 1207. (a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title he may bring a civil action in any appropriate United States

district court by filing with it a complaint setting forth the facts pertaining to such pattern or practice and requesting such preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights granted by this title.

(b) Whenever an action under section 1206 has been commenced in any court of the United States, the Attorney General may intervene for or in the name of the United States if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

ENFORCEMENT BY THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT

SEC. 1208. No person violating sections 1201, 1203, 1204, or 1205 of this title shall be entitled to benefits of any Federal program directly or indirectly concerning the sale, rental, construction, management, or financing of housing.

SEC. 1209. The Secretary of Housing and Urban Development shall issue regulations to enforce section 1208. Such regulations shall include: (1) a specification of the agency programs covered, (2) the agency procedures for enforcement, (3) the length and degree of the sanctions imposed for noncompliance in accordance with section 1208,

and (4) sufficiently broad placement of responsibility to secure prompt and effective compliance upon institutions, agencies, or other economic organizations dealing with housing.

SEC. 1210. The Secretary of Housing and Urban Development shall—

(a) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(b) publish and disseminate reports, recommendations, and information derived from such studies;

(c) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(d) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(e) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

EFFECT ON STATE LAWS

SEC. 1211. Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are granted by this title; but any law that purports to require or permit any action that would be a discriminatory housing practice under this title shall to that extent be invalid.

CONTEMPT OF COURT

SEC. 1212. All cases of criminal contempt arising under the provisions of this title shall be governed by section 151 of the Civil Rights Act of 1957 (42 U.S.C. 1995).

EXISTING AUTHORITY

SEC. 1213. Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

TITLE XIII—MISCELLANEOUS

SEC. 1301. (a) The term "State" as used herein shall include the District of Columbia.

(b) The term "because of race or color" shall mean because of hostility to the race or color of any person, or because of his association with persons of a different race or

color or his advocacy of equality of persons of different races or colors.

(c) The term "hearing officer" shall mean an agent or employee of the Indemnification Board or a person not otherwise associated with the Board who is designated by the Board to conduct a hearing.

(d) The term "action taken under color of law" shall include the knowing refusal or failure to act where action could or may have prevented injury.

(e) The term "injury to property" shall include any financial or economic loss.

(f) The term "judicial district" shall mean a division thereof where the judicial district is divided into divisions.

SEC. 1302. (a) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act, including payment of awards under title V.

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

The CHAIRMAN. I have scheduled hearings on this legislation beginning today, and continuing tomorrow; then on May 10, 11, and 12, again on May 17, 18, and 19. If there is need for additional hearings, a reasonable opportunity will be afforded.

These hearings will be conducted as they have been in the past, affording an ample opportunity to those who can lend instructive evidence and counsel.

I intend to do all and sundry to expedite these hearings, and will not permit any unnecessary delay or procrastination for dilatory purposes.

Our first witness this morning is the very distinguished Attorney General of the United States, who is no stranger here, a very dedicated public official, for whom I am sure we all have an abiding affection, because of the splendid work he has done as the Attorney General of the United States, and I am pleased to call on Attorney General Katzenbach.

Mr. Katzenbach will make his statement without any interruption, and after he has concluded, members will question.

I also shall place into the record at this point the President's message which he delivered to the Congress last week, as well as a letter from the Attorney General to the Speaker of the House on the same subject, dated April 28, 1966.

(The documents referred to follow:)

THE WHITE HOUSE.

To the Congress of the United States:

Last year I came before the Congress in an hour of crisis to recommend new and powerful guarantees of the right to vote.

Americans faced again the ancient questions:

Who shall take part in the process of democracy?

Shall it be only those born with white skins?

If a man's color should *not* be the sole criterion for determining his right to vote, how shall we make sure that Negroes are not denied the ballot?

I asked the Congress, on that March night in 1965, to strike down all restrictions to voting in all elections—Federal, State and local—which have been used to deny Negroes the right to vote.

Less than five months after I spoke, the Congress perfected and passed our Voting Rights Act of 1965.

I said then that the challenge of voting discrimination had been nothing less than a test of our faith in democracy. Congress met that test. The Voting Rights Act of 1965 reaffirmed the equality of man and government by all the people.

The fruits of the Voting Rights Act and of the Civil Rights Act of 1964 are already impressively apparent.

Discrimination in places of public accommodation—perhaps the most unbearable insult to Negro citizens—has been made unlawful. The mandate of that law has spread faster and more effectively than its most optimistic supporters believed possible.

Discrimination in employment is now illegal. Opportunities closed to Negroes in the past have begun to open.

The discriminatory use of Federal funds has been prohibited. The effect of that prohibition—strengthened by new federal procedures—is now being felt in schools, hospitals, welfare programs and in many other areas once blighted by racial bias.

The Community Relations Service has helped to bring new understanding to areas where community tensions have threatened to disrupt peaceful progress. Now that the Service has been integrated with other civil rights facilities in the Department of Justice and is being enlarged, we expect it to be even more effective.

In the five states where voter discrimination was once most severe, Negro registration has increased by 50%. Voter Registration by local officials and federal examiners appointed under the Act has exceeded 330,000.

At the time of the 1964 national election, less than 25% of the Negro citizens of voting age in those five states were registered to vote. We expect that by the time of the next elections in these states the figure will reach 50%. It is already over 40%.

This achievement serves to renew our faith in the ultimate triumph of a Government in which all free men can participate. It strengthens our resolve to extend the franchise to all who are eligible.

For a democracy cannot be fully realized, when in these five states more than a million eligible Negroes remain unregistered. The challenge to them—and to those in government and private life who labor with them for their just share in the electoral process—is as critically important as the legislative need to enact today's civil rights laws. The statutes now on the books have given Negro Americans the key to freedom. Now it must be used.

I

Once more this year I am asking the Congress to join in an attack on the discrimination that still afflicts our land.

Four times in nine years the representatives of the people have labored through days and nights—through weeks and months—toward the passage of civil rights legislation.

I was part of each of those efforts. I know the fatigue and the triumph that accompanied them. Thus I do not ask for new laws lightly.

Yet discrimination, racial practices still exist in many American communities. They deny the Negro his rights as a citizen. They must be ended.

I ask the Congress:

First, to reform our federal criminal statutes to provide Negroes and all who labor or speak for racial justice the protection of stronger and more effective criminal laws against interference with the exercise of long established rights.

Second, to establish detailed procedures of jury selection in federal courts so that discrimination may be banished—and to create forceful guarantees that state court juries also will be selected without discrimination of any kind.

Third, to broaden the Attorney General's authority to bring suit for the desegregation of schools and public facilities—enabling him to commit the government's legal resources where they are most critically needed.

Fourth, to declare a national policy against racial discrimination in the sale or rental of housing, and to create effective remedies against that discrimination in every part of America.

II

Perhaps the most evident threat to civil rights in 1966 is the danger that recently secured rights may be violently denied by a relatively few racial fanatics.

Citizens who honor the law and who tolerate orderly change—a majority in every part of the country—have been shocked by attacks on innocent men and women who sought no more than justice for all Americans.

The effect of that violence extends far beyond individual victims. Every assault or murder that goes unpunished reinforces the legacy of violence—the knowledge that it is dangerous for a Negro to assert his rights, or even for others to stand up for those rights.

Our federal system assumes that local law enforcement will extend protection to all. Yet the speed with which the fanatics strike has made the work of prevention extremely difficult—even for zealous local police authorities. In some areas, local authorities have been slow or even unwilling to act against the most brazen violence.

So it is that new measures are essential if rights guaranteed by the United States Constitution to every citizen are to be protected.

Laws enacted a century ago to contain racial terror and Klan violence are now clearly inadequate. One of the most important of these statutes requires proof not simply of an act violating a person's civil rights. It also requires the often-difficult showing of specific intent to do so and proof of a conspiracy.

Further, no matter how brutal the crime and no matter what the motive of the criminal it is possible that the courts will conclude that some degree of involvement by local officials may well be required by these ancient statutes.

And, finally, though offenses may range from threats to murders, only a single set of penalties is provided, and those may be inadequate to suit the gravity of the crime.

Law enforcement authority so restricted cannot be effective. And if that authority is lacking, so is justice. What gain is there for either conscience or country if we proudly affirm human rights and then permit those rights to be swept aside by lawless fanatics?

Accordingly, today I propose the enactment of legislation to make our authority against civil rights violence clear and sure. The legislation I offer is designed to prohibit any interference with the exercise of fundamental rights by threats or force, by any person—whether as an individual or in a group and whether privately or officially.

The measure enumerates these rights, including voting, education, housing, employment, jury service, and travel. And it provides for graduated penalties, permitting our courts to make appropriate responses to differing degrees of interference or intimidation.

Further, we shall ask for an expansion of the Federal Bureau of Investigation, specifically to permit it to increase its effective role in the enforcement of civil rights laws.

At times in the recent past, as many as one-third of the Bureau's agents have been assigned to the investigation of civil rights matters. The number of civil rights complaints the Bureau investigated in the last fiscal year was 143 percent more than the figure for 1961. These responsibilities place a heavy burden on the Bureau's field staff.

On the advice of Attorney General Katzenbach and FBI Director Hoover, I recommend that Congress authorize an appropriation providing for another 100 FBI agents and additional supporting personnel—to strengthen our capacity to deal with civil rights crimes.

In every city and town and rural community, law-abiding men and women must look for protection primarily to improved local law enforcement. But the federal government has its responsibilities to see that federal rights are secured and their transgressors brought to justice.

We shall meet these responsibilities.

III

The fabric of law enforcement extends from the police patrol to trial and correction. Racial discrimination in any part of this fabric can spoil the rest.

It is necessary that we improve our investigative resources. It is necessary that we strengthen federal authority against interference with basic rights and impose meaningful sanctions on those who violate them.

Yet if we go only this far—and permit racial discrimination to corrupt the selection of juries—we shall leave at the center of our legal system a potential for injustice that mocks our hopes for a great and just society.

Trial by a freely selected jury of one's peers is not a new right. It has its roots in the Magna Carta. Blackstone described it as the "grand bulwark" of man's liberties.

Yet we have been reminded in recent months that in many areas the exclusion of minority groups from jury service remains systematic and complete.

Denying jury service to any group deprives it of one of the oldest and most precious privileges and duties of free men. It is not only the excluded group which suffers. Courts are denied the justice that flows from impartial juries selected from a cross section of the community. The people's confidence in justice is eroded.

Jury discrimination takes many forms, open and subtle, intentional and inadvertent:

Many jury officials may compile their basic list of potential jurors from membership lists, clubs and civic organizations that tend to exclude minority groups.

Some state laws require jury officials to make highly subjective judgments of a juror's "integrity, good character and sound judgment."

Even when the list of qualified jurors has been fairly compiled, officials in many areas are still free to exclude a particular class of citizens arbitrarily when they make assignments to particular juries.

None of today's civil rights laws gives sufficient protection against these practices.

An 1875 statute makes it a Federal crime for officials in either Federal or State courts to exclude jurors because of their race. But criminal sanctions operate only upon individuals—not upon an entire system.

What is required is not the punishment of individuals. It is the restoration of integrity in the system itself.

The time has come for new legislation redeeming the promise made to every American: a fair trial by a jury of his peers.

I recommend legislation stating explicitly for all our courts that the right to serve on grand or petit juries shall not be denied on the basis of race or color, religion, sex, national origin, or economic status.

For Federal courts, the legislation will carefully prescribe each step of the jury selection process.

In state courts, the Attorney General and private citizens will be empowered to sue wherever discrimination in jury selection exists. Federal courts will have broad authority to grant relief.

IV

Ten years after the Supreme Court of the United States declared racial segregation in public schools to be unconstitutional, the Congress found it necessary to give new force to the Court's decision.

The Civil Rights Act of 1964 provided that all programs receiving Federal financial assistance—including public education—must be administered on a non-discriminatory basis. The Act called for the withdrawal of funds where discrimination remained. It also gave the Attorney General authority to file and intervene in suits to desegregate schools.

Enforcement of the 1964 Act has brought more progress in real integration in one year than in all the preceding nine years.

While there are still far too few Negro children in desegregated classrooms, the number has mutliplied several times. It must and will grow substantially again in the fall.

In providing financial assistance, this Administration has insisted on an end to discrimination. But whether or not our assistance is accepted, the requirements of the Constitution must still be met. Segregated schools are still illegal. The law of the land must be and will be upheld.

Thus the Department of Justice has insisted, in more than 40 school suits under the 1964 Act, that whether or not school boards receive financial assistance, desegregation must proceed.

Despite marked gains of the last two years, the fact remains that today—twelve years after the Supreme Court's decision on segregation in schools—only one in thirteen Negro school children in the South attends classes with white children.

Two amendments to the 1964 Act are needed to strengthen the campaign against racial discrimination in the schools.

One would enlarge the Attorney General's initiative under the Civil Rights Act of 1964.

That Act authorized the Attorney General to file suits to help communities where severe local pressure and the poverty of aggrieved citizens made private suits impossible. Yet this authorization was qualified by the requirement that the Attorney General first receive a complaint from a parent unable to sue on his own before the government's legal resources could be brought to bear.

Although the Attorney General can move directly against discrimination in voting, in employment or in public accommodations, with respect to school discrimination he must first receive a complaint before acting. In communities where the atmosphere of intimidation and ignorance of the law's protection is most severe, the filing of a complaint is most unlikely.

Thus where the need of the Attorney General's intervention is the greatest, his help is least likely to become available.

Accordingly, I propose that the Act be amended to allow the Attorney General to file suit directly, without waiting for a complaint, against discrimination in public schools or public facilities.

The second amendment would give the Attorney General the tools to deal with interference against voluntary school desegregation—the same tools that he now has when school desegregation comes under a court order.

The Civil Rights Act of 1960 included provisions to protect court-ordered desegregation from interference. These provisions were reasonably adequate when the desegregation of difficult areas was begun under court order.

But today, principally because of wide acceptance of the Office of Education's desegregation standards, many school districts are desegregating for the first time without the direct compulsion of court orders.

This is a hopeful sign—and one that imposes a new obligation on the government. We must provide adequate assurances against interference to parents and children eager to desegregate schools, and to people siding with and encouraging them in the exercise of their rights.

The criminal legislation I have already described dealing with intimidation would apply to any violent obstruction of school desegregation. *But I also recommend civil injunctive procedures against violence, threats of violence or any other interference with school desegregation.*

V

The day has long since passed when problems of race in America could be identified with only one section of the country. The social and economic toll exacted by discrimination in employment, for example, is felt in all sections.

The Federal government has worked strenuously to bring leadership to a national effort against such discrimination through the President's Committee on Equal Employment Opportunity, Plans for Progress with industry, and establishment of the Equal Employment Opportunity Commission under the Civil Rights Act of 1964.

Other specific legislative steps can now be taken to bolster this effort. The first year's experience of the Equal Employment Opportunity Commission suggests that it should be endowed with enforcement power and that its coverage should be broadened.

Proposals focussing on these purposes are already before the Congress. *I urge that these needs be given the fullest legislative consideration, and that the Senate complete action on the Bill passed by the House of Representatives yesterday.*

Freedom from discrimination is not enough. There must be freedom from the disadvantage that 200 years of discrimination helped create. There must be freedom of opportunity, freedom to work.

We look to those at the White House Civil Rights Conference this June and to private employers across America to help us find new ways to match the Nation's promise of Civil Rights by the fact of civil results—in *full* and equal employment opportunity.

VI

We undertake to expand and reform the civil rights laws this year with the clear understanding that legal reforms can be counted only a small part of a national program for the Negro American.

We know that the more important challenges of racial inequality today are emphatically national.

Negro ghettos indict our cities North and South, from coast to coast. Hope of cutting back the severe unemployment rate among Negroes is tied directly to the expansion of our national economy. And the ultimate need in human terms—of a more generous idea of brotherhood and a more responsible conception of equality—are part of the unfinished business in every state.

The time has passed when we could realistically deal effectively with racial problems by the passage of what could be strictly defined as civil rights laws.

In fact the most disturbing current measures of the impact of discrimination are economic facts that cover the entire nation:

Non-white Americans constitute only 11 percent of the national labor force, but they make up 20 percent of the unemployed. They take home less than 7 percent of the total personal income of all Americans.

One-fifth of the entire population lives in poverty. One-half of non-white Americans live in poverty.

In junior high schools across the country, 12 percent of white children are in school grades below their age level—compared to 30 percent of Negro children.

Poor housing, unemployment and poverty, while they affect racial minorities particularly, will not be defeated by new civil rights laws. Thus, the programs that Congress has adopted go far beyond the vindication of civil rights.

The Elementary and Secondary Education Act of 1965 will enrich the quality of our public schools.

The Housing Act of 1965 will provide part of the decent low and middle-income housing our cities desperately need. Beyond this, adoption of the Demonstration Cities Act this year will launch a major attack on the blight of urban ghettos.

Amendments to the Manpower Development and Training Act adopted in 1965 will help unskilled Negroes, as well as whites, prepare for a role in the economies of today and tomorrow.

The Economic Opportunity Act of 1965—the Anti-Poverty Act—is reaching out with new hope for the disadvantaged—for those preschool children, teenagers, and older men and women who have never before had cause to hope.

We do not call any of these "civil rights programs." Nevertheless, they are crucial, and perhaps decisive elements in the Negro American's long struggle for a fair chance in life.

It is self-evident that the problems we are struggling with form a complicated chain of discrimination and lost opportunities. Employment is often dependent on education, education on neighborhood schools and housing, housing on income, and income on employment. We have learned by now the folly of looking for any single crucial link in the chain that binds the ghetto.

All the links—poverty, lack of education, underemployment and now discrimination in housing—must be attacked together. If we are to include the Negro in our society, we must do more than give him the education he needs to obtain a job and a fair chance for useful work.

We must give the Negro the right to live in freedom among his fellow Americans.

I ask the Congress to enact the first effective federal law against discrimination in the sale and rental of housing.

The time has come for the Congress to declare resoundingly that discrimination in housing and all the evils it breeds are a denial of justice and a threat to the development of our growing urban areas.

The time has come to combat unreasoning restrictions on any family's freedom to live in the home and the neighborhood of its choice.

This year marks the hundredth anniversary of the first statute enacted by the Congress in an attempt to deal with discrimination in housing. It reads:

"All citizens of the United States shall have the same right, in every State and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold and convey real and personal property."

For 100 years this law has reflected an ideal favoring equality of housing opportunity. Acting under this statute and the Fourteenth Amendment, the Supreme Court has invalidated state and local laws prohibiting the sale of houses to Negroes. It has prohibited the enforcement of racially restrictive covenants. It has struck down state legislation imposing undue burdens upon minority groups with respect to real estate transactions.

There is nothing novel about the Congressional concern with housing that I now ask you to expand. Programs enacted by Congress have, for more than three decades, stimulated the development of private housing, and directly financed hundreds of thousands of public housing units.

The historic Housing Act of 1949 proclaimed a national goal for the first time: "a decent home and suitable living environment for every American family."

The great boom in housing construction since the Second World War is, in large part, attributable to Congressional action to carry out this objective.

Yet not enough has been done to guarantee that *all* Americans shall benefit from the expanding housing market Congress has made possible.

Executive Order No. 11063, signed by President Kennedy on November 20, 1962, prohibited housing discrimination where Federal Housing Administration and Veterans Administration insurance programs are involved. That Executive Order clearly expressed the commitment of the executive branch to the battle against housing discrimination.

But that Order, and all the amendments that could validly be added to it, are inevitably restricted to those elements of the housing problem which are under direct executive authority.

Our responsibility is to deal with discrimination directly at the point of sale or refusal, as well as indirectly through financing. Our need is to reach dis-

crimination practiced by financial institutions operating outside the FHA and VA insurance programs, and not otherwise regulated by the government.

Our task is to end discrimination in all housing, old and new—not simply in the new housing covered by the Executive Order.

I propose legislation that is constitutional in design, comprehensive in scope and firm in enforcement. It will cover the sale, rental and financing of all dwelling units. It will prohibit discrimination, on either racial or religious grounds, by owners, brokers and lending corporations in their housing commitments.

Under this legislation, private individuals could sue in either state or federal courts to block discrimination.

The Attorney General would be empowered to sue directly for appropriate relief, wherever he has reasonable cause to believe that a pattern of discrimination exists.

The legislation would direct the Secretary of Housing and Urban Development to make factual studies, and to give technical assistance to the Community Relations Service and all other public and private organizations working to eliminate discriminatory housing patterns.

The bill I am submitting to the Congress this year would leave in effect the many state laws that have preceded the Federal government in the field of fair housing. We would hope to enact a law that will not only open the fight against discrimination where there are no state laws against it, but also strengthen the enforcement efforts of states which have fair housing programs now.

The ghettos of our major cities—North and South, from coast to coast—represent fully as severe a denial of freedom and the fruits of American citizenship as more obvious injustices. As long as the color of a man's skin determines his choice of housing, no investment in the physical rebuilding of our cities will free the men and women living there.

The fair housing law I propose this year is an essential part of our attempt to rejuvenate and liberate America's growing urban areas—and more importantly, to expand the liberty of all the people living in them.

A nation that aspires to greatness cannot be a divided nation—with whites and Negroes entrenched behind barriers of mutual suspicion and fear.

It cannot tolerate:

overcrowded ghetto schools, producing new thousands of ill-trained citizens for whom the whole community must be responsible.

rising health hazards and crime rates in the ghettos' ugly streets and homes.

the failure of expensive social programs, such as urban renewal, where there is no way out and up for Negro residents.

The truly insufferable cost of imprisoning the Negro in the slums is borne by our national conscience.

When we restrict the Negro's freedom, inescapably we restrict a part of our own.

Negro Americans comprise 22% of the enlisted men in our Army combat units in Viet Nam—and 22% of those who have lost their lives in battle there. We fall victim to a profound hypocrisy when we say that we cannot buy or rent dwellings among citizens they fight to save.

VII

No civil rights act, however historic, will be final. We would look in vain for one definitive solution to an injustice as old as the nation itself—an injustice that leaves no section of the country and no level of American life unstained. This Administration has pledged that as long as racial discrimination denies opportunity and equal rights in America, we will honor our Constitutional and moral responsibility to restore the balance of justice.

Yet no amount of legislation, no degree of commitment on the part of the national government, can by itself bring equal opportunity and achievement to Negro Americans. It must be joined by a massive effort on the part of the States and local governments, of industry, and of all citizens, white and Negro.

Hundreds of thousands of Negro Americans in every part of the country are making that effort now. They know that the responsibilities of citizenship follow inevitably from the achievement of civil rights and economic opportunity.

They know that an obligation lies before them, to take full advantage of the improved education and training that is now becoming available to them—in the public schools, in vocational training, in the universities.

They know that it is their task to lead others in the quest for achievement and social justice—to inspire them with confidence, with perseverance, with the mutual forbearance on which our democracy depends.

VIII

We are engaged in a great adventure—as great as that of the last century, when our fathers marched to the western frontier. Our frontier today is of human beings, not of land.

If we are able to open that frontier, to free each child to become the best that is in him to become, our reward—both spiritual and material—will exceed any that we gained a century ago through territorial expansion.

Whether we shall succeed is an issue that rests in the heart of every American. It rests in the determination of Negro Americans to use the opportunities for orderly progress that are now becoming—at last—a reality in their lives. It rests in our common willingness to expand those opportunities in the years ahead.

That issue can and will be decided in only one way. For we have not come this far to fail within sight of our goal.

LYNDON B. JOHNSON.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D.C., April 28, 1966.

The SPEAKER,
House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Enclosed for your consideration and appropriate reference is a proposed "Civil Rights Act of 1966." This bill contains six titles which are designed to implement the major facets of the President's Civil Rights Message—reform of the federal jury system, elimination of discrimination in State juries, facilitation of desegregation of public schools and facilities, judicial relief from discrimination in housing, and provision for penalties for certain acts of violence or intimidation.

TITLE I—FEDERAL JURIES

The present statutes reflect the will of Congress that federal juries be composed of a cross-section of the community. But these laws do not provide sufficient guidance to jury commissions across the nation as to how they shall carry out this Congressional purpose. The result has been the use of varying sources of names of prospective jurors, differing systems of selection and diverse tests of qualification. While this uncertain system appears not to have operated unconstitutionally, in some districts Negro representation on juries has been substantially less than the proportion of Negroes in the community, and other classes have sometimes been inadequately represented on juries. In any event, the system used in many districts is an imperfect means of insuring that the will of Congress is carried out, and carried out uniformly.

Title I of the "Civil Rights Act of 1966" is drawn to eliminate uncertainty and make clear beyond dispute that each judicial district or division is fulfilling its constitutional and statutory obligations in selection and assignment of jurors. It sets forth the sources from which potential jurors are to be drawn and the procedures to be followed in selecting jurors and testing their qualifications.

Title I declares it to be the policy of the United States that all qualified persons shall have the opportunity to serve on grand and petit juries in federal courts and shall have an obligation to serve when summoned. It prohibits discrimination in the selection of federal jurors on account of race, color, religion, sex, national origin, or economic status.

The bill requires that the names of prospective jurors be taken at random from the voter registration rolls, which are defined to include lists of eligible voters prepared by federal examiners under the Voting Rights Act of 1965. The voter rolls are considered to be the best universally available source of names substantially reflecting a full and fair cross-section of the community. Where, however, the judical council of the circuit determines that use of the voter rolls as the exclusive source of names would not be consistent with the prohibition of discriminatory selection, the council would be required to prescribe other sources of names in addition to the voter rolls. It is anticipated that it will be necessary to prescribe additional sources of names for use in

some districts where Negroes are at present not fairly represented on the voting rolls.

The qualifications for jury service prescribed by existing law are retained, but it is provided that all persons found in accordance with objective criteria to possess such qualifications are to be deemed qualified as jurors. Under the present law, the statutory qualifications may have been regarded as establishing the minimum to be required, leaving the courts and jury commissions free to impose more stringent qualifications. The bill makes clear that the qualifications set a ceiling, that requirements beyond those listed may not be imposed.

Title I also provides a ready means for challenging jury selection in criminal and civil cases on grounds that the procedures established by the bill have not been followed. This challenge procedure is made available prospectively, and should be a major guarantee of the equal rights which are the objective of the legislation.

TITLE II—STATE JURIES

Title II of the "Civil Rights Act of 1966" is based on the power of Congress to enforce the Fourteenth Amendment by "appropriate legislation" and is designed to eliminate unconstitutional discrimination in the selection of grand and petit juries in State courts. This title provides that no persons shall be denied the right to serve on State juries on account of race, color, religion, sex, national origin, or economic status. In areas in which such discrimination is not practiced, existing jury selection procedures would not be upset. Where discrimination still exists, this title provides the means to eliminate it.

Title II has two principal features. First, it authorizes the Attorney General to bring civil actions in the federal courts for injunctive relief against discriminatory practices in State court jury selection. Under existing law, the Attorney General has no authority to initiate jury discrimination suits but may only intervene (under Title IX of the Civil Rights Act of 1964) in private suits. The authority vested in hi mby this title would be similar to the authority the Attorney General now has to seek injunctions against discrimination in voting, public accommodations and employment and, under Title III of this bill, against discrimination in public schools and facilities.

Upon a finding of discrimination, the court is expressly authorized to grant specified kinds of effective relief, including a decree which would, (1) prohibit the use of any qualification or ground of exclusion, exemption or excuse which has been administered in a discriminatory manner or which lends itself to such abuse; (2) require the use of objective criteria in determining qualifications, exclusion, exemptions, or excuses; (3) require maintenance of such records as may be necessary to show, in the future, whether discrimination is being practiced; and (4) appoint a master to perform the duties of the State jury officials. In addition, the court may grant other appropriate relief under general equitable principles.

The second principal feature of this title deals with the need for disclosure and development of information relevant to the question whether discrimination results from the system for selecting jurors. This objective is accomplished by a challenge procedure which may be used by the Attorney General in a suit under this title, private litigants residing in the area who seek to enforce the prohibition against discrimination by a civil action under 42 U.S.C. 1983, or a defendant in a criminal case or convicted person attacking collaterally a criminal conviction.

Upon the filing of an allegation of discrimination, appropriate State officials are required to furnish a "written statement of jury selection information." This statement is to describe in detail the procedures followed by the State jury officials in selecting jurors—including the sources of names of prospective jurors, the criteria used in determining qualifications for jury service, and the methods used for summoning jurors and assigning them to jury panels. The complaining party may cross-examine jury officials and introduce any other relevant evidence that may be available in support of the challenge. If, at that point, there is some evidence of discrimination, the complaining party is given access to any other relevant records of jury selection which are not otherwise publicly available and these may be introduced in support of the challenge. If the court then determines that there is probable cause to believe that discrimination has occurred, it is the responsibility of the State to produce additional evidence demonstrating that the alleged discrimination did not occur.

This provision meets twin considerations. It affords interested parties and the court access to the relevant records of jury selection needed to permit a fair

determination whether discrimination has occurred or may occur. In addition, it assures that records may be kept confidential except as necessary to the court proceeding. Use of this challenge procedure in collateral attacks upon criminal convictions is available only with respect to judgments of conviction entered after the effective date of the title.

TITLE III—PUBLIC SCHOOLS AND FACILITIES

The Civil Rights Act of 1964 authorizes the Attorney General to bring suit to desegregate a public facility (Title III) or public educational institution (Title IV) on written complaint of an aggrieved person. Further, before the Attorney General may sue, he must determine that the complainant is unable to institute and maintain a suit.

The requirement that there be a written complaint and that the complainant be unable to bring suit has proven to be an obstacle to the 1964 statutory objective of furthering "the orderly achievement of desegregation." The requirement is impractical, since deprived Negroes are often unfamiliar with the requirement that the complaint be in writing or that a complaint must be filed with the Attorney General at all. And in some places intimidation or fear of reprisals prevents persons seeking to exercise their rights from filing a complaint. Thus, it is often true that these restrictions prevent the Attorney General from acting in the very areas where there is the greatest need.

Title III would remedy this by authorizing the Attorney General, on his own initiative, to bring a civil action for injunctive relief whenever he has reasonable cause to believe that a person is being denied his right to the equal protection of the laws with respect to a public school or other public facility. It would also authorize him to seek injunctions against interference with such rights by public officials or private individuals. As noted above, similar discretionary authority is now possessed by the Attorney General with respect to the protection of voting, public accommodation, and employment rights.

TITLE IV—HOUSING

It is the purpose of Title IV to eliminate discrimination in residential housing on account of race, color, religion or national origin. To that end, it would prohibit discrimination by property owners, real estate brokers, and others engaged in the sale, rental or financing of housing. The bill would reach not only discriminatory practices in the sale, rental or financing of housing but also such acts as mobs blocking a minority-group family from moving into a neighborhood or mulitple-listing associations excluding, or refusing their services to, persons who sell or rent housing in a nondiscriminatory manner. The title would also prohibit coercion, intimidation or interference with the right of a person to obtain housing and its financing without discrimination or to aid others in exercising such rights.

A person alleging a violation could bring an action in a Federal district court or a State or local court for injunctive relief and for damages. In the court's discretion, he could also be awarded up to $500 punitive damages. The attorney General would be empowered to initiate suits in Federal courts to eliminate a "pattern or practice" of discrimination, and to intervene in a private suit brought in a Federal court.

The legislation would also expressly authorize the Secretary of Housing and Urban Development to make and publish studies of housing discrimination, formulate proposed codes or standards of conduct for fair housing, and cooperate with and render assistance to the Community Relations Service and other governmental and private agencies engaged in eliminating discrimination in housing.

This title specifically provides that nothing in it shall be construed to validate or limit any State or local laws which grant, guarantee, or protect the same rights as are granted by it. On the other hand, the title also provides that any law which purports to require or permit action which would be a discriminatory housing practice under this title shall to that extent be invalid.

TITLE V—INTERFERENCE WITH RIGHTS

Title V is a criminal statute designed to deter and punish interference by force of threat of force with activities protected by Federal law or the Constitution. This title would strengthen the government's capability to meet the problem of civil rights violence. Each area of protected activity is specifically described. They are voting, public accommodations, public education, public services and

facilities, employment, housing, jury service, use of common carriers, and participation in federally assisted programs.

The statute would protect Negroes and members of other minority groups from violence directed at them while they are engaging in, or because they have participated in, such activities, and from violence which is intended to discourage the victims from engaging in such activities. In this regard, the title would also punish violence directed against a person who has not been involved in civil rights activity but who is selected as a victim in order to intimidate others.

Title V would also protect civil rights workers and others who urge or aid participation in these activities, as well as those who engage in any form of speech or peaceful assembly opposing denial of the opportunity to particiate in such activities. Persons who have duties to perform with respect to the protected activities—such as public school officials, restaurant owners, and employers—would also be protected.

The title would prohibit forcible interference with any of the specified activities by private individuals acting alone as well as by public officers or other persons acting under color of law.

Unlike 18 U.S.C. 241 and 242, which are general in their terms, Title V is specific and would stand by itself, requiring no reference to the Fourteenth Amendment (or any other law) to determine what conduct is prohibited. Thus, in a prosecution brought under this statute the Government would not have to prove a "specific intent" on the part of the defendant, as is presently required by the courts in prosecutions under 18 U.S.C. 241 and 242.

The prescribed penalties are graduated in accordance with the seriousness of the results of violations, ranging from misdemeanor penalties to life imprisonment.

Title V also amends the penalty provisions of sections 241 and 242 of Title 18, United States Code, to provide a similarly graduated penalty structure.

TITLE VI—MISCELLANEOUS

Title VI authorizes the necessary appropriations and contains the customary separability provision.

I urge the early and favorable consideration of this important legislation.

The Bureau of the Budget has advised that enactment of this legislation would be in accord with the Program of the President.

Sincerely,

(S) NICHOLAS DEB. KATZENBACH,
Attorney General.

The CHAIRMAN. Mr. McCulloch.

Mr. MCCULLOCH. Mr. Chairman, I have no formal statment to make today.

Mr. Chairman, I am pleased that you set forth the number of day's hearings that would be had in this matter, and I may say that I, too, am not interested in any unnecessary delays. Yet, Mr. Chairman, and members of the committee, I think that all proper time should be taken to explore the questions that arise in this legislation and fully to hear all interested witnesses.

I might say in that connection that our colleague, Mr. Mathias, together with several other of our colleagues who introduced legislation, several weeks ago, want full time to be heard. Mr. Mathias has been ill and has just returned home from the hospital, and he will not be able to be here this week.

I am pleased, therefore, with the chairman's statement that there will not, on the other hand, be unnecessary haste in going to the very heart of the problem.

STATEMENT OF REPRESENTATIVE PETER W. RODINO, JR., IN SUPPORT OF H.R. 14765

Once again this Committee has before it a civil rights bill that is designed to assure equal treatment of all citizens before the law. And once again we will demonstrate our alertness to the cause of human justice and civil equality by striking down inequities in the fabric of American society.

Since the historic Civil Rights Act of 1964 and 1965 we have been progressing in a logical, orderly, and constitutional manner to improve the administration of justice, insure the integrity of the ballot box, further the drive for equal educational and employment opportunities, and protect all citizens against interference in the enjoyment of long established constitutional guarantees of individual liberty.

Specifically, the proposed Civil Rights Act of 1966 will secure the right of citizens to serve on Federal and State juries without discrimination on account of race, color, sex, religion, national origin, or economic status. The Attorney General has testified to the effect that there has been ". . . gross systematic exclusion of members of the Negro race from jury duty . . .", and that "either by law or practice, women, persons of low economic status, and persons of identifiable national origin have sometimes been excluded from jury service." Jury discrimination obviously violates the sense of the Federal Constitution, and warps a fundamental tenet of our entire legal system that is based on the principle of trial by one's peers.

I fully support legislation to end jury discrimination, and to give the Attorney General adequate authority to enforce, through the courts, this basic right of the American judicial system.

Regrettably, violence in our society remains a stark reality as highlighted by the assassination of a beloved President and the numerous killings of white and Negro citizens attempting to act in accord with our vaunted principle of equal rights. Rightfully, violence has become an issue of national remorse and concern. The Civil Rights Act of 1966 promises vigorous Federal protection from intimidation, the threat of force, violence, and terror directed against persons exercising constitutional rights, duties, and privileges of American citizenship.

In 1954 we were bombarded with dire predictions of impending doom and gloom if school desegregation was allowed to become our national policy; and again in 1964 one heard ominous whisperings of inevitable chaos if the public accommodations section of the Civil Rights Act of 1964 was passed. The American people, true to their heritage of openness and fairness, have already cast aside those false prophecies, and I predict that the Civil Rights Act of 1966 will be judged by future Americans as a necessary and correct step in assuring equal treatment for all our citizens.

The CHAIRMAN. Mr. Katzenbach.

STATEMENT OF ATTORNEY GENERAL NICHOLAS deB. KATZENBACH; ACCOMPANIED BY STEPHEN POLLAK, FIRST ASSISTANT, CIVIL RIGHTS DIVISION; AND ALAN MARER

Attorney General KATZENBACH. Mr. Chairman and members of the subcommittee, I apologize for the length of the statement, but I believe that since the legislation that is proposed here is important, and has its complexities, that it will probably promote the understanding of the committee of this proposal if I read it in its entirety.

I am accompanied here this morning by Stephen Pollak, who is the first assistant in the Civil Rights Division, and by Alan Marer. Mr. John Doar would have been here, if he were not otherwise engaged.

It is a privilege to come before this committee, as you embark on the consideration of the proposed Civil Rights Act of 1966, H.R. 14765, and to urge its prompt enactment.

During the past 3 years this committee has been almost continuously in the eye of the storm. Yet it has confronted directly a series of measures raising profound issues of both social upheaval and social adjustment.

It has done so with wisdom, insight, and with a substantial fusion of purpose and action on both sides of the aisle. The whole Nation has been the beneficiary of your work, and you have played an indis-

pensable role in the process of peaceful and timely change without which there might be deep rifts in our public order.

The President reminded us in his Howard University address last year that the inequities suffered by Negroes are not isolated infirmities. "They are," he said, "a seamless web. They cause each other. They reinforce each other. Most of the Negro community is buried under a blanket of history and circumstance. It is not a solution to lift one corner of that blanket * * * we must raise the entire cover if we are to liberate our fellow citizens."

It is possible to report measurable and meaningful progress since the passage of the Civil Rights Acts of 1964 and 1965. The overwhelming conscience of the Nation has been truly aroused.

We have made heartening progress toward achieving the integrity of the ballot since the enactment of the voting rights bill last August.

And, Mr. Chairman, I suggest that the elections in Alabama yesterday were proof of the wisdom of this committee in proposing that legislation.

In the five States affected by this act the number of Negroes registered has increased by 50 percent—350,000 newly registered voters; in these States 43 percent of the total number of eligible Negroes are registered, and I can assure you that this will further improve by this fall.

More than two-thirds of these new voters have been enrolled by local officials. In the 11 States of the South registration now exceeds 50 percent of total eligible Negroes.

The impact has not only been a statistical one; there have been environmental changes also. The terms of political debate and attitudes in the South are changing.

In school desegration the rate is progressively accelerating. In this past year over 1,500 school districts reported either specific headway or at least acquiescence in the principles of the law and the guidelines formulated by the Department of Health, Education, and Welfare.

Only 80 districts in the 17 Southern and Border States refused to comply.

In the 11 states of the South only 6 percent—180,000 out of about 3 million—of Negro children attend desegrated schools, but this marks more progress in 1 year than in all previous years. Again, this next fall we see a greater mobilization of effort and accomplishment. The passage of title III of the bill would further insure this result.

The experience we have had in very recent weeks in so difficult an area as Lowndes County, Ala., is reassuring.

In employment, experience is short. But in the 9 months since title VII went into effect, the work of the Equal Opportunity Commission has moved forward rapidly.

In public accommodations compliance has been marked though considerable momentum had already voluntarily been set in motion prior to the passage of the 1964 act. But once Congress set uniform requirements and the Department of Justice had the power to file suits, the rate of progress rose sharply.

Equally significant, there has been a mutually reinforcing effect between the assaults our Government is making on the malignancies of poverty, the greatly intensified efforts to lift all levels of educational quality and opportunity, and the civil rights legislation.

Why, then, a Civil Rights Act of 1966?

The answer is that there continue to be deep-seated, interconnected, and complex problems of racial injustice which are immediate, apparent, and not susceptible to effective treatment without action by Congress now.

Title V is, of course, a response to the shameful catalog of racial killings—sometimes Klan sponsored—most of which have so far gone unpunished.

The responsibility for maintaining order and security is primarily one for State and local government. Title V does not diminish this responsibility. What it does is give to the Federal Government a capacity to deal with Klansmen and other fanatics when the local authorities are unwilling or unable to do so, or when Federal action is appropriate to vindicate federally protected rights.

Titles I and II seek to end discrimination in our jury system.

Title III will give us tools we need if we are to complete the desegregation of schools and public facilities.

Beyond this, however, we have the plain fact of a further blight on the social climate which relentlessly obstructs progress toward human equality all across the country. This is the inequity in housing everywhere which sharply retards all our efforts in civil rights, education, employment, and recreation. The ending of compulsory residential segregation has become a national necessity.

This is the purpose of title IV.

Residential segregation strikes at dignity and freedom in a manner often more subtle and less resounding than acts of terror, exclusion from the polling booth, or barricades at the school door. Yet the isolations and tensions produced by housing segregation are serious ruptures in our national life and undercut all the other efforts toward human and economic betterment. Law must lead and law must protect in this vital area as it has in voting, public accommodations, school and employment.

Freedom in the choice of housing is a large principle of modern civilized society which cannot be reduced now to the technicalities of administrative improvisations or judicial interpretation. It requires a concerted voice and the enlarged effort that will unquestionalbly result from congressional action.

Let me turn then, Mr. Chairman, directly to the bill.

TITLES I AND II—JURY REFORM

I can think of nothing more fundamental to our legal system than the right to have an impartial trial of the facts in every criminal and civil case. To assure impartiality in cases triable by jury, the Federal Constitution requires that no invidious discrimination be made in the selection of jurors in State and Federal courts.

Unfortunately however, this command of the fundamental law had not always been obeyed. Let me describe, first, the scope and nature of the problem of jury discrimination in the State courts.

In the last century there have been scores of court opinions dealing with claims of jury discrimination in State courts, including at least 35 decisions by the U.S. Supreme court alone. In just the very recent past, there have been judicial findings of jury discrimination in State

courts in Alabama, Arkansas, Georgia, Kentucky, Louisiana, Mississippi, and North Carolina.

A striking example of unconstitutional jury exclusion is set forth in a decision of a three-judge Federal court in Alabama, handed down on February 7 of this year, in the case of *White* v. *Crook*. Despite the fact that Negroes comprised 72 percent of the adult male population of Lowndes County, Ala., they made up just slightly more than 1 percent of the names on the jury rolls and, as the court found, "No Negro had ever served on a civil or criminal petit jury" there.

The district court found that the jury commissioners of Lowndes County had "pursued a course of conduct in the administration of their office which was designed to discriminate and had the effect of discriminating in the selection of jurors on racial grounds."

The result, the court said, was gross systematic exclusion of members of the Negro race from jury duty in Lowndes County.

The full scope of the jury discrimination problem is not revealed, however, by focusing exclusively on exclusion of Negroes. Either by law or practice, women, persons of low economic status, and persons of identifiable national origins have sometimes been excluded from jury service.

Legal challenges to jury discrimination should not be left exclusively to individual defendants in criminal cases or to private citizens, often hardly able to afford it, who might bring civil actions. In this connection, the United States Court of Appeals for the Fifth Circuit observed that (*United States ex. rel. Goldsby* v. *Harpole*, 263 F. 2d 71, 82 (C.A. 5, 1959)):

> The very prejudice which causes the dominant race to exclude members of what it may assume to be an inferior race from jury service operates with multiplied intensity against one who resists such exclusion. Conscientious southern lawyers often reason that the prejudicial effects on their client of raising the issue far outweigh any practical protection in the particular case.

Once a claim of unlawful exclusion has been raised, the information necessary to sustain the challenge may not be accessible to the complainant or, in fact, the records prepared in the course of selecting jurors may not have been retained by jury officials.

Even when available the records may be so voluminous and the dimensions of the investigation so great that only the rarest of private litigants have the time and resources to prepare the case.

The Federal Government presently has no authority to act independently to bring civil actions for relief against unconstitutional discrimination in State jury selection procedures. The Department of Justice is authorized by title IX of the 1964 Civil Rights Act to intervene in jury discrimination suits brought by private litigants under 42 U.S.C. 1983. The Department has intervened recently in six such suits, including the Lowndes County suit that I have described, and has participated as an amicus curiae in five other recent jury discrimination cases. But the Department's authority to act in this area is unduly limited.

The problem of jury selection in the Federal court system is somewhat different. Varying selection systems are used, and the results in some cases create the appearance of unfairness. At a minimum they lack desirable uniformity in the opportunities for service afforded to all segments of the community.

One of the most widely used methods of securing source list of names is the so-called keyman system. Over 40 Federal judicial districts rely exclusively on this system under which the Federal jury officials ask various individuals in the district to submit names of persons who, in the opinion of the individuals contacted, would be suitable for jury service, and persons suggested for jury duty under this system are frequently members of the social and economic classes to which the keymen themselves belong.

Recent informal samplings taken by the Department of Justice in six States of the South show a substantial disparity between the percentage of the adult Negro population and the percentage of Negroes on jury panels or jury lists.

In none of the districts surveyed in Alabama, Florida, Georgia, Louisiana, Mississippi, or Texas did the percentage of Negroes on Federal jury panels equal the percentage of age-eligible Negroes in the population of the district.

Nor is the Federal jury problem confined to the underrepresentation of Negroes or other racial or national origin minorities. There is also reason to believe that in some places persons of relatively low economic status are underrepresented, while wealthier persons constitute a greater percentage of jurors than is warranted by their percentage of the population.

Exclusion of any person from jury service in any court in this country on account of race, color, religion, national origin, sex, or economic status is inconsistent with our principles.

As the Supreme Court has said—

> The American tradition of trial by jury . . . necessarily contemplates an impartial jury drawn from a cross section of the community . . . Jury competence is an individual rather than a group or class matter.

Thiel v. *Union Pacific Railroad*, 328 U.S. 217, 220 (1946). To disregard this principle, the court has said, "is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."

FEDERAL JURIES

The basic objective of title I is to assure that Federal grand and petit jurors are drawn from a full cross section of the community. This title contains four key features designed to accomplish this objective.

First, it provides that no person or class of persons shall be denied the right to serve on grand or petit juries in Federal courts on account of race, color, religion, sex, national origin, or economic status.

Second, it designated voter registration rolls as the exclusive sources from which names of prospective jurors must be drawn, subject to an exception where, in the judgment of the judicial council of the circuit, use of the voter rolls would not result in obtaining an adequate cross section.

Third, it specifies definite requirements for the selection of names from the basic sources and detailed mandatory procedures for each subsequent step in the selection process.

Fourth, it provides a challenge mechanism for determining whether jury officials have followed the prescribed procedures.

Section 1864 requires the jury commission in each district to maintain a master jury wheel for the district—or separate wheels for divisions or places of holding court—and to place in the master wheel names of potential jurors selected at random from the official voter registration lists.

These voter rolls currently reflect a fair cross section of the community in most areas, and the Voting Rights Act of 1965 provides the means to end in the near future such racial discrimination in the voter registration process which has not yet been eliminated.

We have, however, also made provision for the current period of transition during which some areas are moving from large-scale exclusion of Negroes from the electorate to full participation by Negroes in elections.

The key provision is section 1864(a). It provides that in areas in which Negroes and/or other groups are still not fairly represented on the voter rolls—whether because of the lingering effects of past discrimination, intimidation, the mores of a segregated society, or other factors—the judicial council of the circuit would be required to designate other sources of names to supplement the voting lists so that the pool of potential jurors will fairly reflect the population of the district. The sitting appellate court judges comprise the judicial council.

The next step in the selection process is to draw names from the master wheel and summon by mail the persons whose names are drawn. A person summoned, must appear before the clerk, and fill out a juror qualification from which will elicit his name, address, age, sex, religion, education, race, occupation, and citizenship, as well as other information necessary to determine whether he is qualified to serve as a juror.

This title retains the qualifications prescribed by present law. One of these qualifications is that a juror must be able to read, write, speak, and understand the English language. The determination whether a person is able to meet this qualification is to be based solely on the juror qualification form.

A person who is able to fill out the form substantially, who stated on the form that he is able to read, write, and speak and understand the English language, and who satisfies the remaining qualifications, must be found qualified to serve.

Imposition of higher qualifications not set forth in the statute in an effort to obtain so-called blue ribbon juries would not be permissible under this title.

The names of all persons determined to be qualified are then to be placed in a qualified juror wheel. As jurors are needed, the jury commission is to draw names from the wheel and assign persons to particular grand or petit jury panels.

Section 1867 establishes a special procedure in both criminal and civil cases for determining whether the provisions governing selection procedures—section 1864, 1865 and 1866—have been complied with. If the court determines that there has been a failure to comply with these procedural provisions, it is required, as appropriate, to dismiss the indictment or stay the proceedings pending the selection of a petit jury in conformity with this title.

Persons challenging the selection system must be given access to confidential jury records if there is "some evidence" of noncompliance

with the procedural requirements. This is intended to impose only a modest burden on the challenger, however, and he need not, for example, make a prima facie case of noncompliance, as that concept has developed in jury discrimination cases under the 14th amendment.

There need only be enough evidence to cause a reasonable man to believe that further investigation is necessary before the allegation can be disposed of, and moreover, in order to prevail on the challenge, it is not necessary for the challenger to show prejudice in his particular case, only some significant failure to comply with the prescribed procedures.

This challenge provision and mechanism is intended to be a self-executing enforcement provision. The possibility of the filing of a challenge motion and disclosure of jury records should go far to insure that proper procedures are followed.

Finally, under present law entire classes of persons can be excluded from jury service on hardship grounds. Under the bill, excuses may only be granted on an individual basis and then only for 6 months at a time in cases of unusually severe hardship.

Since the bill substantially increases juror fees and mileage payments, eliminating so much of the economic hardship now entailed in jury service, such service should impose no undue burden on most wage earners and members of other low-income groups.

STATE JURIES

Title II of the bill is designed to eliminate all forms of unconstitutional discrimination in the selection of jurors in State courts. This title contains three basic provisions.

First it prohibits discrimination in State jury selection processes on account of race, color, religion, national origin, sex, or economic status.

Second, it authorizes the Attorney General to enforce the prohibition by civil injunctive proceedings against State jury officials.

Third, it provides a discovery mechanism to facilitate determinations of whether unlawful discrimination has occurred in the jury selection process.

Although the terms of prohibition on discrimination contained in section 201 are identical to the corresponding section in Title I: Government, Federal Juries, the effect of the prohibition of discrimination on account of sex and economic status will be somewhat different. Under the Federal jury system embodied in title I, all jurors would be selected at random from the voter rolls and no exemptions, excuses, or exclusions based solely on sex or economic status would be authorized.

Under title II two types of State laws regulating jury service by women would be nullified. First, those in Alabama, Mississippi, and South Carolina which totally exclude women from jury service.

Second, those in Florida, Louisiana, and New Hampshire which exclude women unless they affirmatively volunteer for jury service by taking steps—not required of men—to sign up for jury service.

The laws in the second category place a heavier burden on women who want to serve, than on men, and undoubtedly exclude many women who do not know that they must volunteer.

Similarly, the ban on economic discrimination in title III would not outlaw every State procedure which may have some incidental eco-

nomic impact. State laws imposing direct economic qualifications for jury service, such as New York State's $250 property qualification, would be nullified by title II.

State laws prescribing the tax rolls as the exclusive source of names of jurors would also be nullified unless the tax base is so broad as to include practically every adult in the community.

Other State laws which may be affected by title II, depending upon how they are construed and administered in practice, include those which prescribe direct economic qualifications, but only in the alternative; and those which call for tax lists or other selective sources of names as an alternative to other unobjectionable sources.

Title II would authorize the Attorney General to institute in a Federal court a civil action for preventive relief whenever he has reasonable grounds to believe that State jury officials are violating the prohibition against discrimination. This provision is similar to statutes authorizing the Attorney General to sue to prevent violations of Federal rights with respect to voting, public accommodations, and employment, and under title III of the bill, with respect to schools and public facilities.

Of course, litigants in both civil and criminal cases in the State courts could continue to challenge the composition of juries—including possible violations of section 201—under existing procedures.

The third important provision of title II is the special discovery procedure contained in section 204. The discovery machinery, to be available in addition to that afforded under the Federal rules or applicable State law, would be set in motion whenever it is asserted in an appropriate case that discrimination had occurred in the jury selection process.

Upon making of such an assertion, the appropriate State or local officials are required to furnish a sworn written statement of jury selection information containing a detailed description of the sources of names of potential jurors and of all standards and procedures employed in each step of the jury selection process.

The written statement of jury selection information constitutes evidence on the issue of discrimination. In addition, the complaining party may cross-examine the State jury officials and any other persons having knowledge of revelant facts and may also present any other available relevant evidence.

If, at that point, the court determines that there is some evidence of discrimination, the complaining party is to be given access to any relevant records and papers relating to the jury selection process which may otherwise be unavailable to him under State law.

The purpose and meaning of the some-evidence requirements here is substantially the same as the some-evidence requirement under title I. If the court then determines that there is reasonable cause to believe that discrimination has occurred and that the records and papers of the jury officials are inadequate to permit a determination of this issue, it becomes the responsibility of the appropriate State officials to produce additional evidence demonstrating then that discrimination did not occur.

Title II provides the means of assuring that State juries are selected in conformity with the Constitution while, at the same time, leaving

those State and local courts which have always met their responsibilities free to follow their traditional procedures.

TITLE III—PUBLIC SCHOOLS AND PUBLIC FACILITIES

Under titles III and IV of the Civil Rights Act of 1964 the Attorney General is authorized to initiate civil proceedings to desegregate public schools and facilities. But this authority has proved deficient for three principal reasons.

First, the Attorney General may sue only after a written complaint has been received from an aggrieved person, and many Negroes are not familiar with the complaint requirement or do not know how to go about complying with it.

Second, even when a complaint has been filed, the Attorney General may sue only if he determines that local residents or other interested groups will be unable to bear the burden of litigation themselves—a time-consuming and difficult judgment to make.

Third, school desegregation has generated an increase of violence and intimidation aimed at Negroes seeking to assert their constitutional rights. Thus the requirement of a written complaint as a prerequisite to a suit by the Federal Government, and intimidation of Negroes have proved to be mutually reinforcing obstacles to the orderly progress of desegregation, the expressed statutory purposes of titles III and IV.

Title III of the bill is designed to insure that such unlawful intimidation does not affect the power of the Federal Government to bring suits to desegregate schools and public facilities.

It would repeal both the written complaint requirement and the requirement of a determination that local residents are unable to sue on their own behalf. It would also authorize civil proceedings by the Attorney General to enjoin interference by private individuals or public officials with desegregation of public schools and facilities. Title V of this bill would impose criminal penalties for such interference.

TITLE IV—HOUSING

In the Civil Rights Act of 1866, Congress declared:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

Again, in the National Housing Act of 1949, Congress made an even broader commitment by pledging the Nation to the goal of a decent home and a suitable living environment for every American family.

Yet today, 100 years after the Civil Rights Act and 17 years after the Housing Act, we find, in the words of the U.S. Commission on Civil Rights, that—

housing . . . seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay.

Title IV of the President's bill is designed to help achieve equality in the marketplace.

The past 20 years have provided the country with millions upon millions of new dwelling units and have vastly changed the character

of our urban residential areas. Suburbia has come into being around the boundaries of our cities and continues to spread.

Except for our Negro citizens, virtually all Americans have had an equal opportunity to share in these developments in our national life. The Negro's choice in housing, unlike that of his fellow citizens, is not limited merely by this means.

It is limited by his color. By and large, desirable new housing in our cities and suburbs is foreclosed to him, and, ironically, because of its scarcity, what housing is left available to him frequently costs him more, judged by any fair standard, than comparable housing open to whites.

The result is apparent to all: impacted Negro ghettos that are surrounded and contained by white suburbia. The problem has arisen in metropolitan communities everywhere in the country.

Segregated housing is deeply corrosive both for the individual and for his community. It isolates racial minorities from the public life of the community. It means inferior public education, recreation, health, sanitation, and transportation services and facilities.

It means denial of access to training and employment and business opportunities. It prevents the inhabitants of the ghettos from liberating themselves, and it prevents the Federal, State, and local governments and private groups and institutions from fulfilling their responsibility and desire to help in this liberation.

Through the years, there has been considerable State and private response to discrimination in housing. Seventeen States, the District of Columbia, Puerto Rico, the Virgin Islands, and a large number of municipalities have enacted a variety of fair housing laws.

Volunteer efforts by private citizens also have been organized in many communities, such as Neighbors, Inc., here in the District of Columbia.

In addition, there has been a series of actions by the Federal Government.

In the judicial branch, the Supreme Court acted decisively as early as 1948 when it held racially restrictive covenants to be unenforcible in either the State or Federal courts.

In the executive branch, President Kennedy's Executive Order 11063 of November 20, 1962, established the President's Committee on Equal Housing Opportunity and forbade discrimination in new FHA- or VA-insured housing.

By now it should be plain that a patchwork of State and local laws is not enough. The work of private volunteer groups is not enough. Court decisions are not enough. The limited authority now available to the executive branch is not enough.

The time has now surely come for decisive action by the legislative branch of the Federal Government. Durable remedies for so endemic and deep-seated a condition as housing segregation should be based on the prescription and sanction of Congress. This is all the more so as the issue is national in scope and as it penetrates into so many other sectors of public policy such as the rebuilding and physical improvement of our cities.

The extent to which the decisions of individual homeowners reduce the availability of housing to racial minorities is hard to estimate.

But I believe it is accurate to say that individual homeowners do not control the pattern of housing in communities of any size. The main components of the housing industry are builders, landlords, real estate brokers, and those who provide mortgage money. These are the groups which maintain housing patterns based on race.

I do not mean to suggest that the enforcement of segregation in housing is necessarily motivated by racial bias. More often the conduct of those in the housing business reflects the misconception that neighborhoods must remain racially separate to maintain real estate values.

While there exist studies which indicate that segregated housing does not depress real estate values, many in the real estate business fear to take the chance. I have no doubt that they simply feel trapped by custom and the possibility of competitive loss. The fact is, however, that their policies and practices are what perpetuate segregated housing.

At present a particular builder or landlord who resists selling or renting to a Negro most often does so not out of personal bigotry but out of fear that his prospective white tenants or purchasers will move to housing limited to whites and that, because similar housing is unavailable to Negroes, what he has to offer will attract only Negroes. If all those in the housing industry are bound by a universal law against discrimination, there will be no economic peril to any one of them. All would be in a position to sell without discrimination. Indeed, experenced developers have stated that they would welcome such a law.

Therefore, I think it would be a mistake to regard the most significant aspect of a Federal fair housing measure as its sanctions against builders, landlords, lenders, or brokers. What is more significant, rather, is that they can utilize this law as a shield to protect them when they do what is right.

The same protection would be given an individual homeowner who privately has no reservation about selling his home to a Negro but who may be inhibited by the fears he could generate among the neighbors he is leaving. A uniform statute would outlaw segregation in all neighborhoods.

There is a close parallel here with the impact of the public accommodations title of the Civil Rights Act of 1964. Restaurant or motel owners, willing to desegregate, failed to do so because of economic fears. Once the act was passed—and all of their competitors had to serve Negroes—many quickly complied.

Title IV applies to all housing and prohibits discrimination on account of race, color, religion or national origin by property owners, tract developers, real estate brokers, lending institutions and all others engaged in the sale, rental, or financing of housing.

It also prohibits coercion or intimidation intended to interfere with the right of a person to obtain housing without discrimnaton—for example, the coercion of a mob attempting to prevent a Negro family from moving into a neighborhood.

And it prohibits retaliatory action by real estate boards or associations against real estate agents who have refused to discriminate against Negroes or other persons of minority groups.

Title IV provides a judicial remedy. An individual aggrieved by a discriminatory housing practice would be enabled to bring an action in either a Federal district court or a State or local court for injunctive relief and for any damages he may have sustained. In the court's discretion, he could also be awarded up to $500 exemplary damages.

The title empowers the Attorney General to initiate suits in Federal courts to eliminate a "pattern or practice" of discrimination, and to intervene in private suits brought in Federal courts.

Title IV is based primarily on the commerce clause of the Constitution and on the 14th amendment. I have no doubts whatsoever as to its constitutionality.

As one of the Justices of the Supreme Court said in the very recent *Guest* case—to which I shall return shortly—the 14th amendment includes a "positive grant of legislative power, authorizing Congress to exercise its discretion in fashioning remedies to achieve civil and political equality for all citizens."

I have pointed out already how segregated living is both a source and an enforcer of involuntary second-class citizenship. To the extent that this blight on our democracy impedes States and localities from carrying out their obligations under the 14th amendment to promote equal access and equal opportunity in all public aspects of community life, the 14th amendment authorizes removal of this impediment.

That there is official and governmental involvement in the real estate and construction industries needs little demonstration. Apart from zoning and building codes, there are the obvious facts of regulations covering credit, mortgages, interest rates, and banking practices, and there is the universal licensing of real estate agents.

But there are more basic considerations.

Are we to tell our Negro citizens that the Congress which has guaranteed them access to desegregated public schools and to swimming pools and to golf courses is powerless to guarantee them the basic right to choose a place to live? I would find this hard to explain, for I would not be able to understand it myself.

To me it is clear that the 14th amendment gives Congress the power to address itself to the vindication of what is, in substance, the freedom to live.

Congress can and must make the legislative judgment that without equal housing opportunity there cannot be full equality under law. Congress can and must determine that the enforcement of involuntary segregation through discriminatory housing practices is inconsistent with the words, spirit, and purpose of the 14th amendment.

These are the human terms in which the Constitution speaks and cries out for quick response. There are also economic terms. The Congress is charged with the protection and promotion of interstate commerce in all its forms.

I cannot doubt that housing is embraced under this congressional power. The construction of homes and apartment buildings, the production and sale of building materials and home furnishings, the financing of construction and purchases all take place in or through the channels of interstate commerce.

When the total problem is considered, it requires no great leap of the imagination to conclude that interstate commerce is significantly

affected by the sale even of single dwellings, multiplied many times in each community.

It was almost 30 years ago that the Supreme Court faced and resolved this problem in *Wickard* v. *Filburn*. In that case the court held that the Agricultural Adjustment Act could validly apply to a farmer who sowed only 23 acres of wheat, almost all of which was consumed on his farm.

The housing industry last year represented $27.6 billion of new private investment. This expenditure on residential housing is considerably more than the $22.9 billion which all American agriculture contributed to the gross national product in 1965.

Simply consider in practical terms how housing is financed, built, and sold.

Take the case of a real estate developer in California who wants to construct a subdivision on land in Arizona. He and a group of associates raise money from banks in New York, from insurance companies in Connecticut, from pension funds in Chicago. They go to Arizona to purchase the land: hire a contractor from Texas to build the homes; he leases construction equipment in Colorado, orders lumber from Oregon, millwork from Michigan, steel products from Pennsylvania, appliances from Ohio, furnishings from North Carolina. Meanwhile the developer is advertising for buyers from all over the Nation in national magazines and in newspapers from coast to coast. Buyers are found; they in turn secure mortgages from banks and insurance companies throughout the country. One might almost say that everything in each of those homes—from the land to the homeowner—"moved" in interstate commerce; but certainly the "housing" as a marketable commodity, was created, financed, and sold in and through the channels of interstate commerce.

Of course, like Mr. Filburn's wheat, not every home has all of these connections with interstate commerce. But most housing has some of these. For example, of the total of almost 15 million single-family occupant-owned dwellings that carried mortgages in 1960, 2½ million were mortgaged to out-of-State lenders. More than half the home mortgages held by insurance companies were held by companies outside the homeowner's State. What is more, in many of our largest cities with the most serious housing problems, the local real estate markets are themselves in interstate commerce, seeking owners and tenants from multistate metropolitan areas or through national listings. Such cities as Kansas City, New York, Chicago, St. Louis, Cincinnati, Omaha, Philadelphia, have "bedroom areas" crossing into other States.

There thus can be no doubt that anything which significantly affects the housing industry also affects interstate commerce. Discriminatory housing practices produce such an effect. They restrict the amount and type of new housing; discourage the repair and rehabilitation of existing housing; remove incentives to the purchase of new furniture and appliances, and frustrate the efforts of people to move from job to job and from State to State.

Clearly the people, the money, the materials, the entrepreneurial talent which move in and to the housing market are not confined within single States. Rather they are well within the range of congressional

regulation, and within this range Congress' judgment as to what problems need solving and how they should be solved is necessarily broad. Title IV identifies a national problem. It suggests an effective solution.

TITLE V—NEW CRIMINAL LEGISLATION

The vast majority of Americans have welcomed the efforts of American Negroes to assume their rightful position of equality in all aspects of our public life. Other Americans, although finding these developments difficult to approve, have accepted them in a spirit which does credit to our principles of majority rule and respect for law. But unfortunately, our society includes a small minority of lawless elements who have reacted with violence to these efforts. We know, too, that unpunished acts of racial violence can effectively deter the free exercise of Federal rights and frustrate the national commitment to equality in public life.

It is a historic and, I believe, sound principle of federalism that the keeping of the peace is, for the most part, a matter of State and not Federal concern. This system works, even where racial strife exists, in those places where public opinion supports law and order and local law-enforcement officials carry out their Federal constitutional duties to provide protection to citizens without regard to race or color and proceed against wrongdoers.

The fact is, however, that in some places local officials either have been unable or unwilling to prosecute crimes of racial violence or to obtain convictions in such cases even where the facts appeared to warrant conviction.

But the need for effective Federal criminal legislation in the civil rights area does not arise solely from a malfunctioning of State or local administration of the criminal law. Particularly in recent years, crimes of racial violence typically have been directed to denying positive Federal rights and thus reflect a purpose to flout the will of the Congress as well as to express age-old racial animosities. Alexander Hamilton seems to have had both of these considerations in mind when he observed in No. 81 of "The Federalist" that "the prevalence of a local spirit" would require that Federal courts be vested with "the jurisdiction of national causes."

The principal Federal criminal sanctions against crimes of racial violence on the books today are sections 241 and 242 of the Federal Criminal Code. In March, the Supreme Court decided two cases—*United States* v. *Price* and *United States* v. *Guest*—involving the construction of these statutes as they were applied in indictments for conspiracies involving killings in Neshoba County, Miss., and on a highway in Georgia. The Court's decision in *Price*—where private individuals and public officials were indicated—establishes that when public officials or private individuals acting in concert with public officials interfere with the exercise of the 14th amendment rights, section 241 is violated. In the *Guest* case, however, only private individuals had been indicated. The Court in *Guest* sustained a branch of the indictment charging a private conspiracy to interfere with the right to travel interstate—a distinctly "Federal" right not dependent upon the 14th amendment.

But that portion of the indictment which charged a conspiracy of private persons to interfere with 14th amendment rights—in that case, the right to use the highways and other State facilities without discrimination on account of race or color—appears to have been upheld because of certain allegations of official involvement in the conspiracy (even though no public officials had been indicted). The opinion leaves in doubt the question whether Congress in section 241 reached purely private interference with 14th amendment rights.

The really important fact about the *Guest* decision, however, is that six Justices declared that Congress has the power, under section 5 of the 14th amendment, to reach such private misconduct if it chooses to do so.

Before turning to an explanation of title V of the bill—which embodies among other things a responsible answer to the *Guest* case—let me mention another defect in the present law.

Section 241 is worded in general terms. As Justice Holmes once said of section 241, it protects Federal rights "in the lump." Because it is not always clear just what rights are secured or protected by the 14th amendment, the Supreme Court has read in the requirement that the Government prove a "specific intent" on the part of the defendant to deprive his victim of a particular 14th amendment right. As Justice Brennan said, commenting on this "specific intent" requirement in his concerning opinion in the *Guest* case:

> Since the limitation of the statute's effectiveness derives from Congress' failure to define—with any measure of specificity—the rights encompassed, the remedy is for Congress to write a law without this defect * * *. If Congress desires to give the statute more definite scope, it may find ways of doing so.

Specific statement of the protected fields of activity has a further value: the prohibition should be better understood by would-be violators. Such a statute would have a greater deterrent effect.

Title V of the bill is intended to achieve four main objectives.

First, it would make it a crime for private individuals forcibly to interfere, directly or indirectly, with participation in activities protected by Federal laws, including the 14th amendment—whether or not "State action" is involved. It would also protect these activities against interference by public officials.

Second, it would specify the different kinds of activity which are protected—thus giving unmistakable warning to lawless persons that if they interfere with any of these activities, they must answer to the Federal Government.

Third, it would protect civil rights workers, Negroes, and peaceful demonstrators seeking equality.

Fourth, it would provide a graduated scale of penalties depending upon whether bodily injury or death results from the interference.

Title V prohibits injury, intimidation of interference based on race, color, religion, or national origin that occurs while the victim is actually engaging in protected activity—for example, a person assaulted while he is eating in a restaurant or working on a job. It gives the same protection to persons seeking to engage in protected activities—for example, going to the polls to vote, taking steps to enroll a child in school, or inspecting a home for possible purchase. Title V also prohibits interference that occurs either before or after a person engages in protected conduct but which is related to that conduct.

This would include, for example, reprisals taken against a person a week or even months after an election because he voted, or threatening a person with violence to discourage him or others from voting. Title V would also cover interference with persons performing duties in connection with protected activities—for example, a public school official implementing a desegregation plan.

Title V would not require proof of a "specific intent" such as is required under 18 U.S.C. 241 by the decision in *Screws* v. *United States*, 325, U.S. 91 (1945). This is so because, unlike section 241, title V specifically describes the prohibited conduct and stands by itself. No reference to the 14th amendment or any other law would be required in order to determine what conduct is prohibited.

I think it should be recognized, however, that the Federal Government has no special concern with incidents involving violence simply because they happen to occur at or near the time that a person was engaged in a federally protected activity. For this reason, section 501(a)—which prohibits interference that occurs while a person is actually engaging or seeking to engage in protected activity—applies only to racially motivated conduct. Similarly, under section 501 (b) and (c)—which cover reprisals and attempts to deter protected activity—the jury would have to find that the defendant's purpose was to deter persons from engaging in protected activity or punish persons who have done so.

Title V covers one situation in which the victim of the interference need not himself have had anything to do with any kind of civil rights activity. This is the case where there is an indiscriminate attack on a Negro simply because he is a Negro—a terrorist act in the truest sense—and for the purpose of discouraging Negroes generally from engaging in activities described in subsection 501 (a) (1)–(9) or civil rights workers from assisting Negroes to participate in such activities. Such incidents are not uncommon and are effective in discouraging Negroes from seeking equality and those who would help them. Any law that fails to deal with the pattern of indiscriminate violence would be seriously deficient.

Finally, you will recall that title VII of the 1964 Civil Rights Act prohibits discrimination only by private employers with a substantial number of employees and that governmental employers are not covered at all; that under title II of that act, places of public accommodation are defined to include only those establishments whose operations have certain specified relationships with interstate commerce; and that the Federal statutes prohibiting discrimination in transportation reach only interstate carriers.

Violence directed at a person seeking service in a restaurant not covered by the 1964 act will intimidate persons who might want to seek service in covered restaurants. It is therefore necessary to punish the former in order adequately to protect the latter. The same holds true with respect to employment and transportation. For these reasons, title V of this bill would reach racially motivated forcible interference with employment, regardless of the size and regardless of the public or private character of the employer; with service in all of the described types of places of public accommodation, whether or not they fall within the limits of the 1964 act; and with common carrier transportation whether interstate or intrastate.

CONCLUSION

Mr. Chairman, I hope that this discussion has established the compelling warrants for each section of the bill. I believe that each of the titles is necessary, timely, and constitutional. The President in his message made it abundantly clear that he does not lightly ask for new laws.

The President also stressed that "the day has long since passed when problems of race in America could be identified with only one section of the country." "We know," he said, "that the more important challenges of racial inequality are emphatically national."

It is one of the merits of this act, I believe, that it strikes both at conditions of special circumstance and at national needs. Title III seeks to improve legal remedies in school desegregation to make them comparable to those in voting, public accommodation, and employment rights.

But the effects of titles I, II, and IV are national and are not conceived as attacks on problems specifically Southern or regional.

I grant—as the President has—that the fifth major civil rights law in 9 years demands much of this committee and the Congress itself. But the issue presented is the pervasive one in our democratic system today.

Moreover, we are compensating for decades of neglect and deprivation. The Negro asks not for special privilege or unusual favor but for what is rightfully his: the dignity and the opportunity for a full and participating citizenship.

Let me suggest also that it often happens that great measures of social and political transformation follow each other in rapid succession and with cumulative force. Thirty years ago, as the chairman will well recall, there was a whole series of bills which gave life and vigor to our regulatory system.

Almost 20 years ago the national consciousness was focussed intensively on our world responsibilities; in but a few years time the Greek-Turkish aid program, the Marshall plan, NATO, and mutual security were enacted by the Congress.

More recently, we have had an interrelated and rapid sequence of laws adopted in the critical field of education.

A true effectiveness of national effort often depends on what the scientist would call "critical mass." Several steps taken in close progression have much greater combined impact than a series of episodic thrusts. The moment for "critical mass" in civil rights has arrived.

The CHAIRMAN. I want to say personally that your statement is timely, it is factual, lucid, and most helpful. We are very grateful for it.

Now the Chair would like to establish some ground rules here. The members of the subcommittee have prior rights to address questions to you, and then members of the Judiciary Committee who are not members of the subcommittee will have that right likewise, but only after the members of the subcommittee have completed their questions; and the members of the Judiciary Committee who are not members of the subcommittee will please identify themselves while asking questions.

I would like to ask you, Mr. Attorney General, under the pending proposal, would Federal jurors still be required to be literate.

Will you comment on the need to retain the requirement of literacy?

I think there are two places that is mentioned, page 8, lines 3 and 4, and on page 6, lines 3 and 4.

Attorney General KATZENBACH. The requirement for literacy has been in the law for some time, Mr. Chairman, and this seems to me in general a reasonable requirement for jury service. There are many juries, many cases that could be presented to a jury without the necessity of requirement of literacy, but that is rather difficult to predict in advance, and since you are taking names out of a panel, it would seem to us that literacy, at least a minimal literacy which we require there was not an unreasonable condition to impose for jury service.

The CHAIRMAN. Do you think your provisions are sufficient to test literacy?

Attorney General KATZENBACH. I think so, Mr. Chairman. The form has to be made out in the presence of the jury commissioner, by the person involved, and I think if you have the ability to fill out a simple form, to read the instructions and fill out a simple form or fill it out after obtaining some explanation from the clerk, you are sufficiently literate to serve on a jury.

The CHAIRMAN. Now under existing law, there are certain classes or groups of persons that may be excused or excluded from jury services. For example, attorneys, doctors, farmers, pharmacists. What discretion, if any, does the Federal court retain now under your proposal to exclude certain types of citizens?

Attorney General KATZENBACH. Well, we have abolished the blanket exclusion of groups that have—groups of that kind, except for the groups which are presently specified in Federal law, which includes policemen, firemen, and public officials.

Other people may be excused, but only excused by the court for a period of 6 months on personal grounds. The court would thus have a power to excuse an attorney who was engaged actively in practice. It would have the power to excuse a doctor who had an important practice.

It would not have the power to excuse all doctors, and I see no reason why a certain number of doctors should not serve, particularly those who have retired, and are not presently actively engaged.

And of course, that is true, Mr. Chairman, with respect to many members of the bar, not actively engaged in the practice of law. They may be engaged in other pursuits, although they are members of the bar.

The CHAIRMAN. Now what evidence, if any, is there of discrimination on the basis of religion? You mentioned religion as one of the reasons for improper exclusion. Is there any evidence to indicate that religion has been used deliberately to exclude?

Attorney General KATZENBACH. There is a Maryland case, Mr. Chairman, excluding athiests from service on a jury. That would be one religious or nonreligious test.

In addition to that, in some of the juries that have been challenged and looks were taken at the panel it has been suggestive of, although not proven, that there was religious discrimination.

That is, simply a discrepancy in the number of persons from what the census estimate would be the total number of persons that is quite great.

Now I would like to emphasize throughout that most Federal systems, most State courts, use a keyman system, and it is quite possible that you can get these kinds of discrepancies in a cross section, without having any affirmative purpose of discriminating against any one whatsoever; simply when the keyman comes up with names, it may simply have the effect of giving you more again of a blue ribbon type of jury.

Now if you find that in a particular area, for example, the blue collar workers compose a large percentage, we will say, of the Catholic population, or the Protestant population, or something, of that district, it may be that by the exclusion of that group, you are also getting discrepant figures as far as religion is concerned.

The CHAIRMAN. You feel that we should include the word "religion."

Attorney General KATZENBACH. I think so. I don't it is a major problem, Mr. Chairman.

I see no reason not to have it in there.

The CHAIRMAN. Is the information that is to be elicited on the juror qualification form which is set forth on page 6 intended to be exclusive?

Attorney General KATZENBACH. We think that those exceptions, apart from the individual excuses and the challenge procedures, are all that are needed. Going beyond this, Mr. Chairman, ought to be done on an individual basis, or as a result of the challenge process.

The CHAIRMAN. What about the length—what about the question of the length of residence or prior jury service?

Attorney General KATZENBACH. Well, we deal with—the length of residence in the existing law is a year. This should be reflected on the form.

And then there is a provision here as far as jury service is concerned, which does excuse, if you have served 30 days on any jury except where more is necessary, you are excused from further jury service for a period of 2 years.

The CHAIRMAN. Is there any need, do you think, to provide in the bill that the Federal prosecutor challenge the Federal jury selection procedure? On page 8, where the challenges occur, I don't see any mention that the Federal prosecutor can challenge.

Attorney General KATZENBACH. No, sir, the only challenges that the Federal prosecutor has are simply his peremptory challenges and those for cause in the trial of the case. That is right.

The CHAIRMAN. Do you think he should have greater power than that?

Attorney General KATZENBACH. No, sir; I see no reason for it. You are dealing here with the Federal court system. The responsibility I mean, the method of doing this is expressed by the statute, and responsibility is given to the chief judge, to prescribe it, to see that it is enforced. I see no need to give the Department of Justice any further authority in this.

The CHAIRMAN. Now, if in this bill you emphasize pluralistic jurors, do you think there will be a tendency for hung juries, because

of the difficulties that may exist between the two classes in getting a consensus jury?

Attorney General KATZENBACH. No, sir, it is always the prosecution's job in a criminal case to get all 12 jurors, and that is not always easy, but I would expect people, irrespective of their race or color or religion to give, in general, fair, impartial verdicts, and I see no reason to be concerned about it.

I would say quite candidly, Mr. Chairman, on another point, the effect of this kind of jury system as far as the Federal courts are concerned, is to do away with blue ribbon juries, or juries that end to be blue ribbon juries.

My guess would be, and I think it would be shared by most people, that that would increase the burden on the prosecution.

It is sometimes easier to convict with a white collar jury than it is with a blue collar jury. But I think that is what our jury system contemplated, and I don't approve of juries selected with a higher economic status.

The CHAIRMAN. Tell us a little bit more about the prohibition against discrimination on the ground of sex. You have indicated that some of the States have laws which permit the woman to claim exemption from jury duty.

They would not be permitted to claim this exemption, would they?

Attorney General KATZENBACH. No, sir; they would be permitted to claim an exemption. We would not touch that in the State laws. I would take it this way: There are by and large three categories. One, that three States have, which says women can't serve on juries. Now the Alabama law to that effect has been declared unconstitutional by the Federal court.

That is shared by two other States.

The second kind of laws—for example, I believe the kind of law that Florida has—and that says women are eligible to serve, but they have to volunteer for service, that would also be changed by this, and for the reason that we feel that that is not a burden put on men, and because we think that jury service is a privilege of citizenship, that you ought to be able to enjoy.

The third category says that in some States, that women can be exempted from jury service, even if they give no reason. That is, if they simply ask for an exemption from jury services. That law would not be touched. If the women have that right, they can continue to have it.

The CHAIRMAN. There are 16 jurisdictions that permit women to claim exemption from jury service, solely because they are women. They are Alaska, Arkansas, District of Columbia, Georgia, Kansas, Maryland—and Maryland jury law varies from county to county.

Of the 23 counties, 4 permit women to claim exemption on the basis of sex alone, and 19 counties apply the law equally to men and women.

Also Minnesota, Missouri, Nevada, New York, North Dakota, Rhode Island, Tennessee, Virginia, Washington, and Wisconsin.

Eight States specifically exempt women, but not men, on the basis of their responsibility in connection with child care, or other family matters. These are Connecticut, Massachusetts, Nebraska, North Carolina, Oklahoma, Utah, Wyoming.

Two States include women on the jury only when courthouse facilities permit, Rhode Island and Nebraska.

I don't know what that means. [Laughter.]

Two States specifically provide that women are not required to serve in trials involving certain crimes. These are Massachusetts and Nebraska.

Twenty-one States apply the law equally to men and women. These are Arizona, California, Colorado, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Michigan, Montana, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, Vermont, and West Virginia.

Now we have a jigsaw puzzle here, and don't you think we should anticipate some difficulty in that regard from those different States?

Attorney General KATZENBACH. I would think not, Mr. Chairman, and hope not, because most of those laws that you described there would not be effected.

Now as I said, clearly, the ones that exclude women from jury are affected, and that is proper. I think it is unconstitutional to exclude women from juries.

Secondly, laws that put a special burden on women to serve on juries, that is, require them to volunteer for jury service, would be affected. Those that permit the courts or permit by statute exemptions of women who don't then wish to serve on juries, whatever the reason may be, are not affected by this, any more than we in the State system, we don't tell you a State, if it was—if it wants to, can't exempt doctors, can't exempt nurses, can't exempt lawyers.

They can exempt groups of that kind. We have not attempted to interfere with the States in that regard, so that I think most of these laws would not be affected. The only law where the automatic exemption is given if it is requested that would be affected would be that of the District of Columbia.

The CHAIRMAN. Now in reference to title II, on the question of State juries, you do not have any criminal penalties against any improper action of the State jury officials who wilfully refuse to obey the mandate of the statute. Would you deliberately omit criminal penalties, and if so, why?

Attorney General KATZENBACH. It is omitted, sir, because it is already in the law, in section 243 of the criminal code.

I might add, Mr. Chairman, the criminal penalty against jury officials of this kind is not an effective way of revising the system, and we are trying to deal here with the system, and we are trying to deal with it as far as the State juries are concerned, to remove the possibilities of bias and prejudice, to give an opportunity to everyone to serve, but apart from that, not to put the States in a straitjacket to give them a maximum of flexibility, as long as they don't discriminate on the grounds that we have listed.

In other words we say we put the Federal system, and I think that is proper, and we prescribe a system for doing it.

We don't attempt to prescribe a system for selecting juries to the States.

The CHAIRMAN. I would like to place in the record at this point the recent decision and decree in *White* v. *Crook*, rendered by a three-

judge court, which sets forth remedies almost identical to those proposed for State juries in title II of H.R. 14765.

I think it is very pertinant.

(The document referred to follows:)

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Civil Action No. 2263–N

Gardenia White, Jesse W. Favor, John Hulett, Lillian C. McGill, Wille Mae Strickland, The Episcopal Society for Cultural and Racial Unity, a corporation, The Rev. John B. Morris, The Rev. Henri A. Stines, The Rev. Albert R. Dreisbach, Jr., and The Rev. Malcolm Boyd, for themselves, jointly and severally, and for all others similarly situated; *plaintiffs*, United States of America, by Nicholas deB. Katzenbach, Attorney General of the United States; *plaintiff-intervenor*,

v.

Bruce Crook, Henry Barganier, and J. H. Jackson, as members of the Jury Commission of Lowndes County, Alabama, and Carlton Perdue, as County Solicitor of Lowndes County, Alabama, Harrell Hammonds, as Judge of Probate of Lowndes County, Alabama, C. F. Ryals, as Sheriff of Lowndes County, Alabama, T. Werth Thagard, as Judge of the Second Judicial Circuit of Alabama (Lowndes County), Arthur E. Gamble, Jr., as Solicitor of the Second Judicial Circuit of Alabama (Lowndes County), M. E. Marlette, as Clerk of the Second Judicial Circuit of Alabama (Lowndes County), and Mrs. Kelly Coleman, Clerk of the Circuit Court of Lowndes County, Alabama, and Clerk of the Jury Commission of Lowndes County, Alabama, *Defendants*.

WRIT OF INJUNCTION

TO THE DEFENDANTS BRUCE CROOK, HENRY BARGANIER, and J. H. JACKSON, individually and as members of the jury commission of Lowndes County, Alabama, and MRS. KELLY COLEMAN, individually and as clerk of the jury commission of Lowndes County, Alabama, and each of them:

TAKE NOTICE that you and each of you, your agents, officers, employees, successors in office, and all persons in active concert with you, be and you are hereby ORDERED and ENJOINED as more particularly set out in the Memorandum Opinion and Order and in the Decree of this Court made and filed herein on this date, copies of which are herewith served upon you.

WITNESS my hand and the seal of this Court on this the 7th day of February, 1966.

R. C. DOBSON,
Clerk of the U.S. District Court for the Middle District of Alabama.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Civil Action No. 2263–N

Gardenia White, et al., *Plaintiffs*, United States of America, by Nicholas deB. Katzenbach, Attorney General of the United States, *Plaintiff-Intervenor*,

v.

Bruce Crook, Henry Barganier, and J. H. Jackson, as members of the Jury Commission of Lowndes County, Alabama, et al., *Defendants*.

NOTICE

To: Hon. George C. Wallace, Governor, State of Alabama, Montgomery, Ala.; Hon. Richmond M. Flowers, Attorney General, State of Alabama, Montgomery, Ala.

TAKE NOTICE that this Court has on this date entered its Memorandum Opinion and Order and its Decree, copies of which are served upon each of you herewith, in the above-captioned cause.

WITNESS my hand and the seal of this Court on this the 7th day of February, 1966.

R. C. DOBSON,
Clerk of the U.S. District Court for the Middle District of Alabama.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

Civil Action No. 2263–N

Gardenia White, Jesse W. Favor, John Hulett, Lillian S. McGill, Willie Mae Strickland, the Episcopal Society for Cultural and Racial Unity, a corporation, the Rev. John B. Morris, the Rev. Henri A. Stines, the Rev. Albert R. Dreisbach, Jr., and the Rev. Malcolm Boyd, for themselves, jointly and severally, and for all others similarly situated, *Plaintiffs*, United States of America, by Nicholas deB. Katzenbach, Attorney General of the United States, *Plaintiff-Intervenor*,

v.

Bruce Crook, Henry Barganier, and J. H. Jackson, as members of the Jury Commission of Lowndes County, Alabama, and Carlton Perdue, as County Solicitor of Lowndes County, Alabama, Harrell Hammonds, as Judge of Probate of Lowndes County, Alabama, C. F. Ryals, as Sheriff of Lowndes County, Alabama, W. E. Harrell, Jr., as Foreman of the Grand Jury of Lowndes County, Alabama, T. Werth Thagard, as Judge of the Second Judicial Circuit of Alabama (Lowndes County), Arthur E. Gamble, Jr., as Solicitor of the Second Judicial Circuit of Alabama (Lowndes County), M. E. Marlette, as Clerk of the Second Judicial Circuit of Alabama (Lowndes County), and Mrs. Kelly Coleman, Clerk of the Circuit Court of Lowndes County, Alabama, and Clerk of the Jury Commission of Lowndes County, Alabama, *Defendants.*

MEMORANDUM OPINION AND ORDER

This action was instituted as a class action by male and female residents of Lowndes County, Alabama, against the individual members of the jury commission of Lowndes County, Alabama. Subsequently, the plaintiffs amended by adding as defendants other officials of Lowndes County and the State of Alabama, who, according to the amended complaint, performed certain functions in connection with the jury selection and jury use in Lowndes County, Alabama. By the complaint as amended, plaintiffs allege that the defendants have systematically excluded Negro male citizens and female citizens of both races from jury service in Lowndes County, Alabama. Because of the challenge to the Alabama statue which totally excludes women from jury service, a three-judge district court was designated and convened, pursuant to 28 U.S.C. §§ 2281, 2284, to try this case. Subsequently, the United States moved for leave to intervene pursuant to § 902 of the Civil Right Act of 1964; this motion was based upon a complaint in intervention and a certification by the Attorney General of the United States that, in his judgment, this case was of general importance.

This case was submitted on the issues made up by the pleadings and proof, and, upon consideration of the evidence, consisting of the oral testimony of several witnesses, together with the exhibits thereto, this Court now proceeds to make and enter in this memorandum opinion, as authorized by Rule 52, Federal Rules of Civil Procedure, the appropriate findings of fact and conclusions of law.

The plaintiffs, male and female Negro citizens and residents of Lowndes County, Alabama, seek of the defendants, through this Court, as provided under the Constitution and laws of the United States, injunctive relief to remedy alleged conduct of the defendants (including the denial to the plaintiffs of the equal protection of the laws on account of race or color) in violation of the Fourteenth Amendment to the Constitution and 42 U.S.C. § 1981. The plaintiffs bring this action in their own behalf and on behalf of others similarly situated, pursuant to Rule 23(a)(3) of the Federal Rules of Civil Procedure. The plaintiff-intervenor is the United States of America; its standing to intervene is es-

tablished by 42 U.S.C. § 2000h–2 and by Rule 24(b) of the Federal Rules of Civil Procedure. The defendants are the members and clerk of the jury commission of Lowndes County, Alabama; the judge for the Second Judicial Circuit of Alabama, which includes Lowndes County; the probate judge and the sheriff of Lowndes County; the solicitor and the clerk of the Second Judicial Circuit of Alabama, which includes Lowndes County; the foreman of the grand jury of Lowndes County; and the solicitor of Lowndes County.

By leave of this Court, upon an appropriate petition, the Alabama Circuit Judges Association filed its brief as amicus curiae. The brief filed on behalf of the Alabama Circuit Judges Association concerns itself with the relief sought by the plaintiffs and the plaintiff-intervenor against the defendant circuit judge; the Association emphasizes in its brief that it does not oppose any relief sought other than that sought against the circuit judge for the Second Judicial Circuit of Alabama, which includes Lowndes County.

The procedure for the selection of jurors in Alabama is controlled by statute.[1] Each county in Alabama has a jury commission composed of three members appointed by the Governor.[2] These commissioners, in order to be qualified, must be electors of the county, reputed for their fairness, impartiality, integrity and good judgment; the commissioners so appointed serve for the tenure of the Governor who appoints them.[3] The jury commissioners are required to place on the jury roll "the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment."[4] The clerk of the jury commission is required by law to "obtain the name of every male citizen of the county over twenty-one and under sixty-five years of age and their occupation, place of residence, and place of business . . . ."[5] The jury commission is required to maintain a jury roll containing the name of "every male citizen living in the County who possessed the qualifications herein prescribed and who is not exempted by law from serving on juries."[6] As a part of the procedural requirements the names of the persons on the jury roll must also be printed on separate cards, which are placed in a jury box. It is the duty of the commission to see that the name of each person possessing the qualifications to serve as a juror and not exempted by law from jury duty "is placed on the jury roll and in the jury box."[7] The Alabama law further requires the jury commission and its clerk to scan the registration lists, the list returned to the tax assessor, any city directories and telephone directories, and any and every other source of information, and to visit every precinct in the county at least once a year.[8]

When jurors are required for a court session, the presiding judge draws from the jury box the names of the individuals to serve as jurors during the term in question. These jurors may be either petit jurors or grand jurors as the situation requires. The names so drawn are sent to the clerk of the court, and the clerk prepares a venire; the venire containing these names is sent to the sheriff who summons the persons listed to appear and serve.[9] The presiding judge has the authority to pass upon claims for exemptions, excuses and qualifications of those individuals who have been summoned to appear and serve as jurors.[10] Either party in civil and criminal cases has a right to examine jurors as to their qualifications, interests, or any bias that would affect the trial of the case. In civil actions each party has a certain number of preemptory challenges, and in criminal cases the struck jury method is the exclusive means of selecting juries.

The 1960 census reflects that the total population of Lowndes County was 15,417 and that Negroes comprised 80.7% of the total county population and 72.0% of the adult male population. The white males between the ages of 21 to 65 totaled 738, and the nonwhite males between the ages of 21 to 65 totaled

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[1] These statutes are codified in the Code of Alabama, Recompiled 1958, Title 30. All statutory references to the qualifications of and to the procedure for the selection of jurors in Alabama as set forth in this opinion will be to Title 30, Code of Alabama, Recompiled 1958.

[2] With some exceptions provided by local Acts or Acts of local application.

[3] Sections 8, 9 and 10.

[4] Section 21.

[5] Section 18.

[6] Section 21. To the extent that this section uses the word "every" it is a permissive as opposed to a mandatory requirement. *Fikes* v. *State*, 263 Ala. 89.

[7] Section 24.

[8] Section 24.

[9] Section 30.

[10] Sections 4 and 5.

1,798. The white females between the ages 21 to 65 totaled 789, and the nonwhite females between the ages of 21 to 65 totaled 1,278.[11] The evidence in this case reflects that before each term of court the presiding judge of the Second Judicial Circuit would draw at random from the jury box a sufficient number of cards (usually 110) to provide jurors for the next term of court to be conducted in Lowndes County. When the number of cards in the jury box became depleted to the extent that the judge could not make a complete draw, he notified the clerk of the jury commission, who informed the commisioners that the box required refilling. At times the jury commissioners refilled the box or added names on their own initiative; when they filled the jury box, they would put approximately 250 names in it. The testimony reflected that the judge found it necessary to suggest that the jury box be refilled "probably once a year." The Lowndes County jury commissioners, in selecting persons they considered to be qualified for jury service, used as their primary source the Lowndes County voting lists on which no Negroes were named. The other source (personal knowledge) accounted for the names of seven Negroes listed on the Lowndes County jury roll in the twelve-year period from 1953 until this action was commenced. From 1953 to the time this suit was instituted, Negroes comprised little more than 1% of the persons selected by the commissioners as eligible and qualified for jury service in Lowndes County, Alabama.

There was no conflict in the evidence to the effect that there were a substantial number of Negro citizens residing in Lowndes County who were qualified for jury service under Alabama law. As a matter of fact, it was stipulated between counsel that there were qualified Negroes in Lowndes County whose names had not been placed on the jury rolls or in the jury box by the jury commission. The actual procedure followed by the jury commission of Lowndes County, Alabama, in replenishing the jury box was for the commission to borrow the qualified voter list from the county probate judge, to meet, and during the course of the meeting have one of the commissioners read the names of all males on the qualified voter list, most of whom were known to one or more of the commissioners. As the list was read, the persons whose names appeared thereon were either summarily approved or rejected as prospective jurors. Discussion of the qualifications was generally unnecessary. It is especially significant that there were no Negroes registered to vote in Lowndes County prior to March 1, 1965. Literacy was not considered by the commissioners as an absolute prerequisite in order for a person to be deemed by them qualified for jury service. As a matter of fact, the jury commissioners have not used any method for testing a person's ability to read and write. As the names were read from the qualified voter list, those approved by the commissioners were recorded on jury cards. The cards were placed in the jury box for use by the presiding judge. The extent to which the qualified voter lists were used by the commissioners is revealed by comparing the contemporaneous voting list with the venire lists from 1953 to the time this case was tried. This analysis reflects that 98.0% of the names on the venires of prospective jurors appeared on the contemporaneous voting lists. It is especially significant that there were no Negroes registered to vote in Lowndes County prior to March 1, 1965; the voting lists for Lowndes County, Alabama, during this time included the names of approximately 1,200 white male citizens. Thus, no Negroes' names appeared on the jury commissioners' primary source for finding and selecting prospective jurors. The evidence further reflected that the commissioners made some efforts to secure the names of persons considered qualified as potential jurors whose names were not on the qualified voter lists. These efforts resulted in the names of seven Negroes being placed in the jury box from 1953 until August 25, 1965, the date this action was commenced. During this period—approximately twelve years—these seven Negroes were drawn for jury service a total of nineteen times. After the complaint in this action was filed, the jury commission met to replenish the jury box and at that time the names of 18 Negroes were placed in the box. The evidence reflected that the jury commissioners considered this to be a sufficient number to satisfy the requirements of the law. No Negro has ever served on a civil or criminal petit jury in Lowndes County, Alabama.

In addition to the above procedure, which resulted, in the opinion of this Court, in an extremely aggrevated case of systematic exclusion by reason of

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[11] United States Bureau of Census. United States Census of Population: 1960. General Population Characteristics, Alabama.

race, the commissioners followed a procedure which restricted the number of qualified white persons whose names were placed in the jury box. An analysis of the jury records as offered and received in evidence in this case reflects that a very limited number of persons has constituted the core of the county jury system in Lowndes County, Alabama, and that the names of this extremely limited group have been repeatedly circulated through the jury box. As a matter of fact, the names of only 670 persons have been on cards in the box since 1953. Of these 670 individuals, 211 have had their names in the box six or more times, and some as many as fifteen or sixteen times. These 211 persons collectively account for 66.5% of the total of 2,748 names, including repeats that have appeared on the venire lists in Lowndes County, Alabama, from 1953 to the present time. Fifty-seven of these persons were called for jury service three successive terms. Seven of them were called for jury service four successive terms.

The procedures as outlined above, adopted and followed by the jury commissioners in Lowndes County, Alabama, since 1953, have resulted in jury service in that county being limited to a small number of adult, white male citizens, with Negro male citizens and female citizens of both races being systematically excluded either by practice or, in the case of the women, by statute.

I. THE SYSTEMATIC EXCLUSION OF NEGROES BY RACE

In this civil action the plaintiffs assert the right of Negroes, collectively, to be free from racial discrimination in jury selection procedures. They invoke the constitutional principle that systematic exclusion for the purposeful discrimination against Negroes in selecting persons qualified for jury service involves arbitrary state action directly contrary to, and in violation of, the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The rule of law that Negroes may not systematically be excluded from the opportunity to serve on civil and criminal juries, grand and petit, in the state and federal courts has several basic aspects. The qualified Negro citizen has a right not to be denied participation in the democratic institution by which all citizens become most directly involved in the administration of justice. When Negroes are excluded from jury service because of their color, the action of the state "is practically a brand upon them, affixed by the law, an assertion of their inferiority. . . ." *Strauder* v. *West Virginia*, 100 U.S. 303. As the Supreme Court stated in *Strauder* v. *West Virginia*:

"The very idea of a jury is that it is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine. . . ."

State laws governing the qualifications of voters are also subject to the limitations of the Equal Protection Clause. *Carrington* v. *Rash*, 1965, 380 U.S. 89.

The evidence in this case as above outlined, without any serious dispute, clearly reflects wide disproportions between the number of qualified Negro citizens in Lowndes County and the number of names of Negroes placed on the jury roll and in the jury box by the defendant jury commissioners and the defendant jury commission clerk. This proof, without more, requires an inference of systematic exclusion on racial grounds; this inference, in the absence of some satisfactory explanation, is sufficient to show that the male plaintiffs and the members of the class they represent have been denied the constitutional rights they assert. *Reece* v. *Georgia*, 350 U.S. 85; *Hernandez* v. *Texas*, 347 U.S. 475; *Brown* v. *Allen*, 344 U.S. 443; *Patton* v. *Mississippi*, 332 U.S. 463; *Norris* v. *Alabama*, 294 U.S. 587; *United States ex rel. Seals* v. *Wiman*, 304 F. 2d 53; *United States ex rel. Goldsby* v. *Harpole*, 263 F. 2d 71. See also the recent opinion and order of the United States District Court for the Middle District of Alabama in *William P. Mitchell, et al.*, Plaintiffs, *United States of America*, Plaintiff and *Amicus Curiae* v. *Edgar Johnson, et al.*, Defendants, Civil Action No. 649–E, January 18, 1966,_____F. Supp._____.

Not only did the defendant jury commissioners and the defendant jury commission clerk fail to offer some satisfactory explanation to rebut this inference, but their testimony clearly reflected that they pursued a course of conduct in the administration of their office which was designed to discriminate and had the effect of discriminating in the selection of jurors in Lowndes County, Alabama, on racial grounds. Moreover, the establishment and use of a relatively small number of white male citizens' names in the jury box as a "recirculating jury pool" not only made possible the exclusion of qualified Negroes from jury duty in a county in the Black Belt section of Alabama where the total Negro

population is 30.7% of the total county population, but also resulted in magnifying the power vested in the relatively small group of Lowndes County white citizens as opposed to the absolute lack of power growing out of the right to serve as grand and/or petit jurors by members of the Negro race.

It must be concluded, therefore, that in their action, conduct, and procedures followed, the defendant commissioners and the defendant jury clerk in Lowndes County, Alabama, not only failed to adhere to the laws of the State of Alabama relating to the selection of qualified jurors, but clearly violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment which make unlawful the systematic exclusion of Negroes from jury service because of their race. This Court has the power and duty, therefore, to fashion a decree granting such relief as will ensure the nondiscriminatory functioning of the jury system in Lowndes County, Alabama. It is recognized that the mere failure on the part of the jury commission to adhere to the Alabama statutes does not in and of itself constitute any violation of the plaintiffs' federally-guaranteed constitutional rights. However, the purpose of the Alabama statutes is to ensure at least a reasonable approximation to the requirements that jury venires include all qualified persons and, hence, represent a cross-section of the community, with no significant groups being excluded without justifiable reasons; therefore, the procedures outlined by the Alabama statutes can and do serve in this case as a standard by which the actions of the jury commissioners may be judged. Their failure to adhere, to any substantial degree, to the requirements of Alabama law in their selection procedures explains to some extent the imbalance in the jury rolls in Lowndes County, Alabama. Had the clerk of the jury commission obtained the names of all male citizens in the county between the ages of 21 to 65, as required by the Alabama statute, together with their occupations, residences and places of business, and turned this information over to the members of the jury commission, the commission, by using this list and other information collected from the voter registration rolls, the city directories and the telephone directories, and by visiting the precincts in the county as they are required by the Alabama statutes to do, could very easily have made a roll containing the names of citizens of Lowndes County which would have met the Alabama statutory requirements. The sole purpose of these requirements is to ensure that the jury commissioners will have as complete a list as possible of names, compiled on an objective basis, from which to select qualified jurors. The commissioners in this case, all white, relied almost entirely on the qualified voter list of Lowndes County, on which there were no Negroes listed prior to March 1, 1965. This means, very simply, that the jury commissioners of Lowndes County have failed to perform the duty required of them by the law of Alabama which requires that they familiarize themselves with the qualifications of eligible citizens of the county without regard to race, and that their failure to comply with these statutes, among other things hereinabove set forth, has resulted in gross systematic exclusion of members of the Negro race from jury duty in Lowndes County. *Cassell* v. *Texas*, 339 U.S. 282; *Hill* v. *Texas*, 316 U.S. 400; *Smith* v. *Texas*, 311 U.S. 128.

Unconstitutional jury selection methods are usually brought before courts prior to trial in order to quash a particular panel or venire in a particular case. This case is one of the first civil actions brought to remedy systematic exclusion of Negroes from jury service generally.[12] There is no question that under 42 U.S.C. § 1983 these male plaintiffs under the evidence in this case are entitled to the relief they seek and are entitled to have the defendants adopt procedures that will ensure that they and all other qualified members of their class in Lowndes County, Alabama, serve on juries.[13]

II. STATUTORY EXCLUSION OF WOMEN FROM JURY SERVICE IN ALABAMA

As stated earlier in this opinion, jury service on the part of the citizens of the United States is considered under our law in this country as one of the basic rights and obligations of citizenship. The women plaintiffs on behalf of them-

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[12] See *William P. Mitchell, et al.*, Plaintiffs, *United States of America*, Plaintiff and Amicus Curiae v. *Edgar Johnson, et al.*, Defendants, MD Ala., Civil Action No. 649-E, January 18, 1966. — F. Supp. —.

[13] An action such as the plaintiffs have brought here was suggested by Mr. Justice Jackson in his dissent in *Cassell* v. *Texas*, supra, as a "direct and effective" means to eliminate unconstitutional discrimination.

selves and other women similarly situated contend very forcefully that the Alabama statute that bars their exercise of this basic right is unconstitutional.[14] This attack on Alabama's complete exclusion of women from jury service is based on the Equal Protection Clause of the Fourteenth Amendment. The argument that the Fourteenth Amendment was not historically intended to require the states to make women eligible for jury service reflects a misconception of the function of the Constitution and this Court's obligation in interpreting it. The Constitution of the United States must be read as embodying general principles meant to govern society and the institutions of government as they evolve through time. It is therefore this Court's function to apply the Constitution as a living document to the legal cases and controversies of contemporary society. When such an application to the facts in this case is made, the conclusion is inescapable that the complete exclusion of women from jury service in Alabama is arbitrary.

Jury service is a form of participation in the processes of government, a responsibility and a right that should be shared by all citizens, regardless of sex. The Alabama statute that denies women the right to serve on juries in the State of Alabama therefore violates that provision of the Fourteenth Amendment to the Constitution of the United States that forbids any state to "deny to any person within its jurisdiction the equal protection of the law." The plain effect of this constitutional provision is to prohibit prejudicial disparities before the law. This means prejudicial disparities for all citizens—including women. See *Fay* v. *New York*, 332 U.S. 261; *Hoyt* v. *Florida*, 368 U.S. 57; see also *Hernandez* v. *Texas*, supra.

The courts have not heretofore been called on to decide a case presenting the constitutional validity of a state's complete exclusion of women from service as jurors. *Hoyt* v. *Florida*, supra, and *Fay* v. *New York*, supra, were concerned with systems of jury selection under which service by women was voluntary. Significantly, in *Hoyt* v. *Florida*, supra, the Supreme Court's opinion concluded as follows:

"Finding no substantial evidence whatever in this record that Florida has arbitrarily undertaken to exclude women from jury service, a showing which it was incumbent on appellant to make . . ., we must sustain the judgment of the Supreme Court of Florida. . . ." 368 U.S. 57, 69.

Further, the Chief Justice and Justices Black and Douglas assigned as their sole reason for concurring that, "We cannot say from this record that Florida is not making a good faith effort to have women perform jury duty without discrimination on the ground of sex." 368 U.S. at 69. Moreover, the *Hoyt* and *Fay* cases presented challenges from a viewpoint entirely different from the present case. In those cases the parties defendant challenged the composition of the juries because of the systematic exclusion of women. In this case it is the women themselves who assert their right to serve as jurors, or, more accurately, their right not to be excluded from jury service solely because of their sex.

Women are allowed to serve on juries in the federal courts and in the courts of forty-seven states. Only in three—Alabama, Mississippi and South Carolina—are women completely excluded from jury service. The time must come when a state's complete exclusion of women from jury service is recognized as so arbitrary and unreasonable as to be unconstitutional. As to Alabama, we can see no reason for not recognizing that fact at the present time.

Even though this Court finds and holds that the exclusion of women from jury service in Alabama by a statutory provision is arbitrary in view of modern political, social and economic conditions, this Court is fully aware that the Alabama statute has been regarded and relied upon as constitutional by all alike.

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[14] Title 30, § 21, Code of Alabama, Recompiled 1958, is the Alabama statute that restricts jury service to male citizens. That statute in pertinent part states as follows: "*§ 21. Qualifications of persons on jury roll.*—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county . . ." Only three states—Alabama, Mississippi and South Carolina—totally bar women from jury service. All others either treat women and men on the same basis or provide some form of voluntary service for women. The prohibition against women serving on juries in Alabama does not apply to federal juries by reason of the Civil Rights Act of 1957, 28 U.S.C. § 1861—that Act deleting that portion of the law that disqualified persons for service on federal juries who are incompetent to serve on a grand or petit jury by the law of the state in which the federal district court is held.

This Court believes public policy is best served by holding that that part of the decision in this case to the effect that Alabama's prohibition of jury service for women is unconstitutional should be prospective in its application, and, for that reason, should have no retroactive effect. See generally, *Linkletter* v. *Walker*, 381 U.S. 618, and *Tehan, Sheriff, etc.* v. *United States ex rel. Shott*, January 19, 1966 [34 LW 4095], —— U.S. ——. However, to eliminate any possible misunderstanding, this Court specifically declares that, for the future, commencing not later than a time designated, women have a right not to be excluded as a class from jury service in Alabama courts.

III. RELIEF

The relief to be afforded in this case will involve not only the issuance of a prohibitory injunction, but an injunction requiring immediate affirmative action by the jury commissioners by their emptying the Lowndes County jury box and abandoning the present Lowndes County jury roll without any further use of either, and by their compiling a jury roll and refilling the jury box in strict accordance with the law of Alabama and the constitutional principles herein set forth.[15] This Court recognizes that it does not sit to enforce the law of the State of Alabama, but where the constitutional guaranties as set forth by the Constitution of the United States have been violated to the extent that the defendants have violated them in this case, it is appropriate, in fashioning relief from these violations, for the Court, to the extent possible, to let its decree recognize the validity of the law of the State of Alabama as much as is practicable and consistent with the object of eliminating discrimination in the Lowndes County jury selection system. In remedying the wrong found by this Court to exist concerning the exclusion of Negroes from jury service in Lowndes County, Alabama, the defendants are cautioned that if they apply Alabama's qualifications for jury service—particularly that qualification relating to good character and sound judgment and that qualification concerning the requirement that prospective jurors be able to read English—these qualification requirements must be imposed fairly and objectively and administered to all regardless of race, in a nondiscriminatory manner. This Court recognizes the practical difficulties which will be faced by the jury commission in putting into the jury box the name of every qualified juror on a comprehensive list to be prepared by the jury commission clerk, and further recognizes that the law of Alabama, as stated in *Fikes* v. *State*, supra, does not require, literally, that *every* qualified person's name be placed on the rolls or in the box. However, the law does require that the jury commissioners not place so few names in the jury box as not to obtain a full cross-section of the county. In this connection, there should be no less than 1000 names placed in the jury box in Lowndes County, Alabama, at each refilling.

Failure on the part of the defendant jury commissioners and the defendant jury commission clerk to comply immediately and in good faith with the requirements of this opinion and order will necessitate the appointment by this Court of a master or panel of masters to recompile the jury roll and to empty and refill the Lowndes County jury box. This action, if it becomes necessary, would be only for the purpose of having the requirements of the law fulfilled. Since the defendant jury commissioners and the defendant jury commission clerk are already charged with this duty—by both the Alabama law and the requirements of the United States Constitution—such action by this Court should not be necessary.

As to that part of this Court's order relating to jury service in Alabama for women, we believe there should be some reasonable delay in its going into effect. Even though it is clear—and we do here unequivocally declare—that women in Alabama have a constitutional right not to be arbitrarily excluded from jury service, it is the feeling of the members of this Court that the several practical problems, including a determination of whether service is to be compulsory or voluntary and the availability of physical facilities, require that the State of Alabama be given a reasonable time to comply with that part of this

[15] The use of mandatory injunctions, where necessary to afford relief, as in this case, has been approved by the United States Court of Appeals for the Fifth Circuit in *Alabama* v. *United States* (1962), 304 F. 2d 583.

Court's decree.[16] In this connection, since the next regular session of the Alabama Legislature is not scheduled until January, 1967, the defendants should be allowed until June 1, 1967, considered by this Court to be a reasonable period prior to the time the defendants should be required to include women as jurors.

IV. THE DEFENDANTS OTHER THAN THE MEMBERS OF THE JURY COMMISSION AND JURY COMMISSION CLERK

As stated earlier in this memorandum opinion, the complaint was amended to add defendants County Solicitor Perdue, Probate Judge Hammonds, Sheriff Ryals, Grand Jury Foreman Harrell, Circuit Judge Thagard, Circuit Solicitor Gamble and Circuit Clerk Marlette. The evident purpose of the amended complaint was to secure a restraining order prohibiting these designated officials from proceeding with a term of court for criminal cases which was then pending. This Court, by formal order made and entered in this case on September 27, 1965, denied the motion for a temporary restraining order. There was no evidence presented in this case that reflected any misconduct on the part of these defendants. More particularly, there was no evidence that any of these defendants have engaged in any acts or practices designed to have or having the effect of systematically excluding Negroes from jury service in Lowndes County Alabama, by reason of their race. As a matter of fact, there is no specific relief requested against any of these defendants except Circuit Judge Thagard. As to Circuit Judge Thagard the evidence taken upon the trial of this case reflects that he draws names from the jury box when necessary prior to holding a term of court in Lowndes County, Alabama, and gives the names to the clerk, who makes up the jury venire. When the jury box has an insufficient number of cards in it, the judge notifies the clerk, who, in turn, notifies the jury commissioners that the box needs refilling. There is no evidence whatsoever that any discrimination has been practiced by Judge Thagard either in his duty of drawing the names of jurors from the box or of excusing jurors from service by reason of their race or color after they report. This Court concludes, therefore, that this action should be dismissed as to the defendants County Solicitor Perdue, Probate Judge Hammonds, Sheriff Ryals, Grand Jury Foreman Harrell, Circuit Judge Thagard, Circuit Solicitor Gamble and Circuit Clerk Marlette. This order of dismissal will be without prejudice to any one or all of them being brought back in the case if, subsequent to the issuance of the decree in this case, it becomes necessary or appropriate to do so in order to effectuate the decree or to preserve the jurisdiction of this Court.

Jurisdiction of all phases of this case is expressly reserved. A formal order will be entered in accordance with the foregoing opinion.

Done, this the 7th day of February, 1966.

/s/ RICHARD T. RIVES,
U.S. Circuit Judge.
/s/ CLARENCE W. ALLGOOD,
U.S. District Judge.
/s/ FRANK M. JOHNSON, JR.,
U.S. District Judge.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

CIVIL ACTION NO. 2263-N

Gardenia White, Jesse W. Favor, John Hulett, Lillian S. McGill, Willie Mae Strickland, The Episcopal Society for Cultural and Racial Unity, a corporation, The Rev. John B. Morris, The Rev. Henri A. Stines, The Rev. Albert R. Dreisbach, Jr., and The Rev. Malcolm Boyd, for themselves, jointly and severally, and for all others similarly situated, *Plaintiffs.*

United States of America, by Nicholas deB. Katzenbach, Attorney General of the United States, *Plaintiff-Intervenor,*

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[16] It is not uncommon for courts, when declaring constitutional rights not previously recognized and declared, to delay for a reasonable time, in consideration of practical problems incident to an implementation of those rights, the actual exercise of the newly declared rights. *Brown v. Board of Education,* 347 U.S. 483, and 349 U.S. 294; *Reynolds v. Sims,* 208 F. Supp. 431, aff'd 377 U.S. 533.

vs.

Bruce Crook, Henry Barganier, and J. H. Jackson, as members of the Jury Commission of Lowndes County, Alabama, and Carlton Perdue, as County Solicitor of Lowndes County, Alabama, Harrell Hammonds, as Judge of Probate of Lowndes County, Alabama, C. F. Ryals, as Sheriff of Lowndes County, Alabama, W. E. Harrell, Jr., as Foreman of the Grand Jury of Lowndes County, Alabama, T. Werth Thagard, as Judge of the Second Judicial Circuit of Alabama (Lowndes County), Arthur E. Gamble, Jr., as Solicitor of the Second Judicial Circuit of Alabama (Lowndes County), M. E. Marlette, as Clerk of the Second Judicial Circuit of Alabama (Lowndes County), and Mrs. Kelly Coleman, Clerk of the Circuit Court of Lowndes County, Alabama, and Clerk of the Jury Commission of Lowndes County, Alabama, *Defendants.*

DECREE

Pursuant to the findings of fact and conclusions of law entered this date:

1. To the extent that the statutes and laws of Alabama exclude women from jury service in Alabama, is is ADJUDGED and DECREED that said statutes and laws deny to women the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and it is ORDERED that said statutes and laws shall be of no effect on and after June 1, 1961.

2. It is ODERED, ADJUDGED and DECREED that the jury roll and jury box of Lowndes County, Alabama, as that roll and box are presently constituted, are illegal and violative of the constitutional rights of the plaintiffs and all others similarly situated.

3. It is ORDERED, ADJUDGED and DECREED that the defendants Bruce Crook, Henry Barganier, and J. H. Jackson, individually and as members of the jury commission of Lowndes County, Alabama, and Mrs. Kelly Coleman, individually and as clerk of the jury commission of Lowndes County, Alabama, their agents, officers, employees, successors in office, and all persons in active concert with them, be and each is hereby enjoined from engaging in any act or practice which involves or results in discrimination by reason of race or color in the selection of jurors for jury service in Lowndes County, Alabama. It is further ORDERED that:

(a) The jury box shall be emptied forthwith. The jury box shall be refilled before the Spring Term of Court, 1966, to be held and conducted in Lowndes County, Alabama, and thereafter by the following procedures.

(b) On or before 30 days from the date of this decree Mrs. Kelly Coleman as clerk of the jury commission of Lowndes County, Alabama, or her successor in office, shall examine the current Qualified Voters' List of Lowndes County, Alabama, the current Tax Assessor's List of Lowndes County, Alabama, and the list compiled by federal examiners in Lowndes County, Alabama, pursuant to the Voting Rights Act of 1965, Public Law 89–110, filed with the Probate Judge of Lowndes County, Alabama, on or before the date of this decree, and shall compile a comprehensive alphabetical list therefrom to be known henceforth as the "Clerk's Comprehensive List," showing the names and addresses of all listed.

(c) The jury commissioners shall, commencing not later than 30 days from the date of this decree, meet regularly to pass on the qualifications of persons named on the Comprehensive List.

(d) The jury commissioners shall select for the jury roll and jury box from the names so considered not less than 1000 persons who meet the qualifications prescribed by law and no other.

(e) At least once every two years the jury commissioners and the clerk of the jury commission shall empty the jury box and refill it according to the procedures set forth in this decree, including the compilation of a new Clerk's Comprehensive List.

4. It is further ORDERED that the defendant jury commissioners and the defendant clerk of the jury commission submit for inspection by the attorneys or agents of the plaintiff-intervenor within fourteen days following each meeting of the Lowndes County Jury Commission at which names of prospective jurors are selected, a report reflecting compliance with this part of the decree of this Court. This report shall include:

(a) A copy of the Clerk's Comprehensive List, marked by said defendants to show (i) the race of each person on the list, and (ii) the names of the

persons considered by the jury commissioners pursuant to paragraph No. 3(c) of this decree.

(b) A separate listing of those persons on the Clerk's Comprehensive List who were considered by the jury commissioners and found by them to be unqualified for jury service; this listing shall also show the person's race and shall give a detailed and specific description of the reason or reasons why each person was found to be unqualified.

5. It is further ORDERED that the said defendants shall henceforth keep or cause to be kept the complete jury roll books for public inspection, and shall make all such records available at any reasonable time for inspection and copying by agents of the United States.

6. It is further ORDERED that this cause be and the same is hereby dismissed as to the defendants Carlton Perdue as County Solicitor of Lowndes County, Alabama; Harrell Hammonds as Judge of Probate of Lowndes County, Alabama; C. F. Ryals as Sheriff of Lowndes County, Alabama; W. E. Harrell, Jr., as Foreman of the Grand Jury of Lowndes County, Alabama; T. Werth Thagard as the Judge of the Second Judicial Circuit of Alabama, which includes Lowndes County, Alabama; Arthur E. Gamble, Jr., and M. E. Marlette, as Solicitor and Clerk, respectively, of the Second Judicial Circuit of Alabama, which includes Lowndes County, Alabama. It is ORDERED that as to these defendants no costs in this case are to be taxed.

This Court retains jurisdiction of this cause as to all matters.

The costs incurred in this proceeding to date are hereby taxed against the defendants Bruce Crook, Henry Barganier and J. H. Jackson as members of the Jury Commission of Lowndes County, Alabama.

Done, this the 7th day of February, 1966.

/s/ RICHARD T. RIVES,
U.S. Circuit Judge,
/s/ CLARENCE W. ALLGOOD,
U.S. District Judge.
/s/ FRANK M. JOHNSON, JR.,
U.S. Distritct Judge.

The CHAIRMAN. Would you please supply the committee with information indicating the extent of suits brought by the Department of Justice under title 3 and 4 of the Civil Rights Act of 1964?

Attorney General KATZENBACH. Yes, sir.

The CHAIRMAN. I would like to have that.

(The document referred to follows:)

FEDERAL GOVERNMENT LITIGATION TO DESEGREGATE PUBLIC SCHOOLS AND PUBLIC FACILITIES UNDER TITLES III, IV, AND IX OF THE CIVIL RIGHTS ACT OF 1964, AND AS AMICUS CURIAE

I. PUBLIC SCHOOL LITIGATION

A. Suits brought by the United States under Title IV

1. Alabama

United States v. *Hale County Board of Education*, No. 3980-66 (S.D. Ala.).
2/7/66—Complaint filed by United States. Case currently pending in district court.

United States v. *Lowndes County Board of Education*, No. 2328-N (M.D. Ala.).
1/11/66—Complaint filed by United States.
2/10/66—Consent decree entered providing for a plan of desegregation.

United States v. *Wilcox County Board of Education*, No. 3934-65 (S.D. Ala.).
11/2/66—Complaint filed by United States. Case currently pending in district court.

2. Arkansas

United States v. *Junction City School District, et al.*, No. 10995 (W.D. Ark.).
2/7/66—Complaint filed by United States. Case currently pending in district court.

3. Louisiana

United States v. *Louisiana State Board of Education*, No. 3186 (E.D. La.).
4/8/65—Complaint filed by United States.
5/7/65—Permanent injunction entered enjoining defendants from segregating state trade schools.

United States v. *St. Barnard Parish School Board, et al.*, No. 16323 (E.D. La.)
2/16/66—Complaint filed by United States. Case currently pending in district court.

4. Mississippi

United States v. *Aberdeen Municipal Separate School District*, No. EC 6564 (N.D. Miss.).
8/26/65—Complaint filed by United States.
9/10/65—Preliminary injunction entered providing for desegregation of specified grades.

United States v. *Carroll County Board of Education*, No. GC 6541 (N.D. Miss.).
8/26/65—Complaint filed by United States.
9/2/65—Preliminary injunction entered enjoining defendant from further discrimination. Case currently pending before district court on government's request for additional relief.

United States v. *Natchez Special Municipal Separate School District, et al.*, N. 1120 (W) (S.D. Miss.).
9/7/65—Complaint filed by United States.
10/2/65—Preliminary injunction entered enjoining plaintiffs from further discrimination. Case currently pending in district court on government's request for additional relief.

United States v. *North Pike County Consolidated School District*, No. 3807 No. 1120 (W) (S.D. Miss.).
8/25/65—Complaint filed by United States.
9/25/65—Order of district court entering desegregation plan.

5. South Carolina

United States v. *School District No. 1, Lexington County, South Carolina, et al.*, No. 66-96 (E.D. S.C.).
2/7/66—Complaint filed by United States. Case currently pending in district court.

6. Tennessee

United States v. *Campbell County Board of Education*, No. 5187 (E.D. Tenn.).
1/4/65—Complaint filed by United States.
2/3/65—Permanent injunction entered requiring desegregation of school system.

B. Suits in which the United States intervened under title IX

1. Alabama

Armstrong v. *Board of Education of the City of Birmingham*, No. 9678 (N.D. Ala.).
4/7/66—Motion to intervene filed by United States.
5/6/66—Motion to intervene granted. Case currently pending in district court.

Bennett v. *Madison County Board of Education*, No. 63-613 (N.D. Ala.).
4/12/66—Motion to intervene filed by United States.
5/6/66—Motion to intervene granted. Case currently pending in district court.

Boykins v. *Board of Education of City of Fairfield*, No. 65-499 (N.D. Ala.).
7/30/65—Motion to intervene filed by United States.
9/7/65—Order of district court entering desegregation plan. Case currently pending on appeal in the Court of Appeals for the Fifth Circuit on government's appeal seeking additional relief.

Brown v. *Board of Education of City of Bessemer*, No. 65-366 (N.D. Ala.).
6/16/65—Motion to intervene filed by United States.
6/30/65—Order of district court entering desegregation plan.
Case currently pending on appeal in the Court of Appeals for the Fifth Circuit on Government's appeal seeking additional relief.

Hereford v. *Huntsville Board of Education*, No. 63-109 (N.D. Ala.).
4/12/66—Motion to intervene filed by United States.
5/6/66—Motion to intervene granted. Case currently pending in district court.

Hutton v. *Kuykendall*, No. 65-580 (N.D. Ala.) (Greene County).
1/11/66—Motion to intervene filed by United States.
Case currently pending in district court.
Miller v. *Board of Education of Gadsden*, No. 63-574 (N.D. Ala.).
4/12/66—Motion to intervene filed by United States.
5/6/66—Motion to intervene granted. Case currently pending in district court.
Stout v. *Jefferson County Board of Education*, No. 65-396 (N.D. Ala.).
7/12/65—Motion to intervene filed by United States.
8/27/65—Order of district court entering desegregation plan.
Case currently pending on appeal to the Court of Appeals for the Fifth Circuit on government's appeal seeking additional relief.
2. Arkansas
McGhee v. *Nashville-Childress, Arkansas Special School District*, No. 962 (N.D. Ark.).
2/7/66—Motion to intervene filed by United States.
3/3/66—Consent decree entered providing for institution of desegregation plan.
3/25/66—Amended complaint filed by government against additional school districts.
Smith v. *Board of Education of Morrilton School District*, No. 2, No. 18234 (E.D. Ark.).
1/25/66—Motion to intervene in the Court of Appeals filed by United States. Case currently awaiting decision in Court of Appeals for the Eighth Circuit.
3. Georgia
Stell v. *Savannah-Chatham Board of Education*, No. 1316 (S.D. Ga.).
11/9/65—Motion to intervene filed by United States.
4/1/66—District court's decision entered adopting defendants intervenor's plan. Case currently on appeal in the Court of Appeals for the Fifth Circuit.
Turner v. *Coolsby*, No. 1226 (S.D. Ga.) (Taliaferro County).
1/12/66—Motion to intervene filed by United States.
4/3/66—Motion to intervene granted. Case currently pending in district court.
4. Louisiana
Banks v. *St. James Parish School Board*, No. 16173 (E.D. La.).
1/11/66—Motion to intervene filed by United States.
1/18/66—Desegregation order entered.
Banks v. *Claiborne Parish School Board*, No. 11304 (W.D. La.).
2/7/66—Motion to intervene in the Court of Appeals filed by United States. Case currently pending in Court of Appeals for the Fifth Circuit.
Hall v. *St. Helena Parish School Board*, No. 1068 (E.D. La.).
6/27/65—Motion to intervene filed by United States.
4/26/66—Order of district court entering desegregation plan.
Jenkins v. *City of Bogalusa School Board*, No. 15798 (E.D. La.).
8/11/65—Motion to intervene filed by United States.
8/12/65—Order of district court entering desegregation plan.
Johnson v. *Jackson Parish School Board*, No. 11130 (W.D. La.).
2/7/66—Motion to intervene in the Court of Appeals filed by United States. Case currently pending in Court of Appeals for the Fifth Circuit.
Jones v. *Caddo Parish School Board*, No. 11055 (W.D. La.).
7/19/65—Motion to intervene filed by United States.
8/3/65—District court's order denying the motion to intervene.
8/19/65—Order of district court entering desegregation plan. Case currently on appeal in the Court of Appeals for the Fifth Circuit on government's appeal seeking additional relief.
Lemon v. *Bossier Parish School Board*, No. 10687 (W.D. La.).
1/4/65—Motion to intervene filed by United States.
8/20/65—Order of district court entering desegregation plan. Case currently pending on appeal in the Court of Appeals for the Fifth Circuit on government's appeal seeking additional relief.
Smith, et al. v. *Concordia Parish School Board, et al.*, No. 11577 (W.D. La.).
1/24/66—Motion to intervene filed by United States. Case currently pending in district court.

Valley, et al. v. *Rapides Parish School Board, et al.*, No. 10946 (W.D. La.).
8/6/65—Motion to intervene in Court of Appeals filed by United States.
8/23/65—Court of Appeals remanded case to district court.
4/13/66—Order of district court entering revised desegregation plan.

5. Mississippi

Anderson, et al. v. *Canton Municipal Separate School District, et al.*, No. 3700(5)(c) (S.D. Miss.).
6/12/65—Motion to intervene filed by United States.
8/5/65—Order of district court entering desegregation plan.

Baird, et al. v. *Benton County Board of Education, et al.*, No. WC 6513 (N.D. Miss.).
7/21/65—Motion of United States to intervene granted.
8/6/65—Order of district court entering desegregation plan. Request by United States for additional relief pending in district court.

Barnhardt, et al. v. *The Meridian Separate School District, et al.*, No. 1300 (S.D. Miss.).
6/12/65—Motion to intervene filed by United States.
8/5/65—Order of district court entering desegregation plan.
Case currently pending in district court on plaintiff's request for additional relief.

Carthan, et al. v. *Mississippi State Board of Education, et al.*, No. 3814 (S.D. Miss.).
10/2/65—Motion to intervene filed by United States.
10/13/65—Temporary restraining order enjoining enforcement of statute (statute has since been repealed).

Coffey v. *State Educational Finance Commission*, No. 3906 (S.D. Miss.). (Challenge to state tuition grant statute.)
3/14/66—Motion to intervene filed by United States. Case currently pending in district court.

Singleton v. *Jackson Separate School Board District*, No. 3379 (S.D. Miss.).
6/9/65—Motion to intervene in the Court of Appeals filed by United States.
1/26/66—Judgment of Court of Appeals for the Fifth Circuit ordering entry of desegregation plan.

6. North Carolina

Coppedge, et al. v. *The Franklin County Board of Education, et al.*, No. C-1796 (E.D. N.C.).
1/11/66—Motion to intervene filed by United States. Case currently pending in district court.

Hawkins, et al. v. *The North Carolina State Board of Education, et al.*, No. C-2067 (W.D. N.C.). (Tuition grant.)
1/11/66—Motion to intervene filed by United States.
4/4/66—Judgment filed holding tuition statute unconstitutional.

7. South Carolina

Brown, et al. v. *South Carolina State Board of Education*, No. AC-1655 (E.D. S.C.).
10/1/65—Motion to intervene filed by United States.
3/9/65, 3/12/65—Temporary restraining order granted.
Case currently pending in district court.

Miller, et al. v. *School District No. 2, Clarendon County, South Carolina, et al.*, No. 8752 (E.D. S.C.).
2/7/66—Motion to intervene filed by United States.
4/21/66—District court's judgment entered ordering school board to submit a desegregation plan.

8. Tennessee

Fayne v. *County Board of Education of Tipton County, Tennessee, et al.*, No. C-65-274 (W.D. Tenn.).
1/11/66—Motion to intervene filed by United States.
Case currently pending in district court.

McFerren, et al. v. *Fayette County Board of Education*, No. C-65-136 (W.D. Tenn.).
8/9/65—Motion to intervene filed by United States.
Case currently pending in district court.

Robinson v. *Shelby County Board of Education*, No. 4916 (W.D. Tenn.).
5/5/66—Motion to intervene filed by United States.
Case currently pending in district court.

9. Texas

Adams v. *Mathews, et al.*, No. 3095 (E.D. Texas) (Gregg County).
8/18/65—Motion to intervene filed by United States.
9/30/65—Order of district court accelerating pace of previous desegregation plan.

10. Virginia

Beckett v. *The School Board of the City of Norfolk*, No. 2214 (E.D. Va.).
2/15/66—Motion to intervene filed by United States.
3/17/66—Consent decree entered providing desegregation plan.

C. *Suits in which the United States Participated as Amicus Curiae*

1. Alabama

Carr v. *Montgomery Board of Education*, No. 2072-N (M.D. Ala.).
5/18/64—District court granted motion of United States to participate as *amicus curiae*.
5/22/66—Order of district court entering desegregation plan.
Harris v. *Bullock County Board of Education*, No. 2073-N (M.D. Ala.).
5/18/64—Order granting United States permission to participate as *amicus curiae*.
8/5/64—Order of district court entering desegregation plan.
3/12/66—Supplemental consent decree entered.
Lee v. *Macon County Board of Education*, No. 604-E (M.D. Ala.).
7/16/63—Order designating the United States as *amicus curiae*.
2/3/64, 4/28/64, 7/13/64, 8/27/65—Orders of district court entering desegregation plan.
3/11/66—Consent decree entering desegregation plan.

2. Florida

Steele v. *Board of Public Instruction of Leon County, Florida*, No. 854 (N.D. Fla.).
5/2/66—Motion to participate as *amicus curiae* in the Court of Appeals for the Fifth Circuit filed by United States.
Case currently pending in court of appeals.

3. Mississippi

Blackwell v. *The Issaquena County Board of Education*, No. 1096 (S.D. Miss.).
2/24/66—Motion to intervene filed by United States.
3/4/66—Order granting United States permission to participate as *amicus curiae*.
Case currently pending in district court.
Hudson v. *Leake County School Board*, No. 3382 (S.D. Miss.).
6/12/65—Motion to intervene filed by United States.
6/28/65—Court granted United States permission to participate as *amicus curiae*.
8/5/65—Order of district court entering desegregation plan.
2/19/66—Order of court of appeals granting further relief.
Mason v. *Biloxi Municipal Separate School District*, No. 2696 (S.D. Miss.).
6/12/65—Motion to intervene filed by United States.
6/28/65—District court granted United States permission to participate as *amicus curiae*.
8/5/65—Order of district court entering desegregation plan.

D. *Suit brought against the United States*

1. Mississippi

Lee v. *United States*, No. 2034 (S.D. Miss.) (Forrest County).
10/8/65—Complaint filed seeking to enjoin United States from suspending federal financial assistance to the Forrest County School Board.
12/10/65—Counter claim filed by United States seeking desegregation of county school system.
Case currently pending in district court.

II. PUBLIC FACILITY LITIGATION

A. Suits brought by the United States under Title III

1. Louisiana

United States v. *The City of Shreveport*, No. 11600 (W.D. La.). (Public recreation facilities.)

12/9/65—Complaint filed by United States.

Case currently pending in district court.

2. Mississippi

United States v. *City of Laurel*, No. 2054 (S.D. Miss.). (Swimming pool and park.)

1/24/66—Complaint filed by United States.

case currently pending in district court.

B. Suits in which the United States intervened under Title IX

1. Alabama

Bevel v. *Mallory*, No. 3714-65 (S.D. Ala.) (Dallas County). (Court Room.)

10/1/65—Motion to intervene filed by United States.

4/27/66—Order of district court prohibiting segregation in the courtroom.

C. Suits in which the United States participated as amicus curiae

1. Georgia

Evans v. *Newton*, No. 61 (M.D. Ga.) (Bibb County). (Park.)

9/16/65—*Amicus Curiae* brief filed in Supreme Court by United States.

1/17/66—Supreme Court's decision holding segregation in park unlawful.

2. Maryland

Williams v. *Rescue Fire Company*, No. 16658 (D. Md.) (Dorchester County). (Swimming pool and arena.)

2/16/66—*Amicus Curiae* brief filed by United States.

5/12/66—District court judgment entered holding that facilities must be desegregated.

The CHAIRMAN. Now section 406 of the bill on housing authorizes private suits in the State as well as Federal courts. Are you aware of any other act aside from the Federal Employers Liability Act which contains this type of dual jurisdiction.

The ATTORNEY GENERAL. The OPA Act, Mr. Chairman, would be another example.

The CHAIRMAN. OPA. Well, that is in limbo, now.

Attorney General KATZENBACH. Yes, sir, but it did provide a similar jurisdiction in the State courts.

The CHAIRMAN. Well, would the fact that you have this dual jurisdiction complicate the situation?

Attorney General KATZENBACH. I don't think so, Mr. Chairman. The purpose of it was simply to give access to more courts, and that is what it does, merely by authorizing it.

Now I think if the State wants to close its doors to those suits, they have got a pretty interesting question. They may be able to do it; but if it is not unwilling to take these suits, why all we want to do, really, is authorize such a suit to be brought.

I don't think it would result in confusion. As I said in my statement, I think when you are dealing with an area like housing, it is like public accommodations, really. What you are trying to do is to make the law on this subject clear, and I think you will get widespread voluntary compliance by all the important ingredients in the housing area, all the important factors in it, if the law is here, and it is really quite parallel to public accommodations.

We authorized suits on public accommodations, and we brought, oh, some 26, some 40 cases, I guess. The fact of the matter is if everybody refused to comply with public accommodations, we would have

to hire a lot more lawyers. But people in this country, I think, accept the law when Congress has declared it, and they abide by it.

So I don't expect fair housing, the accomplishments of this legislation to depend on hundreds and thousands of private suits being brought; I expect it to accomplish its purpose because real estate agents, bankers, builders, the important factors in the housing market, comply with the law, and cease discriminating, and you are giving them an opportunity to do that, without suffering financial economic loss themselves.

On the public accommodations, restaurant owner after restaurant owner said before the law, "Yes, we are perfectly happy to serve Negroes, but if we serve Negroes here, we will lose our white clientele unless everybody else is in the same boat." And I think the same situation exists in housing, because of the quite unfounded fears that somehow or other, desegregated housing is going to affect the value of apartment houses and buildings, and so forth, and that all the experience in desegregated housing has been to the contrary.

The CHAIRMAN. Now in the Fair Housing Act of the District of Columbia, there is a prohibition against blockbusting representations. In your opinion, does title IV of the bill prohibit making representations about blockbusting?

Attorney General KATZENBACH. No, I would think that you would have difficulties prohibiting representations in that respect. Some first amendment protection is there.

I suppose that unless somehow or other this relates to the provisions at page 28, section 405 here, threatening, coercing and intimidating, so that if you had coercive efforts of this kind, I think they would be prohibited.

The CHAIRMAN. I would like just a restatement, as succinctly as possible, of the constitutional basis whereby Congress is empowered to penalize private violence.

Attorney General KATZENBACH. Title V?

The CHAIRMAN. Yes.

Attorney General KATZENBACH. Well, in the two cases decided about a month ago by the Supreme Court, the issue, or one issue presented to the court, was whether or not the existing statutes went that far, enacted as they were under the 14th amendment and under section 5, or whether the 14th amendment only requires State action. The court on that suggested that the existing laws perhaps only went to situations of violence in which there was some involvement of State action, but six Justices of the Supreme Court expressly said that they had no question that section 5 of the 14th amendment could reach purely private action of that kind, and the other three justices, I believe, expressed no opinion on that.

The CHAIRMAN. You are referring to two cases.

Attorney General KATZENBACH. I am referring to *Price* and *Guest*. Primarily, I am really basing it on *Guest*, rather than on *Price*, and the fact that if you will run through the maze of opinions there, you come out quite clearly with the fact that six justices agree that purely private actions can be reached under section 5 of the 14th amendment, where that action is designed to interfere with Federal guaranteed rights.

The CHAIRMAN. I shall place in the record at this point these two decisions.

(The documents referred to follow:)

SUPREME COURT OF THE UNITED STATES

Nos. 59 AND 60.—OCTOBER TERM, 1965.

United States, Appellant, v. Cecil Ray Price et al. } On Appeals From the United States District Court for the Southern District of Mississippi.

[March 28, 1966.]

MR. JUSTICE FORTAS delivered the opinion of the Court.

These are direct appeals from the dismissal in part of two indictments returned by the United States Grand Jury for the Southern District of Mississippi. The indictments allege assaults by the accused persons upon the rights of the asserted victims to due process of law under the Fourteenth Amendment. The indictment in No. 59 charges 18 persons [1] with violations of 18 U. S. C. § 241 (1964 ed.). In No. 60, the same 18 persons are charged with offenses based upon 18 U. S. C. § 242 (1964 ed.). These are among the so-called civil rights statutes which have come to us from Reconstruction days, the period in our history which also produced the Thirteenth, Fourteenth, and Fifteenth Amendments to the Constitution.

The sole question presented in these appeals is whether the specified statutes make criminal the conduct for which the individuals were indicted. It is an issue of construction, not of constitutional power. We have no doubt of "the power of Congress to enforce by appro-

[1] One of the defendants charged in the two indictments, James E. Jordan, is not a party to the present appeal. His case was transferred under Rule 20, Fed. Rules Crim. Proc., to the United States District Court for the Middle District of Georgia.

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priate criminal sanction every right guaranteed by the Due Process Clause of the Fourteenth Amendment." *United States* v. *Williams*, 341 U. S. 70, 72.[2]

The events upon which the charges are based, as alleged in the indictments, are as follows: On June 21, 1964, Cecil Ray Price, the Deputy Sheriff of Neshoba County, Mississippi, detained Michael Henry Schwerner, James Earl Chaney and Andrew Goodman in the Neshoba County jail located in Philadelphia, Mississippi. He released them in the dark of that night. He then proceeded by automobile on Highway 19 to intercept his erstwhile wards. He removed the three men from their automobile, placed them in an official automobile of the Neshoba County Sheriff's office, and transported them to a place on an unpaved road.

These acts, it is alleged, were part of a plan and conspiracy whereby the three men were intercepted by the 18 defendants, including Deputy Sheriff Price, Sheriff Rainey and Patrolman Willis of the Philadelphia, Mississippi, Police Department. The purpose and intent of the release from custody and the interception, according to the charge, were to "punish" the three men. The defendants, it is alleged, "did wilfully assault, shoot and

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[2] Cf. Mr. Justice Holmes in *United States* v. *Mosley*, 238 U. S. 383, 386 (a federal voting rights case under an earlier version of § 241): "It is not open to question that this statute is constitutional . . . ." The source of congressional power in this case is, of course, § 5 of the Fourteenth Amendment, which reads: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

There are three "Williams" cases arising from the same events. The first, with no bearing on the present appeal is *United States* v. *Williams*, 341 U. S. 58, involving a prosecution for perjury. The second, *United States* v. *Williams*, 341 U. S. 70, was a prosecution for violation of § 241; it will be referred to hereinafter as *Williams* I. The third, *Williams* v. *United States*, 341 U. S. 97, was a prosecution for violation of § 242; it will be referred to as *Williams* II.

kill" each of the three. And, the charge continues, the bodies of the three victims were transported by one of the defendants from the rendezvous on the unpaved road to the vicinity of the construction site of an earthen dam approximately five miles southwest of Philadelphia, Mississippi.

These are federal and not state indictments. They do not charge as crimes the alleged assaults or murders. The indictments are framed to fit the stated federal statutes, and the question before us is whether the attempt of the draftsman for the Grand Jury in Mississippi has been successful: whether the indictments charge offenses against the various defendants which may be prosecuted under the designated federal statutes.

We shall deal first with the indictment in No. 60, based on § 242 of the Criminal Code, and then with the indictment in No. 59, under § 241. We do this for ease of exposition and because § 242 was enacted by the Congress about four years prior to § 241.[3] Section 242 was enacted in 1866; § 241 in 1870.

I. No. 60.

Section 242 defines a misdemeanor, punishable by fine of not more than $1,000 or imprisonment for not more than one year, or both. So far as here significant, it provides punishment for "Whoever, under color of law, statute, ordinance, regulation, or custom wilfully subjects any inhabitant of any State . . . to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States . . . ."

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[3] In the interests of clarity, we shall use the present designation of the statutes throughout this discussion. Reference is made to the Appendix to Mr. Justice Frankfurter's opinion in *Williams* I, 341 U. S., at 83, which contains a table showing major changes in the statutes through the years.

The indictment in No. 60 contains four counts, each of which names as defendants the three officials and 15 nonofficial persons. The First Count charges, on the basis of allegations substantially as set forth above, that all of the defendants conspired "to wilfully subject" Schwerner, Chaney and Goodman "to the deprivation of their right, privilege and immunity secured and protected by the Fourteenth Amendment of the Constitution of the United States not to be summarily punished without due process of law by persons acting under color of the laws of the State of Mississippi." This is said to constitute a conspiracy to violate § 242, and therefore an offense under 18 U. S. C. § 371. The latter section, the general conspiracy statute, makes it a crime to conspire to commit any offense against the United States. The penalty for violation is the same as for direct violation of § 242—that is, it would be a misdemeanor.[4]

On a motion to dismiss, the District Court sustained this First Count as to all defendants. As to the sheriff, deputy sheriff and patrolman, the court recognized that each was clearly alleged to have been acting "under color of law" as required by § 242.[5] As to the private persons, the District Court held that "[I]t is immaterial to the conspiracy that these private individuals were not acting under color of law" because the count charges that they were conspiring with persons who were so acting. See *United States* v. *Rabinowich*, 238 U. S. 78, 87.

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[4] "If . . . the offense, the commission of which is the object of the conspiracy, is a misdemeanor only, the punishment for such conspiracy shall not exceed the maximum punishment provided for such misdemeanor." 18 U. S. C. § 371 (1964 ed.).

[5] This is settled by our decisions in *Screws* v. *United States*, 325 U. S. 91, 107–113, and *Williams* II, 341 U. S., at 99–100.

The court necessarily was satisfied that the indictment, in alleging the arrest, detention, release, interception and killing of Schwerner, Chaney and Goodman, adequately stated as the purpose of the conspiracy, a violation of § 242, and that this section could be violated by "wilfully subject[ing] the victims to the deprivation of their right, privilege and immunity" under the Due Process Clause of the Fourteenth Amendment.

No appeal was taken by the defendants from the decision of the trial court with respect to the First Count and it is not before us for adjudication.

The Second, Third and Fourth Counts of the indictment in No. 60 charge all of the defendants, not with conspiracy, but with substantive violations of § 242. Each of these counts charges that the defendants, acting "under color of the laws of the State of Mississippi," "did wilfully assault, shoot and kill" Schwerner, Chaney and Goodman, respectively, "for the purpose and with the intent" of punishing each of the three and that the defendants "did thereby wilfully deprive" each "of rights, privileges and immunities secured and protected by the Constitution and the laws of the United States"—namely, due process of law.

The District Court held these counts of the indictment valid as to the sheriff, deputy sheriff and patrolman. But it dismissed them as against the nonofficial defendants because the counts do not charge that the latter were "officers in fact, or de facto in anything allegedly done by them 'under color of law.'"

We note that by sustaining these counts against the three officers, the court again necessarily concluded that an offense under § 242 is properly stated by allegations of willful deprivation, under color of law, of life and liberty without due process of law. We agree. No other result would be permissible under the decisions of

this Court. *Screws* v. *United States*, 325 U. S. 91; *Williams* II.[6]

But we cannot agree that the Second, Third or Fourth Counts may be dismissed as against the nonofficial defendants. Section 242 applies only where a person indicted has acted "under color" of law. Private persons, jointly engaged with state officials in the prohibited action, are acting "under color" of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a wilfull participant in joint activity with the State or its agents.[7]

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[6] ". . . where police take matters in their own hands, seize victims, beat and pound them until they confess, there cannot be the slightest doubt that the police have deprived the victim of a right under the Constitution. It is the right of the accused to be tried by a legally constituted court, not by a kangaroo court." *Williams* II, 341 U. S., at 101.

[7] "Under color" of law means the same thing in § 242 that it does in the civil counterpart to § 242, 42 U. S. C. § 1983. *Monroe* v. *Pape*, 365 U. S. 167, 185 (majority opinion), 212 (Frankfurter, J., dissenting). In cases under § 1983, "under color" of law has consistently been treated as the same thing as the "state action" required under the Fourteenth Amendment. See, *e. g.*, *Smith* v. *Allwright*, 321 U. S. 649; *Terry* v. *Adams*, 345 U. S. 461; *Simkins* v. *Moses H. Cone Memorial Hospital*, 323 F. 2d 959 (C. A. 4th Cir.), cert. denied, 376 U. S. 938; *Smith* v. *Holiday Inns*, 336 F. 2d 630 (C. A. 6th Cir.); *Hampton* v. *City of Jacksonville*, 304 F. 2d 320 (C. A. 5th Cir.), cert. denied, 371 U. S. 911; *Boman* v. *Birmingham Transit Co.*, 280 F. 2d 531 (C. A. 5th Cir.); *Kerr* v. *Enoch Pratt Free Library*, 149 F. 2d 212 (C. A. 4th Cir.), cert. denied, 326 U. S. 721.

The contrary view in a § 242 context was expressed by the dissenters in *Screws*, 325 U. S., at 147–149, and was rejected then, later in *Williams* II, and finally—in a § 1983 case—in *Monroe* v. *Pape*, *supra*. Cf. *Peterson* v. *City of Greenville*, 373 U. S. 244, 250 (concurring opinion of HARLAN, J.). Recent decisions of this Court which have given form to the "state action" doctrine make it clear that the indictments in this case allege conduct on the part of the "private" defendants which constitutes "state action," and hence

In the present case, according to the indictment, the brutal joint adventure was made possible by state detention and calculated release of the prisoners by an officer of the State. This action, clearly attributable to the State, was part of the monstrous design described by the indictment. State officers participated in every phase of the alleged venture: the release from jail, the interception, assault and murder. It was a joint activity, from start to finish. Those who took advantage of participation by state officers in accomplishment of the foul purpose alleged must suffer the consequences of that participation. In effect, if the allegations are true, they were participants in official lawlessness, acting in wilfull concert with state officers and hence under color of law.

Appellees urge that the decision of the District Court was based upon a construction of the indictment to the effect that it did not charge the private individuals with acting "under color" of law. Consequently, they urge us to affirm in No. 60. In any event, they submit, since the trial court's decision was based on the inadequacy of the indictment and not on construction of the statute,

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action "under color" of law within § 242. In *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, we held that there is "state action" whenever the "State has so far insinuated itself into a position of interdependence [with the otherwise 'private' person whose conduct is said to violate the Fourteenth Amendment] . . . that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." 365 U. S., at 725. Cf. *Pennsylvania* v. *Board of Trusts*, 353 U. S. 230; *Evans* v. *Newton*, — U. S. —; *Peterson* v. *City of Greenville*, 373 U. S. 244; *Lombard* v. *Louisiana*, 373 U. S. 267; *Robinson* v. *Florida*, 378 U. S. 153; *Griffin* v. *Maryland*, 378 U. S. 130; *American Communications Assn.* v. *Douds*, 339 U. S. 382, 401; *Public Utilities Comm'n* v. *Pollak*, 343 U. S. 451; *Smith* v. *Allwright*, 321 U. S. 649; *Terry* v. *Adams*, 345 U. S. 461; *Williams* II, 341 U. S., at 99–100.

we have no jurisdiction to review it on direct appeal. *United States* v. *Swift & Co.*, 318 U. S. 442. We do not agree. Each count of the indictment specifically alleges that all of the defendants were acting "under color of the laws of the State of Mississippi." The fault lies not in the indictment, but in the District Court's view that the statute requires that each offender be an official or that he act in an official capacity. We have jurisdiction to consider this statutory question on direct appeal and, as we have shown, the trial court's determination of it is in error. Since each of the private individuals is indictable as a principal acting under color of law, we need not consider whether he might be held to answer as an "aider or abettor" under 18 U. S. C. § 2 (1964 ed.), despite omission to include such a charge in the indictment.

Accordingly, we reverse the dismissal of the Second, Third and Fourth Counts of the indictment in No. 60 and remand for trial.

II. No. 59.

No. 59 charges each of the 18 defendants with a felony—a violation of § 241. This indictment is in one count. It charges that the defendants "conspired together . . . to injure, oppress, threaten and intimidate" Schwerner, Chaney and Goodman "in the free exercise and enjoyment of the right and privilege secured to them by the Fourteenth Amendment to the Constitution of the United States not to be deprived of life or liberty wtihout due process of law by persons acting under color of the laws of Mississippi." The indictment alleges that it was the purpose of the conspiracy that Deputy Sheriff Price would release Schwerner, Chaney and Goodman from custody in the Neshoba County jail at such time that Price and the other 17 defendants "could and would intercept" them "and threaten, assault and kill them." The penalty under § 241 is a fine of not more than $5,000, or imprisonment for not more than 10 years, or both.

Section 241 is a conspiracy statute. It reads as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

"If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—

"They shall be fined not more than $5,000 or imprisoned not more than ten years, or both."

The District Court dismissed the indictment as to all defendants. In effect, although § 241 includes "rights or privileges secured by the Constitution or laws of the United States" without qualification or limitation, the Court held that it does not include rights protected by the Fourteenth Amendment.

It will be recalled that in No. 60 the District Court held that § 242 included the denial of Fourteenth Amendment rights—the same right to due process involved in the indictment under § 241. Both include rights or privileges secured by the Constitution or laws of the United States. Neither is qualified or limited. Each includes, presumably, *all* of the Constitution and laws of the United States. To the reader of the two sections, versed only in the English language, it may seem bewildering that the two sections could be so differently read.

But the District Court purported to read the statutes with the gloss of *Williams* I. In that case, the only case in which this Court has squarely confronted the point at issue, the Court did in fact sustain dismissal of an indictment under § 241. But it did not, as the District Court incorrectly assumed, hold that § 241 is inapplicable to Fourteenth Amendment rights. The

Court divided equally on the issue. Four Justices, in an opinion by Mr. Justice Frankfurter, were of the view that § 241 "only covers conduct which interferes with rights arising from the substantive powers of the Federal Government"—rights "which Congress can beyond doubt constitutionally secure against interference by private individuals." 341 U. S., at 73, 77. Four other Justices, in an opinion by MR. JUSTICE DOUGLAS, found no support for Mr. Justice Frankfurter's view in the language of the section, its legislative history, or its judicial interpretation up to that time. They read the statute as plainly covering conspiracies to injure others in the exercise of Fourteenth Amendment rights. They could see no obstacle to using it to punish deprivations of such rights. Dismissal of the indictment was affirmed because MR. JUSTICE BLACK voted with those who joined Mr. Justice Frankfurter. He did so, however, for an entirely different reason—that the prosecution was barred by *res judicata*—and he expressed no view on the issue whether "§ 241, as applied, is too vague and uncertain in scope to be consistent with the Fifth Amendment." *Williams* I thus left the proper construction of § 241, as regards its applicability to protect Fourteenth Amendment rights, an open question.

In view of the detailed opinions in *Williams* I, it would be supererogation to track the arguments in all of their intricacy. On the basis of an extensive re-examination of the question, we conclude that the District Court erred; that § 241 must be read as it is written—to reach conspiracies "to injure . . . any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . ."; that this language includes rights or privileges protected by the Fourteenth Amendment; that whatever the ultimate coverage of the section may be, it extends to conspiracies otherwise within the scope of the section,

participated in by officials alone or in collaboration with private persons; and that the indictment in No. 59 properly charges such a conspiracy in violation of § 241. We shall confine ourselves to a review of the major considerations which induce our conclusion.

1. There is no doubt that the indictment in No. 59 sets forth a conspiracy within the ambit of the Fourteenth Amendment. Like the indictment in No. 60, *supra*, it alleges that the defendants acted "under color of law" and that the conspiracy included action by the State through its law enforcement officers to punish the alleged victims without due process of law in violation of the Fourteenth Amendment's direct admonition to the States.

The indictment specifically alleges that the sheriff, deputy sheriff and a patrolman participated in the conspiracy; that it was a part of the "plan and purpose of the conspiracy" that Deputy Sheriff Price, "while having [the three victims] . . . in his custody in the Neshoba County Jail . . . would release them from custody at such time that he [and others of the defendants] . . . could and would intercept [the three victims] . . . and threaten, assault, shoot and kill them."

This is an allegation of state action which, beyond dispute, brings the conspiracy within the ambit of the Fourteenth Amendment. It is an allegation of official, state participation in murder, accomplished by and through its officers with the participation of others. It is an allegation that the State, without the semblance of due process of law as required of it by the Fourteenth Amendment, used its sovereign power and office to release the victims from jail so that they were not charged and tried as required by law, but instead could be intercepted and killed. If the Fourteenth Amendment forbids denial of counsel, it clearly denounces denial of any trial at all.

As we have consistently held "The Fourteenth Amendment protects the individual against *state action,* not against wrongs done by *individuals.*" *Williams* I, 341 U. S., at 92 (opinion of DOUGLAS, J.). In the present case, the participation by law enforcement officers, as alleged in the indictment, is clearly state action, as we have discussed, and it is therefore with the scope of the Fourteenth Amendment.

2. The argument, however, of Mr. Justice Frankfurter's opinion in *Williams* I, upon which the District Court rests its decision, cuts beneath this. It does not deny that the accused conduct is within the scope of the Fourteenth Amendment, but it contends that in enacting § 241, the Congress intended to include only the rights and privileges conferred on the citizen by reason of the "substantive" powers of the Federal Government—that is, by reason of federal power operating directly upon the citizen and not merely by means of prohibitions of state action. As the opinion below puts it, "the Congress had in mind the federal rights and privileges which appertain to citizens as such and not the general rights extended to all persons by the Fourteenth Amendment." We do not agree.

The language of § 241 is plain and unlimited. As we have discussed, its language embraces *all* of the rights and privileges secured to citizens by *all* of the Constitution and *all* of the laws of the United States. There is no indication in the language that the sweep of the section is confined to rights that are conferred by or "flow from" the Federal Government, as distinguished from those secured or confirmed or guaranteed by the Constitution. We agree with the observation of Mr. Justice Holmes in *United States* v. *Mosley,* 238 U. S. 383, 387–388, that

> "the source of this section in the doings of the Ku Klux Klan and the like is obvious and acts of

> violence obviously were in the mind of Congress. Naturally Congress put forth all its powers. . . . [T]his section dealt with Federal rights and with all Federal rights, and protected them in the lump . . . . [It should not be construed so] as to deprive citizens of the United States of the general protection which on its face § 19 [now § 241] most reasonably affords." [8]

We believe, with Mr. Justice Holmes, that the history of the events from which § 241 emerged illuminates the purpose and means of the statute with an unmistakable light. We think that history leaves no doubt that, if we are to give § 241 the scope that its origins dictate, we must accord it a sweep as broad as its language. We are not at liberty to seek ingenious analytical instruments for excluding from its general language the Due Process Clause of the Fourteenth Amendment—particularly since the violent denial of legal process was one of the reasons motivating enactment of the section.[9]

Section 241 was enacted as part of what came to be known as the Enforcement Act of 1870, 16 Stat. 140.[10]

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[8] See also Mr. Justice Rutledge, concurring, in *Screws* v. *United States*, 325 U. S. 91, 120.

[9] It would be strange, indeed, were this Court to revert to a construction of the Forteenth Amendment which would once again narrow its historical purpose—which remains vital and pertinent to today's problems. As is well known, for many years after Reconstruction, the Fourteenth Amendment was almost a dead letter as far as the civil rights of Negroes were concerned. Its sole office was to impede state regulation of railroads or other corporations. Despite subsequent statements to the contrary, nothing in the records of the congressional debates or the Joint Committee on Reconstruction indicate any uncertainty that its objective was the protection of civil rights. See Stampp, The Era of Reconstruction, 136–137 (1965).

[10] The official title is "An Act to enforce the Right of Citizens of the United States to vote in the several States of this Union, and for other Purposes."

The Act was passed on May 31, 1870, a bare two months after ratification of the Fifteenth Amendment. In addition to the new § 241, it included a re-enactment of a provision of the Civil Rights Act of 1866 which is now § 242. The intended breadth of § 241 is emphasized by contrast with the narrowness of § 242 as it then was.[11] Section 242 forbade the deprivation, "under color of law," of "any right secured or protected by this act." The rights protected by the Act were narrow and specific: "to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of person and property as is enjoyed by white citizens [and to] be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and none other." Act of April 9, 1866, 14 Stat. 27. Between 1866 and 1870 there was much agitated criticism in the Congress and in the Nation because of the continued denial of rights to Negroes, sometimes accompanied by violent assaults. In response to the demands for more stringent legislation Congress enacted the Enforcement Act of 1870. Congress had before it and re-enacted § 242 which was explicitly limited as we have described. At the same time, it included § 241 in the Act using broad language to cover not just the rights enumerated in § 242, but all rights and privileges under the Constitution and laws of the United States.

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[11] The substantial difference in coverage of the two sections as they were in the Act of 1870 precludes the argument that § 241 should be narrowly construed to exclude Fourteenth Amendment rights because otherwise it would have been duplicative of § 242 taken in conjunction with the general conspiracy statute, 18 U. S. C. § 371. If, as we hold, § 241 was intended to cover all Fourteenth Amendment rights, it was far broader in 1870 than was § 242. For other reasons for rejecting the duplication argument, see the opinion of MR. JUSTICE DOUGLAS in *Williams* I, 341 U. S., at 88, n. 2.

It was not until the statutory revision of 1874 that the specific enumeration of protected rights was eliminated from § 242. The section was then broadened to include as wide a range of rights as § 241 already did: "any rights, privileges, or immunities, secured or protected by the Constitution and laws of the United States." The substantial change thus effected was made with the customary stout assertions of the codifiers that they had merely clarified and reorganized without changing substance.[12] Section 241 was left essentially unchanged, and neither in the 1874 revision nor in any subsequent re-enactment has there been the slightest indication of a congressional intent to narrow or limit the original broad scope of § 241. It is clear, therefore, that § 241, from original enactment through subsequent codifications, was intended to deal, as Mr. Justice Holmes put it, with conspiracies to interfere with "Federal rights and with all Federal rights." We find no basis whatsoever for a judgment of Solomon which would give to the statute less than its words command.[13]

The purpose and scope of the 1866 and 1870 enactments must be viewed against the events and passions of the time.[14] The Civil War had ended in April 1865. Relations between Negroes and whites were increasingly turbulent.[15] Congress had taken control of the entire governmental process in former Confederate States.

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[12] See 17 Stat. 74; 17 Stat. 579; S. Misc. Doc. No. 101, 40th Cong., 2d Sess.; H. Misc. Doc. No. 31, 40th Cong., 3d Sess.; S. Misc. Doc. No. 3, 42d Cong., 2d Sess.; 2 Cong. Rec. 646, 648, 1029, 1210, 1461.

[13] The opinion of MR. JUSTICE DOUGLAS in *Williams* I, 341 U. S., at 88, disposes of the argument that the words of § 241 themselves suggest the narrow meaning which the opinion of Mr. Justice Frankfurter found in the section.

[14] See generally, Stampp, The Era of Reconstruction (1965); Nevins, The Emergence of Modern America (1927).

[15] See H. R. Rep. No. 16, 39 Cong., 2d Sess., pp. 12 ff.

It had declared the governments in 10 "unreconstructed" States to be illegal and had set up federal military administrations in their place. Congress refused to seat representatives from these States until they had adopted constitutions guaranteeing Negro suffrage, and had ratified the Fourteenth Amendment. Constitutional conventions were called in 1868. Six of the 10 States fulfilled Congress' requirements in 1868, the other four by 1870.

For a few years "radical" Republicans dominated the governments of the Southern States and Negroes played a substantial political role. But countermeasures were swift and violent. The Ku Klux Klan was organized by southern whites in 1866 and a similar organization appeared with the romantic title of the Knights of the White Camellia. In 1868 a wave of murders and assaults was launched including assassinations designed to keep Negroes from the polls.[16] The States themselves were helpless, despite the resort by some of them to extreme measures such as making it legal to hunt down and shoot any disguised man.[17]

Within the Congress pressures mounted in the period between the end of the war and 1870 for drastic measures. A few months after the ratification of the Thirteenth Amendment on December 6, 1865, Congress, on April 9, 1866, enacted the Civil Rights Act of 1866, which, as we have described, included § 242 in its originally narrow form. On June 13, 1866, the Fourteenth Amendment was proposed, and it was ratified the next month. In February 1869 the Fifteenth Amendment was proposed, and it was ratified in February 1870. On May 31, 1870, the Enforcement Act of 1870 was enacted.

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[16] Cf. Nevins, *op. cit. supra*, at 351.

[17] See, *id.*, at 352; Morison, Oxford History of the American People, 722–723 (1965).

In this context, it is hardly conceivable that Congress intended § 241 to apply only to a narrow and relatively unimportant category of rights.[18] We cannot doubt that the purpose and effect of § 241 was to reach assaults upon rights under the entire Constitution, including the Thirteenth, Fourteenth and Fifteenth Amendments, and not merely under part of it.

This is fully attested by the only statement explanatory of § 241 in the recorded congressional proceedings relative to its enactment. We refer to the speech of Senator Pool of North Carolina who introduced the provisions as an amendment to the Enforcement Act of 1870. The Senator's remarks are printed in full in the Appendix to this opinion.[19] He urged that the section was needed in order to punish invasions of the newly adopted Fourteenth and Fifteenth Amendments to the Constitution. He acknowledged that the States as such were beyond the reach of the punitive process, and that the legislation must therefore operate upon individuals. He made it clear that "It matters not whether these individuals be officers or whether they are acting upon their own responsibility." We find no evidence whatever that Senator Pool intended that § 241 should not cover violations of Fourteenth Amendment rights, or that it should not include state action or actions by state officials.

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[18] See, for example, *United States* v. *Waddell*, 112 U. S. 76 (right to perfect a homestead claim); *United States* v. *Classic*, 313 U. S. 299 (right to vote in federal elections); *Logan* v. *United States*, 144 U. S. 263 (right to be secure from unauthorized violence while in federal custody); *In re Quarles*, 158 U. S. 532 (right to inform on violations of federal law). Cf. also *United States* v. *Cruikshank*, 92 U. S. 542, 552; *Hague* v. *CIO*, 307 U. S. 496, 512–513 (opinion of Roberts, J.); *Collins* v. *Hardyman*, 341 U. S. 651, 660.

[19] We include these remarks only to show that the Senator clearly intended § 241 to cover Fourteenth Amendment Rights.

We conclude, therefore, that it is incumbent upon us to read § 241 with full credit to its language. Nothing in the prior decisions of this Court or of other courts which have considered the matter stands in the way of that conclusion.[20]

The present application of the statutes at issue does not raise fundamental questions of federal-state relationships. We are here concerned with allegations which squarely and indisputably involve state action in direct violation of the mandate of the Fourteenth Amendment—that no State shall deprive any person of life or liberty without due process of law. This is a direct, traditional concern of the Federal Government. It is an area in which the federal interest has existed for at least a century, and in which federal participation has intensified as part of a renewed emphasis upon civil rights. Even as recently as 1951, when *Williams* I was decided, the federal role in the establishment and vindication of fundamental rights—such as the freedom to travel, nondiscriminatory access to public areas and nondiscriminatory educational facilities—was neither as pervasive nor as intense as it is today. Today, a decision interpreting a federal law in accordance with its historical design, to punish denials by state action of constitutional rights of the person can hardly be regarded as adversely affecting "the wise adjustment between state responsibility and national control . . . ." *Williams* I, 341 U. S., at 73 (opinion of Frankfurter, J.). In

[20] This Court has rejected the argument that the constitutionality of § 241 may be affected by undue vagueness of coverage. The Court held with reference to § 242 that any deficiency is cured by the requirement that specific intent be proved. *Screws* v. *United States*, 325 U. S. 91. There is no basis for distinction between the two statutes in this respect. See *Williams* I, 341 U. S., at 93–95 (DOUGLAS, J.).

any event, the problem, being statutory and not constitutional, is ultimately, as it was in the beginning, susceptible of congressional disposition.

Reversed and remanded.

MR. JUSTICE BLACK concurs in the judgment and opinion of the Court except insofar as the opinion relies upon *United States* v. *Williams*, 341 U. S. 58; *United States* v. *Williams*, 341 U. S. 70; and *Williams* v. *United States*, 341 U. S. 97.

Remarks of Senator Pool of North Carolina on sponsoring Sections 5, 6 and 7 of the Enforcement Act of 1870 (Cong. Globe, 41st Cong., 2d Sess., pp. 3611–3613):

Mr. POOL. Mr. President, the question involved in the proposition now before the Senate is one in which my section of the Union is particularly interested; although since the ratification of the fifteenth amendment, which we are now about to enforce by appropriate legislation, other sections of the country have become more or less interested in the same question. It is entering upon a new phase of reconstruction; that is, to enforce by appropriate legislation those great principles upon which the reconstruction policy of Congress was based.

I said upon a former occasion on this floor that the reconstruction policy of Congress had been progressive, and that it was necessary that it should be progressive still. The mere act of establishing governments in the recently insurgent States was one thing; the great principles upon which Congress proposed to proceed in establishing those governments was quite another thing, involving principles which lie at the very foundation of all that has been done, and which are intimately connected with all the results that must follow from that and from the legislation of Congress connected with the whole subject.

Mr. President, the first thing that was done was the passage of the thirteenth amendment, by which slavery in the United States was abolished. By that four millions of people were taken out from under the protecting hand of interested masters and turned loose to take care of themselves. They were turned loose and put upon their own resources in communities which were imbued with prejudices against them as a race, communities

which for the most part had for years past—indeed from the very time when those who are now in existence were born—been taught and had instilled into them a prejudice against the equality which has been attempted to be established for the colored citizens of the United States.

Mr. President, the condition which that thirteenth amendment imposed on the late insurrectionary States was one which demanded the serious consideration and attention of this Government. The equality which by the thirteenth, fourteenth, and fifteenth amendments has been attempted to be secured for the colored men, has not only subjected them to the operation of the prejudices which had theretofore existed, but it has raised against them still stronger prejudices and stronger feelings in order to fight down the equality by which it is claimed they are to control the legislation of that section of the country. They were turned loose among those people, weak, ignorant, and poor. Those among the white citizens there who have sought to maintain the rights which you have thrown upon that class of people, have to endure every species of proscription, of opposition, and of vituperation in order to carry out the policy of Congress, in order to lift up and to uphold the rights which you have conferred upon that class. It is for that reason not only necessary for the freedmen, but it is necessary for the white people of that section that there should be stringent and effective legislation on the part of Congress in regard to these measures of reconstruction.

We have heard on former occasions on the floor of the Senate that there were organizations which committed outrages, which went through communities for the purposes, of intimidating and coercing classes of citizens in the exercise of their rights. We have been told here that perhaps it might be well that retaliation should be

resorted to on the part of those who are oppressed. Sir, the time will come when retaliation will be resorted to unless the Government of the United States interposes to command and to maintain the peace; when there will be retaliation and civil war; when there will be bloodshed and tumult in various communities and sections. It is not only necessary for the freedom, but it is important to the white people of the southern section, that by plain and stringent laws the United States should interpose and preserve the peace and quiet of the community.

The fifteenth amendment to the Constitution of the United States provides that the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any State on account of race, color, or previous condition of servitude. It speaks of "the right of citizens to vote." It has been said that voting is a privilege; but this amendment recognizes it as a right in the citizen; and this right is not to "be denied or abridged by the United States, or by any State." What are we to understand by that? Can individuals abridge it with impunity? Is there no power in this Government to prevent individuals or associations of individuals from abridging or contravening that provision of the Constitution? If that be so, legislation is unnecessary. If our legislation is to apply only to the States, it is perfectly clear that it is totally unnecessary, inasmuch as we cannot pass a criminal law as applicable to a State; nor can we indict a State officer as an officer. It must apply to individuals. A State might attempt to contravene that provision of the Constitution by passing some positive enactment by which it would be contravened, but the Supreme Court would hold such enactment to be unconstitutional, and in that way the State would be restrained. But the word "deny" is used. There are various ways in which a State may prevent the full operation of this constitutional amendment. It

cannot—because the courts would prevent it—by positive legislation, but by acts of omission it may practically deny the right. The legislation of Congress must be to supply acts of omission on the part of the States. If a State shall not enforce its laws by which private individuals shall be prevented by force from contravening the rights of the citizen under the amendment, it is in my judgment the duty of the United States Government to supply that omission, and by its own laws and by its own courts to go into the States for the purpose of giving the amendment vitality there.

The word "deny" is used not only in this fifteenth amendment, but I perceive in the fourteenth amendment it is also used. When the fourteenth amendment was passed there was in existence what is known as the civil rights bill, a part of which has been copied in the Senate bill now pending. The civil rights bill recognized all persons born or naturalized in the United States as citizens, and provided that they should have certain rights which were enumerated. They are, "to make and enforce contracts, to sue, be made parties, give evidence, to inherit, purchase, lease, sell, hold and convey real and personal property," and to "the full and equal benefit of all laws and proceedings for the security of person and property."

The civil rights bill was to be enforced by making it criminal for any officer, under color of any State law, "to subject, or cause to be subjected, any citizen to the deprivation of any of the rights secured and protected" by the act. If an officer of any State were indicted for subjecting a citizen to the deprivation of any of those rights he was not to be indicted as an officer; it was as an individual. And so, under the fourteenth amendment to the Constitution, "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive

any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." There the word "deny" is used again; it is used in contradistinction to the first clause, which says, "No State shall make or enforce any law" which shall do so and so. That would be a positive act which would contravene the right of a citizen; but to say it shall not deny to any person the equal protection of the law it seems to me opens up a different branch of the subject. It shall not deny by acts of omission, by a failure to prevent its own citizens from depriving by force any of their fellow-citizens of these rights. It is only when a State omits to carry into effect the provisions of the civil rights act, and to secure the citizens in their rights, that the provisions of the fifth section of the fourteenth amendment would be called into operation, which is, "that Congress shall enforce by appropriate legislation the provisions of this article."

There is no legislation that could reach a State to prevent its passing a law. It can only reach the individual citizens of the State in the enforcement of law. You have, therefore, in any appropriate legislation, to act on the citizen, not on the State. If you pass an act by which you make it an indictable offense for an officer to execute any law of a State by which he trespasses upon any of these rights of the citizen it operates upon him as a citizen, and not as an officer. Why can you not just as well extend it to any other citizen of the country?

It is, in my judgment, incumbent upon Congress to pass the most stringent legislation on this subject. I believe that we have a perfect right under the Constitution of the United States, not only under these three amendments, but under the general scope and features and spirit of the Constitution itself, to go into any of

these States for the purpose of protecting and securing liberty. I admit that when you go there for the purpose of restraining liberty, you can go only under delegated powers in express terms; but to go into the States for the purpose of securing and protecting the liberty of the citizen and the rights and immunities of American citizenship is in accordance with the spirit and whole object of the formation of the Union and the national Government.

There are, Mr. President, various ways in which the right secured by the fifteenth amendment may be abridged by citizens in a State. If a State should undertake by positive enactment, as I have said, to abridge the right of suffrage, the courts of the country would prevent it; and I find that in section two of the bill which has been proposed as a substitute by the Judiciary Committee of the Senate provision is made for cases where officers charged with registration or officers charged with the assessment of taxes and with making the proper entries in connection therewith, shall refuse the right to register or to pay taxes to a citizen. I believe the language of the Senate bill is sufficiently large and comprehensive to embrace any other class of officers that might be charged with any act that was necessary to enable a citizen to perform any prerequisite to voting. But, sir, individuals may prevent the exercise of the right of suffrage; individuals may prevent the enjoyment of other rights which are conferred upon the citizen by the fourteenth amendment, as well as trespass upon the right conferred by the fifteenth. Not only citizens, but organizations of citizens, conspiracies, may be and are, as we are told, in some of the States formed for that purpose. I see in the fourth section of the Senate bill a provision for cases where citizens by threats, intimidation, bribery, or otherwise prevent, delay, or hinder the exercise of this

right; but there is nothing here that strikes at organizations of individuals, at conspiracies for that purpose. I believe that any bill will be defective which does not make it a highly penal offense for men to conspire together, to organize themselves into bodies, for the express purpose of contravening the right conferred by the fifteenth amendment.

But, sir, there is a great, important omission in this bill as well as in that of the House. It seems not to have struck those who drew either of the two bills that the prevention of the exercise of the right of suffrage was not the only or the main trouble that we have upon our hands. Suppose there shall be an organization of individuals, or, if you please, a single individual, who shall take it upon himself to compel his fellow citizens to vote in a particular way. Suppose he threatens to discharge them from employment, to bring upon them the outrages which are being perpetrated by the Kuklux organizations, so as not to prevent their voting, but to compel them to vote in accordance with the dictates of the party who brings this coercion upon them. It seems to me it is necessary that we should legislate against that. That is a more threatening view of the subject than the mere preventing of registration or of entering men's names upon the assessment books for taxation or of depositing the ballot in the box. I think the bill cannot be perfected to meet the emergencies of the occasion unless there be a section which meets that view of the case.

The Senator from Indiana [Mr. Morton] asks whether I have drawn an amendment to that effect. I have, but I cannot offer it at this time, for the simple reason that there is an amendment to an amendment pending.

Mr. MORTON. Let it be read for information.

Mr. POOL. It has been printed, and I send it to the desk to be read for information.

The Chief Clerk read the amendment intended to be proposed by Mr. Pool, as follows:

"Insert after section four of the Senate bill the following sections:

"SEC. 5. *And be it further enacted,* That it shall be unlawful for any person, with intent to hinder or influence the exercise of the right of suffrage, as aforesaid, to coerce or intemidate, or attempt to coerce or intimidate any of the legally qualified voters in any State or Territory. Any person violating the provisions of this section shall be held guilty of a misdemeanor, and on conviction thereof shall be fined or imprisoned, or both, in the discretion of the court: the fine not to exceed $1,000, and the imprisonment not to exceed one year.

SEC. 6. *And be it further enacted,* That if two or more persons shall band or conspire together, or go in disguise upon the public highway, or upon the premises of another, with intent to violate any provision of this act, or to injure, oppress, threaten, or intimidate any citizen with intent to prevent or hinder his free exercise and enjoyment of any right or privilege granted or secured to him by the Constitution or laws of the United States, such person shall be held guilty of felony, and on conviction thereof shall be fined and imprisoned; the fine not to exceed $5,000 and the imprisonment not to exceed ten years; and shall, moreover, be thereafter ineligible to and disabled from holding any office or place of honor, profit, or trust created by the Constitution or laws of the United States.

SEC. 7. *And be it further enacted,* That if in the act of violating any provision in either of the two preceding sections, any other felony, crime, or misdemeanor shall be committed, the offender may be indicted or prosecuted for the same in the courts of the United States, as hereinafter provided, for violations of this act, and on conviction thereof shall be punished for the same

with such punishments as are attached to like felonies, crimes, and misdemeanors by the laws of the State in which the offense may be committed.

"Strike out section twelve and substitute therefor the following:

"*And be it further enacted,* That the President of the United States, or such person as he may empower for that purpose, may employ in any State such part of the land and naval forces of the United States, or of the militia, as he may deem necessary to enforce the complete execution of this act; and with such forces may pursue, arrest, and hold for trial all persons charged with the violation of any of the provisions of this act, and enforce the attendance of witnesses upon the examination or trial of such persons."

. . . . .

Mr. POOL. The Senator from Indiana asked if I had an amendment prepared which met the view of the case I was presenting in regard to the compelling of citizens to vote in a particular way. The first section of the amendment which I have offered uses this language:

"That it shall be unlawful for any person with intent to hinder or influence the exercise of the right of suffrage as aforesaid, to coerce or intimidate or attempt to coerce or intimidate any of the legally qualified voters in any State or Territory."

But, Mr. President, there is another view which seems to have been lost sight of entirely by those who have drawn both the House bill and the bill now pending before the Senate, and from which we apprehend very much danger. It is this: the oppression of citizens because of having voted in a particular way, or having voted at all. It may often happen, as it has happened up to this time already, that upon the close of an election colored persons will be discharged from employment by

their employers. They may be subjected to outrages of various kinds because they have participated in an election, and cast their votes in a particular way. That is not done for the purpose of punishment so much as for the purpose of deterring them from voting in any succeeding election, or from voting in a way that those who perpetrate these outrages do not desire them to do. I find that branch of the subject is entirely left out of view in the bill.

There is another feature of my amendment which I deem of some importance. It is this:

"That if in the act of violating any provision in either of the two preceding sections any other felony, crime, or misdemeanor shall be committed, the offender may be indicted or prosecuted for the same in the courts of the United States."

I think the most effective mode of preventing this intimidation and these attempts at coercion, as well as the outrages which grow out of these attempts, would be found in making any offense committed in the effort to violate them indictable before the courts of the United States. As was said before, in the discussion of the Georgia question in the Senate, the juries in the communities where these outrages are committed are often composed of men who are engaged in them, or of their friends, or of those who connive at them, or of persons who are intimidated by them, and in many instances they dare not bring in a true bill when there is an attempt to indict, or if a true bill be found, they dare not go for conviction on the final trial. It is for that reason that I believe it will be better, it will be the only effective remedy, to take such offenders before the courts of the United States, and there have them tried by a jury which is not imbued with the prejudices and interests of those who perpetrate the crimes.

These are the principal features of the amendment which I have drawn in the effort to perfect this bill; and there is another one to which I will call the attention of the Senate. It is that in regard to calling out the military forces of the United States. I find that in the civil rights bill, as in the bill which has been introduced by the Senate Judiciary Committee, the President is authorized, either by himself or by such person as he may empower for that purpose, to use the military forces of the United States to enforce the act. There in both instances it stops. It has been objected to here that the expression, "or such other person as he may empower for that purpose," should not be in the bill; that it may be subject to abuse. I think it would have no good effect to keep that language in. The President may send his officers and he may empower whomsoever he pleases to take charge of his forces without any such provision.

But there is a use for these forces which seems not to have been averted to in either the civil rights bill or in the bill that is now pending before the Senate. It is the holding of these offenders for examination and trial after they are arrested. Their confederates, if they are put in the common prison of the State, will in nine cases out of ten release them. But more important still is it to use these forces to compel the attendance of witnesses; for a subterfuge resorted to is to keep witnesses away from the trial. In many instances witnesses are more or less implicated in the commission of the offense. In other cases the witnesses are intimidated and cannot be obtained upon the trial. So in the amendment which I have prepared I have proposed that these forces may be used to enforce the attendance of witnesses both upon the examination and the trial. My purpose in introducing this was to perfect the Senate bill. I think, as I said yesterday, that that bill is liable to less objection than the House bill. I think it is more efficacious in its

provisions. I think it is better that the Senate should direct its attention to perfecting that bill, in order that it may be made, when perfected, a substitute for the bill that came from the House.

That much being said upon the purpose of perfecting the bill and making it efficacious, I have very little more to say. I did not intend when I rose to say much upon the general power, which has been questioned here, to pass any law at all. I think it is better to do nothing than to do that which will not have the proper effect. To do that which will not accomplish the purpose would be worse than doing nothing at all. That the United States Government has the right to go into the States and enforce the fourteenth and fifteenth amendments is, in my judgment, perfectly clear, by appropriate legislation that shall bear upon individuals. I cannot see that it would be possible for appropriate legislation to be resorted to except as applicable to individuals who violate or attempt to violate these provisions. Certainly we cannot legislate here against States. As I said a few moments ago, it is upon individuals that we must press our legislation. It matters not whether those individuals be officers or whether they are acting upon their own responsibility; whether they are acting singly or in organizations. If there is to be appropriate legislation at all, it must be that which applies to individuals.

I believe that the United States has the right, and that it is an incumbent duty upon it, to go into the States to enforce the rights of the citizens against all who attempt to infringe upon those rights when they are recognized and secured by the Constitution of the country. If we do not possess that right the danger to the liberty of the citizen is great indeed in many parts of this Union. I think this question will come time and again as years pass by, perhaps before another year, in different forms before the Senate. It is well that we should deal with it

now and deal with it squarely, and I hope that the Senate will not hesitate in doing so.

Mr. President, the liberty of a citizen of the United States, the prerogatives, the rights, and the immunities of American citizenship, should not be and cannot be safely left to the mere caprice of States either in the passage of laws or in the withholding of that protection which any emergency may require. If a State by omission neglects to give to every citizen within its borders a free, fair, and full exercise and enjoyment of his rights it is the duty of the United States Government to go into the State, and by its strong arm to see that he does have the full and free enjoyment of those rights.

Upon that ground the Republican party must stand in carrying into effect the reconstruction policy, or the whole fabric of reconstruction, with all the principles connected with it, amounts to nothing at all; and in the end it will topple and fall unless it can be enforced by the appropriate legislation, the power to enact which has been provided in each one of the great charters of liberty which that party has put forth in its amendments to the Constitution. Unless the right to enforce it by appropriate legislation is enforced stringently and to the point, it is clear to my mind that there will be no efficacy whatever in what has been done up to this time to carry out and to establish that policy.

I did not rise, sir, for the purpose of arguing the question very much in detail. I did not rise for the purpose of making any appeals to the Senate; but more for the purpose of asserting here and arguing for a moment the general doctrine of the right of the United States to intervene against individuals in the States who attempt to contravene the amendment to the Constitution which we are now endeavoring to enforce, and for the purpose of calling attention to the defects in the bill and offering a remedy for them.

SUPREME COURT OF THE UNITED STATES

No. 65.—OCTOBER TERM, 1965.

United States, Appellant, *v.* Herbert Guest et al.	On Appeal From the United States District Court for the Middle District of Georgia.

[March 28, 1966.]

MR. JUSTICE STEWART delivered the opinion of the Court.

The six defendants in this case were indicted by a United States grand jury in the Middle District of Georgia for criminal conspiracy in violation of 18 U. S. C. § 241. That section provides in relevant part:

> "If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States or because of his having so exercised the same;
>
> . . . . .
>
> "They shall be fined not more than $5000 or imprisoned not more than ten years, or both."

In five numbered paragraphs, the indictment alleged a single conspiracy by the defendants to deprive Negro citizens of the free exercise and enjoyment of several specified rights secured by the Constitution and laws of the United States.[1] The defendants moved to dismiss

[1] The indictment, filed on October 16, 1964, was as follows:

"THE GRAND JURY CHARGES:

"Commencing on or about January 1, 1964, and continuing to the date of this indictment, HERBERT GUEST, JAMES SPERGEON LACKEY, CECIL WILLIAM MYERS, DENVER WILLIS PHILLIPS, JOSEPH HOWARD SIMS, and GEORGE HAMPTON TURNER, did, within the Middle District of Georgia, Athens Division, conspire together, with each other, and with other persons

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the indictment on the ground that it did not charge an offense under the laws of the United States. The District Court sustained the motion and dismissed the

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to the Grand Jury unknown, to injure, oppress, threaten, and intimidate Negro citizens of the United States in the vicinity of Athens, Georgia, in the free exercise and enjoyment by said Negro citizens of the following rights and privileges secured to them by the Constitution and the laws of the United States:

"1. The right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of motion picture theaters, restaurants, and other places of public accommodation;

"2. The right to the equal utilization, without discrimination upon the basis of race, of public facilities in the vicinity of Athens, Georgia, owned, operated or managed by or on behalf of the State of Georgia or any subdivision thereof;

"3. The right to the full and equal use on the same terms as white citizens of the public streets and highways in the vicinity of Athens, Georgia;

"4. The right to travel freely to and from the State of Georgia and to use highway facilities and other instrumentalities of interstate commerce within the State of Georgia;

"5. Other rights exercised and enjoyed by white citizens in the vicinity of Athens, Georgia.

"It was a part of the plan and purpose of the conspiracy that its objects be achieved by various means, including the following:

"1. By shooting Negroes;

"2. By beating Negroes;

"3. By killing Negroes;

"4. By damaging and destroying property of Negroes;

"5. By pursuing Negroes in automobiles and threatening them with guns;

"6. By making telephone calls to Negroes to threaten their lives, property, and persons, and by making such threats in person;

"7. By going in disguise on the highway and on the premises of other persons;

"8. By causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts; and

"9. By burning crosses at night in public view.

"All in violation of Section 241, Title 18, United States Code."

The only additional indication in the record concerning the factual details of the conduct with which the defendants were charged is

indictment as to all defendants and all numbered paragraphs of the indictment. 246 F. Supp. 475.

The United States appealed directly to this Court under the Criminal Appeals Act, 18 U. S. C. § 3731.[2] We postponed decision of the question of our jurisdiction to the hearing on the merits. 381 U. S. 932. It is now apparent that this Court does not have jurisdiction to decide one of the issues sought to be raised on this direct appeal. As to the other issues, however, our appellate jurisdiction is clear, and for the reasons that follow, we reverse the judgment of the District Court. As in *United States* v. *Price*, — U. S. —, decided today, we deal here with issues of statutory construction, not with issues of constitutional power.

I.

The first numbered paragraph of the indictment, reflecting a portion of the language of § 201 (a) of the Civil Rights Act of 1964, 42 U. S. C. § 2000a (a) (1964 ed.), alleged that the petitioners conspired to injure, oppress, threaten, and intimidate Negro citizens in the free exercise and enjoyment of:

> "The right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of motion picture theaters, restaurants, and other places of public accommodation." [3]

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the statement of the District Court that: "It is common knowledge that two of the defendants, Sims and Myers, have already been prosecuted in the Superior Court of Madison County, Georgia for the murder of Lemuel A. Penn and by a jury found not guilty." 246 F. Supp. 475, 487.

[2] This appeal concerns only the first four numbered paragraphs of the indictment. The Government conceded in the District Court that the fifth paragraph added nothing to the indictment, and no question is raised here as to the dismissal of that paragraph.

[3] Section 201 (a) of the Civil Rights Act of 1964, 42 U. S. C. § 2000a (a) (1964 ed.), provides:

"All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommo-

The District Court held that this paragraph of the indictment failed to state an offense against rights secured by the Constitution or laws of the United States. The court found a fatal flaw in the failure of the paragraph to include an allegation that the acts of the defendants were motivated by racial discrimination, an allegation the court thought essential to charge an interference with rights secured by Title II of the Civil Rights Act of 1964.[4] The court went on to say that, in any event, 18 U. S. C. § 241 is not an available sanction to protect rights secured by that title because § 207 (b)

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dations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin."

The criteria for coverage of motion picture theaters by the Act are stated in §§ 201 (b)(3) and 201 (c)(3), 42 U. S. C. §§ 2000a (b)(3) and 2000a (c)(3) (1964 ed.); the criteria for coverage of restaurants are stated in §§ 201 (b)(2) and 201 (c)(2), 42 U. S. C. §§ 2000a (b)(2) and 2000a (c)(2) (1964 ed.). No issue is raised here as to the failure of the indictment to allege specifically that the Act is applicable to the places of public accommodation described in this paragraph of the indictment.

[4] The District Court said: "The Government contends that the rights enumerated in paragraph 1 stem from Title 2 of the Civil Rights Act of 1964, and thus automatically come within the purview of § 241. The Government conceded on oral argument that paragraph one would add nothing to the indictment absent the Act. It is not clear how the rights mentioned in paragraph one can be said to come from the Act because § 201 (a), upon which the draftsman doubtless relied, lists the essential element 'without discrimination or segregation on the ground of race, color, religion, or national origin.' This element is omitted from paragraph one of the indictment, and does not appear in the charging part of the indictment. The Supreme Court said in Cruikshank, supra, 92 U. S. at page 556, where deprivation of right to vote was involved,

"'We may suspect that "race" was the cause of the hostility; but it is not so averred. This is material to a description of the substance of the offense and cannot be supplied by implication. Everything essential must be charged positively, not inferentially. The defect here is not in form, but in substance.'" 246 F. Supp. 475, 484.

of the 1964 Act, 42 U. S. C. § 2000a–6 (b) (1964 ed.), specifies that the remedies provided in Title II itself are to be the exclusive means of enforcing the rights the title secures.[5]

A direct appeal to this Court is available to the United States under the Criminal Appeals Act, 18 U. S. C. § 3731, from "a decision or judgment . . . dismissing any indictment . . . or any count thereof, where such decision or judgment is based upon the . . . construction of the statute upon which the indictment . . . is founded." In the present case, however, the District Court's judgment as to the first paragraph of the indictment was based, at least alternatively, upon its determination that this paragraph was defective as a matter of pleading. Settled principles of review under the Criminal Appeals Act therefore preclude our review of the District Court's judgment on this branch of the indictment. In *United States* v. *Borden Co.*, 308 U. S. 188, Chief Justice Hughes, speaking for a unanimous Court, set out these principles with characteristic clarity:

> "The established principles governing our review are these: (1) Appeal does not lie from a judgment which rests on the mere deficiencies of the indict-

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[5] Section 207 (b) of the Civil Rights Act of 1964, 42 U. S. C. § 2000a–6 (b) (1964 ed.), states:

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

Relying on this provision and its legislative history, the District Court said: "It seems crystal clear that the Congress in enacting the Civil Rights Act of 1964 did not intend to subject anyone to any possible criminal penalties except those specifically provided for in the Act itself." 246 F. Supp., at 485.

> ment as a pleading, as distinguished from a construction of the statute which underlies the indictment. (2) Nor will an appeal lie in a case where the District Court has considered the construction of the statute but has also rested its decision upon the independent ground of a defect in pleading which is not subject to our examination. In that case we cannot disturb the judgment and the question of construction becomes abstract. (3) This Court must accept the construction given to the indictment by the District Court as that is a matter we are not authorized to review. . . ." 308 U. S., at 193.

See also *United States* v. *Swift & Co.*, 318 U. S. 442, 444.

The result is not changed by the circumstance that we have jurisdiction over this appeal as to the other paragraphs of the indictment. *United States* v. *Borden*, *supra*, involved an indictment comparable to the present one for the purposes of jurisdiction under the Criminal Appeals Act. In *Borden*, the District Court had held all four counts of the indictment invalid as a matter of construction of the Sherman Act, but had also held the third count defective as a matter of pleading. The Court accepted jurisdiction on direct appeal as to the first, second, and fourth counts of the indictment, but it dismissed the appeal as to the third count for want of jurisdiction. "The Government's appeal does not open the whole case." 308 U. S. 188, 193.

It is hardly necessary to add that our ruling as to the Court's lack of jurisdiction now to review this aspect of the case implies no opinion whatsoever as to the correctness either of the District Court's appraisal of this paragraph of the indictment as a matter of pleading or of the court's view of the preclusive effect of § 207 (b) of the Civil Rights Act of 1964.

II.

The second numbered paragraph of the indictment alleged that the defendants conspired to injure, oppress, threaten, and intimidate Negro citizens of the United States in the free exercise and enjoyment of:

> "The right to the equal utilization, without discrimination upon the basis of race, of public facilities in the vicinity of Athens, Georgia, owned, operated, or managed by or on behalf of the State of Georgia or any subdivision thereof."

Correctly characterizing this paragraph as embracing rights protected by the Equal Protection Clause of the Fourteenth Amendment, the District Court held as a matter of statutory construction that 18 U. S. C. § 241 does not encompass any Fourteenth Amendment rights, and further held as a matter of constitutional law that "any broader construction of § 241 . . . would render it void for indefiniteness." 246 F. Supp., at 486. In so holding, the District Court was in error, as our opinion in *United States* v. *Price*, — U. S. —, decided today, makes abundantly clear.

To be sure, *Price* involves rights under the Due Process Clause, whereas the present case involves rights under the Equal Protection Clause. But no possible reason suggests itself for concluding that § 241—if it protects Fourteenth Amendment rights—protects rights secured by the one Clause but not those secured by the other. We have made clear in *Price* that when § 241 speaks of "any right or privilege secured . . . by the Constitution or laws of the United States," it means precisely that.

Moreover, inclusion of Fourteenth Amendment rights within the compass of 18 U. S. C. § 241 does not render the statute unconstitutionally vague. Since the gravamen of the offense is conspiracy, the requirement that the offender must act with a specific intent to inter-

fere with the federal rights in question is satisfied. *Screws* v. *United States*, 325 U. S. 91; *Williams* v. *United States*, 341 U. S. 70, 93–95 (dissenting opinion). And the rights under the Equal Protection Clause described by this paragraph of the indictment have been so firmly and precisely established by a consistent line of decisions in this Court,[6] that the lack of specification of these rights in the language of § 241 itself can raise no serious constitutional question on the ground of vagueness or indefiniteness.

Unlike the indictment in *Price*, however, the indictment in the present case names no person alleged to have acted in any way under the color of state law. The argument is therefore made that, since there exist no Equal Protection Clause rights against wholly private action, the judgment of the District Court on this branch of the case must be affirmed. On its face, the argument is unexceptionable. The Equal Protection Clause speaks to the State or to those acting under the color of its authority.[7]

In this connection, we emphasize that § 241 by its clear language incorporates no more than the Equal Protection Clause itself; the statute does not purport to give substantive, as opposed to remedial, implementation to any rights secured by that Clause.[8] Since we therefore

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[6] See, *e. g.*, *Brown* v. *Board of Education*, 347 U. S. 483 (schools); *New Orleans City Park Improvement Assn.* v. *Detiege*, 358 U. S. 54, *Wright* v. *Georgia*, 373 U. S. 284, *Watson* v. *Memphis*, 373 U. S. 526, *City of New Orleans* v. *Barthe*, 376 U. S. 189 (parks and playgrounds); *Holmes* v. *City of Atlanta*, 350 U. S. 879 (golf course); *Mayor and City Council of Baltimore City* v. *Dawson*, 350 U. S. 877 (beach); *Muir* v. *Louisville Park Theatrical Assn.*, 347 U. S. 971 (auditorium); *Johnson* v. *Virginia*, 373 U. S. 61 (courthouse); *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715 (parking garage); *Turner* v. *City of Memphis*, 369 U. S. 350 (airport).

[7] "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

[8] See p. 1, *supra*.

deal here only with the bare terms of the Equal Protection Clause itself, nothing said in this opinion goes to the question of what kinds of other and broader legislation Congress might constitutionally enact under § 5 of the Fourteenth Amendment to implement that Clause or any other provision of the Amendment.[9]

It is a commonplace that rights under the Equal Protection Clause itself arise only where there has been involvement of the State or of one acting under the color of its authority. The Equal Protection Clause "does not . . . add any thing to the rights which one citizen has under the Constitution against another." *United States* v. *Cruikshank*, 92 U. S. 542, 554–555. As MR. JUSTICE DOUGLAS more recently put it, "The Fourteenth Amendment protects the individual against *state action*, not against wrongs done by *individuals*." *United States* v. *Williams*, 341 U. S. 70, 92 (dissenting opinion). This has been the view of the Court from the beginning. *United States* v. *Cruikshank*, *supra*; *United States* v. *Harris*, 106 U. S. 629; *Civil Rights Cases*, 109 U. S. 3; *Hodges* v. *United States*, 203 U. S. 1; *United States* v. *Powell*, 212 U. S. 564. It remains the Court's view today. See, *e. g.*, *Evans* v. *Newton*, — U. S. —; *United States* v. *Price*, — U. S. —.

This is not to say, however, that the involvement of the State need be either exclusive or direct. In a variety of situations the Court has found state action of a nature sufficient to create rights under the Equal Protection Clause even though the participation of the State was peripheral, or its action was only one of several co-operative forces leading to the constitutional violation. See, *e. g.*, *Shelley* v. *Kraemer*, 334 U. S. 1; *Pennsylvania* v. *Board*

[9] Thus, contrary to the suggestion in MR. JUSTICE BRENNAN'S separate opinion, nothing said in this opinion has the slightest bearing on the validity or construction of Title III or Title IV of the Civil Rights Act of 1964, 42 U. S. C. §§ 2000b, 2000c (1964 ed.).

of Trusts, 353 U. S. 230; *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715; *Peterson* v. *City of Greenville*, 373 U. S. 244; *Lombard* v. *Louisiana*, 373 U. S. 267; *Griffin* v. *Maryland*, 378 U. S. 130; *Robinson* v. *Florida*, 378 U. S. 153; *Evans* v. *Newton*, *supra*.

This case, however, requires no determination of the threshold level that state action must attain in order to create rights under the Equal Protection Clause. This is so because, contrary to the argument of the litigants, the indictment in fact contains an express allegation of state involvement sufficient at least to require the denial of a motion to dismiss. One of the means of accomplishing the object of the conspiracy, according to the indictment, was "By causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts." [10] In *Bell* v. *Maryland*, 378 U. S. 226, three members of the Court expressed the view that a private businessman's invocation of state police and judicial action to carry out his own policy of racial discrimination was sufficient to create Equal Protection Clause rights in those against whom the racial discrimination was directed.[11] Three other members of the Court strongly disagreed with that view,[12] and three expressed no opinion on the question. The allegation of the extent of official involvement in the present case is not clear. It may charge no more than co-operative private and state action similar to that involved in *Bell*, but it may go considerably further. For example, the allegation is broad enough to cover a charge of active connivance by agents of the State in the making of the "false reports," or other conduct amounting to official discrimination clearly sufficient to constitute denial of rights protected by the Equal Protection

[10] See note 1, *supra*.

[11] 378 U. S. 226, at 242 (separate opinion of MR. JUSTICE DOUGLAS); *id.*, at 286 (separate opinion of Mr. Justice Goldberg).

[12] *Id.*, at 318 (dissenting opinion of MR. JUSTICE BLACK).

Clause. Although it is possible that a bill of particulars, or the proofs if the case goes to trial, would disclose no co-operative action of that kind by officials of the State, the allegation is enough to prevent dismissal of this branch of the indictment.

III.

The fourth numbered paragraph of the indictment alleged that the defendants conspired to injure, oppress, threaten, and intimidate Negro citizens of the United States in the free exercise and enjoyment of:

> "The right to travel freely to and from the State of Georgia and to use highway facilities and other instrumentalities of interstate commerce within the State of Georgia." [13]

The District Court was in error in dismissing the indictment as to this paragraph. The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized. In *Crandall* v. *Nevada*, 6 Wall. 35, invalidating a Nevada tax on every person leaving the State by common carrier, the Court took as its guide the state-

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[13] The third numbered paragraph alleged that the defendants conspired to injure, oppress, threaten, and intimidate Negro citizens of the United States in the free exercise and enjoyment of:

"The right to the full and equal use on the same terms as white citizens of the public streets and highways in the vicinity of Athens, Georgia."

Insofar as the third paragraph refers to the use of local public facilities, it is covered by the discussion of the second numbered paragraph of the indictment in Part II of this opinion. Insofar as the third paragraph refers to the use of streets or highways in interstate commerce, it is covered by the present discussion of the fourth numbered paragraph of the indictment.

ment of Chief Justice Taney in the *Passenger Cases*, 7 How. 283, 492:

> "For all the great purposes for which the Federal government was formed, we are one people, with one common country. We are all citizens of the United States; and, as members of the same community, must have the right to pass and repass through every part of it without interruption, as freely as in our own States." See 6 Wall., at 48–49.

Although the Articles of Confederation provided that "the people of each State shall have free ingress and regress to and from any other State," [14] that right finds no explicit mention in the Constitution. The reason, it has been suggested, is that a right so elementary was conceived from the beginning to be a necessary concomitant of the stronger Union the Constitution created.[15] In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution. See *Williams* v. *Fears*, 179 U. S. 270, 274; *Twining* v. *New Jersey*, 211 U. S. 78, 97; *Edwards* v. *California*, 314 U. S. 160, 177 (concurring opinion), 181 (concurring opinion); *New York* v. *O'Neill*, 359 U. S. 1, 6–8; 12–16 (dissenting opinion).

In *Edwards* v. *California*, 314 U. S. 160, invalidating a California law which impeded the free interstate passage of the indigent, the Court based its reaffirmation of the federal right of interstate travel upon the Commerce Clause. This ground of decision was consistent with precedents firmly establishing that the federal commerce power surely encompasses the movement in interstate commerce of persons as well as commodities. *Glou-*

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[14] Art. IV, Articles of Confederation.

[15] See Chafee, Three Human Rights in the Constitution 185 (1956).

cester Ferry Co. v. *Pennsylvania*, 114 U. S. 196, 203; *Covington & Cincinnati Bridge Co.* v. *Kentucky*, 154 U. S. 204, 218–219; *Hoke* v. *United States*, 227 U. S. 308, 320; *United States* v. *Hill*, 248 U. S. 420, 423. It is also well settled in our decisions that the federal commerce power authorizes Congress to legislate for the protection of individuals from violations of civil rights that impinge on their free movement in interstate commerce. *Mitchell* v. *United States*, 313 U. S. 80; *Henderson* v. *United States*, 339 U. S. 816; *Boynton* v. *Virginia*, 364 U. S. 454; *Atlanta Motel* v. *United States*, 379 U. S. 241; *Katzenbach* v. *McClung*, 379 U. S. 294.

Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further.[16] All have agreed that the right exists. Its explicit recognition as one of the federal rights protected by what is now 18 U. S. C. § 241 goes back at least as far as 1904. *United States* v. *Moore*, 129 F. 630, 633. We reaffirm it now.[17]

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[16] The District Court relied heavily on *United States* v. *Wheeler*, 254 U. S. 281, in dismissing this branch of the indictment. That case involved an alleged conspiracy to compel residents of Arizona to move out of that State. The right of interstate travel was, therefore, not directly involved. Whatever continuing validity *Wheeler* may have as restricted to its own facts, the dicta in the *Wheeler* opinion relied on by the District Court in the present case have been discredited in subsequent decisions. Cf. *Edwards* v. *California*, 314 U. S. 160, 177, 180 (DOUGLAS, J., concurring); *Williams* v. *United States*, 341 U. S. 70, 80.

[17] As emphasized in MR. JUSTICE HARLAN'S separate opinion, § 241 protects only against rights secured by other federal laws or by the Constitution itself. The right to interstate travel is a right that the Constitution itself guarantees, as the cases cited in the text make clear. Although these cases in fact involved governmental interference with the right of free interstate travel, their reasoning fully

This does not mean, of course, that every criminal conspiracy affecting an individual's right of free interstate passage is within the sanction of 18 U. S. C. § 241. A specific intent to interfere with the federal right must be proved, and at a trial the defendants are entitled to a jury instruction phrased in those terms. *Screws* v. *United States*, 325 U. S. 91, 106–107. Thus, for example, a conspiracy to rob an interstate traveler would not, of itself, violate § 241. But if the predominant purpose of the conspiracy is to impede or prevent the exercise of the right of interstate travel, or to oppress a person because of his exercise of that right, then, whether or not motivated by racial discrimination, the conspiracy becomes a proper object of the federal law under which the indictment in this case was brought. Accordingly, it was error to grant the motion to dismiss on this branch of the indictment.

For these reasons, the judgment of the District Court is reversed and the case is remanded to that court for further proceedings consistent with this opinion.

It is so ordered.

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supports the conclusion that the constitutional right of interstate travel is a right secured against interference from any source whatever, whether governmental or private. In this connection, it is important to reiterate that the right to travel freely from State to State finds constitutional protection that is quite independent of the Fourteenth Amendment.

We are not concerned here with the extent to which interstate travel may be regulated or controlled by the exercise of a State's police power acting within the confines of the Fourteenth Amendment. See *Edwards* v. *California*, 314 U. S. 160, 184 (concurring opinion); *New York* v. *O'Neill*, 359 U. S. 1, 6–8. Nor is there any issue here as to the permissible extent of federal interference with the right within the confines of the Due Process Clause of the Fifth Amendment. Cf. *Zemel* v. *Rusk*, 381 U. S. 1; *Aptheker* v. *Secretary of State*, 378 U. S. 500; *Kent* v. *Dulles*, 357 U. S. 116.

SUPREME COURT OF THE UNITED STATES

No. 65.—October Term, 1965.

United States, Appellant, v. Herbert Guest et al.	On Appeal From the United States District Court for the Middle District of Georgia.

[March 28, 1966.]

Mr. Justice Clark, with whom Mr. Justice Black and Mr. Justice Fortas join, concurring.

I join the opinion of the Court in this case but believe it worthwhile to comment on its Part II in which the Court discusses that portion of the indictment charging the appellees with conspiring to injure, oppress, threaten and intimidate Negro citizens of the United States in the free exercise and enjoyment of:

> "The right to equal utilization, without discrimination upon the basis of race, of public facilities in the vicinity of Athens, Georgia, owned, operated, or managed by or on behalf of the State of Georgia or any subdivision thereof."

The appellees contend that the indictment is invalid since 18 U. S. C. § 241, under which it was returned, protects only against interference with the exercise of the right to equal utilization of State facilities, which is not a right "secured" by the Fourteenth Amendment in the absence of state action. With respect to this contention the Court upholds the indictment on the ground that it alleges the conspiracy was accomplished, in part, "by causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts." The Court reasons that this allegation of the indictment might well cover active connivance by agents of the State in the making of these false reports or in carrying

on other conduct amounting to official discrimination. By so construing the indictment, it finds the language sufficient to cover a denial of rights protected by the Equal Protection Clause. The Court thus removes from the case any necessity for a "determination of the threshold level that State action must attain in order to create rights under the Equal Protection Clause." A study of the language in the indictment clearly shows that the Court's construction is not a capricious one, and I therefore agree with that construction, as well as the conclusion that follows.

The Court carves out of its opinion the question of the power of Congress, under § 5 of the Fourteenth Amendment, to enact legislation implementing the Equal Protection Clause or any other provision of the Fourteenth Amendment. The Court's interpretation of the indictment clearly avoids the question whether Congress, by appropriate legislation, has the power to punish private conspiracies that interfere with Fourteenth Amendment rights, such as the right to utilize public facilities. My Brother BRENNAN, however, says that the Court's disposition constitutes an acceptance of appellees' aforesaid contention as to § 241. Some of his language further suggests that the Court indicates *sub silentio* that Congress does not have the power to outlaw such conspiracies. Although the Court specifically rejects any such connotation, *ante*, p. ——, it is, I believe, both appropriate and necessary under the circumstances here to say that there now can be no doubt that the specific language of § 5 empowers the Congress to enact laws punishing all conspiracies—with or without state action—that interfere with Fourteenth Amendment rights.

SUPREME COURT OF THE UNITED STATES

No. 65.—October Term, 1965.

United States, Appellant, v. Herbert Guest et al. } On Appeal From the United States District Court for the Middle District of Georgia.

[March 28, 1966.]

Mr. Justice Harlan, concurring in part and dissenting in part.

I join Parts I and II [1] of the Court's opinion, but I cannot subscribe to Part III in its full sweep. To the extent that it is there held that 18 U. S. C. § 241 (1964 ed.) reaches conspiracies, embracing only the action of private persons, to obstruct or otherwise interfere with the right of citizens freely to engage in interstate travel, I am constrained to dissent. On the other hand, I agree that § 241 does embrace state interference with such interstate travel, and I therefore consider that this aspect of the indictment is sustainable on the reasoning of Part II of the Court's opinion.

This right to travel must be found in the Constitution itself. This is so because § 241 covers only conspiracies to interfere with any citizen in the "free exercise or enjoyment" of a right or privilege "secured to him by the Constitution or laws of the United States," and no "right to travel" can be found in § 241 or in any other law of the United States. My disagreement with this phase of the Court's opinion lies in this: While past cases do indeed establish that there is a constitutional "right to travel" between States free from unreasonable *govern-*

[1] The action of three of the Justices who join the Court's opinion in nonetheless cursorily pronouncing themselves on the far-reaching constitutional questions deliberately not reached in Part II seems to me, to say the very least, extraordinary.

mental interference, today's decision is the first to hold that such movement is also protected against *private* interference, and, depending on the constitutional source of the right, I think it either unwise or impermissible so to read the Constitution.

Preliminarily, nothing in the Constitution expressly secures the right to travel. In contrast the Articles of Confederation provided in Art. IV:

> "The better to secure and perpetuate mutual friendship and intercourse among the people of the different States in this Union, the free inhabitants of each of these States . . . shall be entitled to all privileges and immunities of free citizens in the several States; and the people of each State shall have free ingress and regress to and from any other State, and shall enjoy therein all the privileges of trade and commerce, subject to the same duties, impositions and restrictions as the inhabitants thereof respectively . . . ."

This right to "free ingress and regress" was eliminated from the draft of the Constitution without discussion even though the main objective of the Convention was to create a stronger union. It has been assumed that the clause was dropped because it was so obviously an essential part of our federal structure that it was necessarily subsumed under more general clauses of the Constitution. See *United States* v. *Wheeler*, 254 U. S. 281, 294. I propose to examine the several asserted constitutional bases for the right to travel, and the scope of its protection in relation to each source.

I.

Because of the close proximity of the right of ingress and regress to the Privileges and Immunities Clause of the Articles of Confederation it has long been declared that the right is a privilege and immunity of national citizenship under the Constitution. In the influential

opinion of Mr. Justice Washington on circuit, *Corfield* v. *Coryell*, 4 Wash. C. C. 371 (1825), the court addressed itself to the question—"what are the privileges and immunities of citizens in the several states?" *Id.*, at 380. *Corfield* was concerned with a New Jersey statute restricting to state citizens the right to rake for oysters, a statute which the court upheld. In analyzing the Privileges and Immunities Clause of the Constitution, Art. IV, § 2, the court stated that it confined "these expressions to those privileges and immunities which are, in their nature, *fundamental*," and listed among them "The right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, professional pursuits, or otherwise . . . ." *Id.*, at 380–381.

The dictum in *Corfield* was cited with approval in the first opinion of this Court to deal directly with the right of free movement, *Crandall* v. *Nevada*, 6 Wall. 35, which struck down a Nevada statute taxing persons leaving the State. It is first noteworthy that in his concurring opinion Mr. Justice Clifford asserted that he would hold the statute void exclusively on commerce grounds for he was clear "that the State legislature cannot impose any such burden upon commerce among the several States." 6 Wall., at 49. The majority opinion of Mr. Justice Miller, however, eschewed reliance on the Commerce Clause and the Import-Export Clause and looked rather to the nature of the federal union:

> "The people of these United States constitute one nation. . . . This government has necessarily a capital established by law . . . . That government has a right to call to this point any or all of its citizens to aid in its service . . . . The government, also, has its offices of secondary importance in all other parts of the country. On the sea-coasts and on the rivers it has its ports of entry. In the inte-

> rior it has its land offices, its revenue offices, and its sub-treasuries. In all these it demands the services of its citizens, and is entitled to bring them to those points from all quarters of the nation, and no power can exist in a State to obstruct this right that would not enable it to defeat the purposes for which the government was established." 6 Wall., at 43–44.

Accompanying this need of the Federal Government, the Court found a correlative right of the citizen to move unimpeded throughout the land:

> "He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its sea-ports, through which all the operations of foreign trade and commerce are conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." 6 Wall., at 44.

The focus of that opinion, very clearly, was thus on impediments by the States on free movement by citizens. This is emphasized subsequently when Mr. Justice Miller asserts that this approach is "neither novel nor unsupported by authority," because it is, fundamentally, a question of the exercise of a State's taxing power to obstruct the functions of the Federal Government: "[T]he right of the States in this mode to impede or embarrass the constitutional operations of that government, or the rights which its citizens hold under it, has been uniformly denied." 6 Wall., at 44–45.

Later cases, alluding to privileges and immunities, have in dicta included the right to free movement. See *Paul* v. *Virginia*, 8 Wall. 168, 180; *Williams* v. *Fears*, 179 U. S. 270, 274; *Twining* v. *New Jersey*, 211 U. S. 78.

Although the right to travel thus has respectable precedent to support its status as a privilege and immunity of national citizenship, it is important to note that those cases all dealt with the right of travel simply as affected by oppressive *state* action. Only one prior case in this Court, *United States* v. *Wheeler*, 254 U. S. 281, was argued precisely in terms of a right to free movement as against interference by private individuals. There the Government alleged a conspiracy under the predecessor of § 241 against the perpetrators of the notorious Bisbee Deportations.[2] The case was argued straightforwardly in terms of whether the right to free ingress and egress, admitted by both parties to be a right of national citizenship, was constitutionally guaranteed against private conspiracies. The Brief for the Defendants in Error, whose counsel was Charles Evans Hughes, later Chief Justice of the United States, gives as one of its main points: "So far as there is a right pertaining to Federal citizenship to have free ingress or egress with respect to the several States, the right is essentially one of protection against the action of the States themselves and of those acting under their authority." Brief, at p. i. The Court, with one dissent, accepted this interpretation of the right of unrestricted interstate movement, observing that *Crandall* v. *Nevada*, *supra*, was inapplicable because, *inter alia*, it dealt with state action. 254 U. S., at 299. More recent cases discussing or applying the right to interstate travel have always been in the context of

[2] For a discussion of the deportations, see The President's Mediation Comm'n, Report on the Bisbee Deportations (November 6, 1917).

oppressive state action. See, *e. g., Edwards* v. *California,* 314 U. S. 160, and other cases discussed, *infra.*[3]

It is accordingly apparent that the right to unimpeded interstate travel, regarded as a privilege and immunity of national citizenship, was historically seen as a method of breaking down state provincialism, and facilitating the creation of a true federal union. In the one case in which a private conspiracy to obstruct such movement was heretofore presented to this Court, the predecessor of the very statute we apply today was held not to encompass such a right.

II.

A second possible constitutional basis for the right to move among the States without interference is the Commerce Clause. When Mr. Justice Washington articulated the right in *Corfield,* it was in the context of a state statute impeding economic activity by outsiders, and he cast his statement in economic terms. 4 Wash. C. C., at 380–381. The two concurring Justices in *Crandall* v. *Nevada, supra,* rested solely on the commerce argument, indicating again the close connection between freedom of commerce and travel as principles of our federal union. In *Edwards* v. *California,* 314 U. S. 160, the Court held squarely that the right to unimpeded movement of persons is guaranteed against oppressive state legislation by the Commerce Clause, and declared unconstitutional a California statute restricting the entry of indigents into that State.

Application of the Commerce Clause to this area has the advantage of supplying a longer tradition of case-law

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[3] The Court's reliance on *United States* v. *Moore,* 129 F. 630, is misplaced. That case held only that it was not a privilege or immunity to organize labor unions. The reference to "the right to pass from one state to any other" was purely incidental dictum.

and more refined principals of adjudication. States do have rights of taxation and quarantine, see *Edwards* v. *California*, 314 U. S., at 184 (concurring opinion), which must be weighed against the general right of free movement, and Commerce Clause adjudication has traditionally been the means of reconciling these interests. Yet this approach to the right to travel, like that found in the privileges and immunities cases, is concerned with the interrelation of state and federal power, not—with an exception to be dealt with in a moment—with private interference.

The case of *In re Debs*, 158 U. S. 564, may be thought to raise some doubts as to this proposition. There the United States sought to enjoin Debs and members of his union from continuing to obstruct—by means of a strike—interstate commerce and the passage of the mails. The Court held that Congress and the Executive could certainly act to keep the channels of interstate commerce open, and that a court of equity had no less power to enjoin what amounted to a public nuisance. It might be argued that to the extent *Debs* permits the Federal Government to obtain an injunction against the private conspiracy alleged in the present indictment,[4] the criminal statute should be applicable as well on the ground that the governmental interest in both cases is the same, namely to vindicate the underlying policy of the Commerce Clause. However, § 241 is not directed toward the vindication of governmental interests; it requires a private right under federal law. No such right can be found in *Debs*, which stands simply for the proposition that the Commerce Clause gives the Federal Govern-

[4] It is not even clear that an equity court would enjoin a conspiracy of the kind alleged here, for traditionally equity will not enjoin a crime. See Developments in the Law—Injunctions, 78 Harv. L. Rev. 994, 1013–1018 (1965).

ment standing to sue on a basis similar to that of private individuals under nuisance law. The substantive rights of private persons to enjoin such impediments, of course, devolve from state not federal law; any seemingly inconsistent discussion in *Debs* would appear substantially vitiated by *Erie R. Co.* v. *Tompkins*, 304 U. S. 64.

I cannot find in any of this past case law any solid support for a conclusion that the Commerce Clause embraces a right to be free from private interference. And the Court's opinion here makes no such suggestion.

III.

One other possible source for the right to travel should be mentioned. Professor Chafee, in his thoughtful study, "Freedom of Movement," [5] finds both the privileges and immunities approach and the Commerce Clause approach unsatisfactory. After a thorough review of the history and cases dealing with the question he concludes that this "valuable human right," *id.*, at 209, is best seen in due process terms:

> "Already in several decisions the Court has used the Due Process Clause to safeguard the right of the members of any race to reside where they please inside a state, regardless of ordinances and injunctions. Why is not this clause equally available to assure the right to live in any state one desires? And unreasonable restraints by the national government on mobility can be upset by the Due Process Clause in the Fifth Amendment. . . . Thus the 'liberty' of all human beings which cannot be taken away without due process of law includes liberty of speech, press, assembly, religion, and also liberty of movement." *Id.*, at 192–193.

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[5] In Three Human Rights in the Constitution of 1787, at 162 (1956).

This due process approach to the right to unimpeded movement has been endorsed by this Court. In *Kent* v. *Dulles*, 357 U. S. 116, the Court asserted that "The right to travel is a part of the 'liberty' of which the citizen cannot be deprived without due process of law under the Fifth Amendment," *id.*, at 125, citing *Crandall* v. *Nevada*, *supra*, and *Edwards* v. *California*, *supra*. It is true that the holding in that case turned essentially on statutory grounds. However, in *Aptheker* v. *Secretary of State*, 378 U. S. 500, the Court, applying this constitutional doctrine, struck down a federal statute forbidding members of Communist organizations to obtain passports. Both the majority and dissenting opinions affirmed the principle that the right to travel is an aspect of the liberty guaranteed by the Due Process Clause.

Viewing the right to travel in due process terms, of course, would clearly make it inapplicable to the present case, for due process speaks only to governmental action.

IV.

This survey of the various bases for grounding the "right to travel" is conclusive only to the extent of showing that there has never been an acknowledged constitutional right to be free from private interference, and that the right in question has traditionally been seen and applied, whatever the constitutional underpinning asserted, only against governmental impediments. The right involved being as nebulous as it is, however, it is necessary to consider it in terms of policy as well as precedent.

As a general proposition it seems to me very dubious that the Constitution was intended to create certain rights of private individuals as against other private individuals. The Constitutional Convention was called to establish a nation, not to reform the common law. Even the Bill of Rights, designed to protect personal liberties, was directed at rights against governmental authority,

not other individuals. It is true that there are a very narrow range of rights against individuals which have been read into the Constitution. In *Ex parte Yarbrough*, 110 U. S. 651, the Court held that implicit in the Constitution is the right of citizens to be free of private interference in federal elections. *United States* v. *Classic*, 313 U. S. 299, extended this coverage to primaries. *Logan* v. *United States*, 144 U. S. 263, applied the predecessor of § 241 to a conspiracy to injure someone in the custody of a United States marshal; the case has been read as dealing with a privilege and immunity of citizenship, but it would seem to have depended as well on extrapolations from statutory provisions providing for supervision of prisoners. The Court in *In re Quarles*, 158 U. S. 532, extending *Logan*, *supra*, declared that there was a right of federal citizenship to inform federal officials of violations of federal law. See also *United States* v. *Cruikshank*, 92 U. S. 542, 552, which announced in dicta a federal right to assemble to petition the Congress for a redress of grievances.

Whatever the validity of these cases on their own terms, they are hardly persuasive authorities for adding to the collection of privileges and immunities the right to be free of private impediments to travel. The cases just discussed are narrow, and are essentially concerned with the vindication of important relationships with the Federal Government—voting in federal elections, involvement in federal law enforcement, communicating with the Federal Government. The present case stands on a considerably different footing.

It is arguable that the same considerations which led the Court on numerous occasions to find a right of free movement against oppressive state action now justifies a similar result with respect to private impediments. *Crandall* v. *Nevada*, *supra*, spoke of the need to travel to the capital, to serve and consult with the offices of government. A basic reason for the formation of this

Nation was to facilitate commercial intercourse; intellectual, cultural, scientific, social, and political interests are likewise served by free movement. Surely these interests can be impeded by private vigilantes as well as by state action. Although this argument is not without force, I do not think it is particularly persuasive. There is a difference in power between States and private groups so great that analogies between the two tend to be misleading. If the State obstructs free intercourse of goods, people, or ideas, the bonds of the union are threatened; if a private group effectively stops such communication, there is at most a temporary breakdown of law and order, to be remedied by the exercise of state authority or by appropriate federal legislation.

To decline to find a constitutional right of the nature asserted here does not render the Federal Government helpless. As to interstate commerce by railroads, federal law already provides remedies for "undue or unreasonable prejudice," 24 Stat. 380, as amended, 49 U. S. C. § 3 (1) (1964 ed.), which has been held to apply to racial discrimination. *Henderson* v. *United States*, 339 U. S. 816. A similar statute applies to motor carriers, 49 Stat. 558, as amended, 49 U. S. C. § 316 (d) (1964 ed.), and to air carriers, 72 Stat. 760, 49 U. S. C. § 1374 (b) (1964 ed.). See *Boynton* v. *Virginia*, 364 U. S. 454; *Fitzgerald* v. *Pan American World Airways*, 229 F. 2d 499. The Civil Rights Act of 1964, 78 Stat. 243, deals with other types of obstructions on interstate commerce. Indeed, under the Court's present holding, it is arguable that any conspiracy to discriminate in public accommodations having the effect of impeding interstate commerce could be reached under § 241, unaided by Title II of the Civil Rights Act of 1964. Because Congress has wide authority to legislate in this area, it seems unnecessary—if prudential grounds are of any relevance, see *Baker* v. *Carr*, 369 U. S. 186, 258–259 (CLARK, J., concurring)—to strain to find a dubious constitutional right.

V.

If I have succeeded in showing anything in this constitutional exercise, it is that until today there was no federal right to be free from private interference with interstate transit, and very little reason for creating one. Although the Court has ostensibly only "discovered" this private right in the Constitution and then applied § 241 mechanically to punish those who conspire to threaten it, it should be recognized that what the Court has in effect done is to use this all-encompassing criminal statute to fashion federal common-law crimes, forbidden to the federal judiciary since the 1812 decision in *United States* v. *Hudson*, 7 Cranch 32. My Brother DOUGLAS, dissenting in *United States* v. *Classic*, *supra*, noted well the dangers of the indiscriminate application of the predecessor of § 241: "It is not enough for us to find in the vague penumbra of a statute some offense about which Congress could have legislated, and then to particularize it as a crime because it is highly offensive." 313 U. S., at 331–332.

I do not gainsay that the immunities and commerce provisions of the Constitution leave the way open for the finding of this "private" constitutional right, since they do not speak solely in terms of governmental action. Nevertheless, I think it wrong to sustain a criminal indictment on such an uncertain ground. To do so subjects § 241 to serious challenge on the score of vagueness and serves in effect to place this Court in the position of making criminal law under the name of constitutional interpretation. It is difficult to subdue misgivings about the potentialities of this decision.

I would sustain this aspect of the indictment only on the premise that it sufficiently alleges state interference with interstate travel, and on no other ground.

SUPREME COURT OF THE UNITED STATES

No. 65.—OCTOBER TERM, 1965.

United States, Appellant, v. Herbert Guest et al. | On Appeal From the United States District Court for the Middle District of Georgia.

[March 28, 1966.]

MR. JUSTICE BRENNAN, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS join, concurring in part and dissenting in part.

I join Part I of the Court's opinion. I reach the same result as the Court on that branch of the indictment discussed in Part III of its opinion but for other reasons. See footnote 3, *infra*. And I agree with so much of Part II (page 6 to the top of page 8) as construes 18 U. S. C. § 241 to encompass conspiracies to injure, oppress, threaten or intimidate citizens in the free exercise or enjoyment of Fourteenth Amendment rights and holds that, as so construed, § 241 is not void for indefiniteness. I do not agree, however, with the remainder of Part II (page 8 to the top of page 11), which holds, as I read the opinion, that a conspiracy to interfere with the exercise of the right to equal utilization of state facilities is not, within the meaning of § 241, a conspiracy to interfere with the exercise of a "right . . . secured . . . by the Constitution" unless discriminatory conduct by state officers is involved in the alleged conspiracy.

I.

The second numbered paragraph of the indictment charges that the defendants conspired to injure, oppress, threaten, and intimidate Negro citizens in the free exercise and enjoyment of "[t]he right to equal utilization, without discrimination upon the basis of race,

of public facilities . . . owned, operated or managed by or on behalf of the State of Georgia or any subdivision thereof." Appellees contend that as a matter of statutory construction § 241 does not reach such a conspiracy. They argue that a private conspiracy to interfere with the exercise of the right to equal utilization of the state facilities described in that paragraph is not, within the meaning of § 241, a conspiracy to interfere with the exercise of a right "secured" by the Fourteenth Amendment because "there exist no Equal Protection Clause rights against wholly private action."

The Court deals with this contention by seizing upon an allegation in the indictment concerning one of the means employed by the defendants to achieve the object of the conspiracy. The indictment alleges that the object of the conspiracy was to be achieved, in part, "[b]y causing the arrest of Negroes by means of false reports that such Negroes had committed criminal acts . . . ." The Court reads this allegation as "broad enough to cover a charge of active connivance by agents of the State in the making of the 'false reports,' or other conduct amounting to official discrimination clearly sufficiently to constitute a denial of rights protected by the Equal Protection Clause," and the Court holds that this allegation, so construed, is sufficient to "prevent dismissal of this branch of the indictment." [1] I understand this to mean

[1] As I read the indictment, the allegation regarding the false arrests relates to all the other paragraphs and not merely, as the Court suggests, to the second numbered paragraph of the indictment. See n. 1 in the Court's opinion. Hence, assuming that, as maintained by the Court, the allegation could be construed to encompass discriminatory conduct by state law enforcement officers, it would be a sufficient basis for preventing the dismissal of each of the other paragraphs of the indictment. The right to be free from discriminatory conduct by law enforcement officers while using privately owned places of public accommodation (paragraph one) or while traveling from State to State (paragraphs three and four), or while doing any-

that, no matter how compelling the proofs that private conspirators murdered, assaulted, or intimidated Negroes in order to prevent their use of state facilities, the prosecution under the second numbered paragraph must fail in the absence of proofs of active connivance of law enforcement officers with the private conspirators in causing the false arrests.

Hence, while the order dismissing the second numbered paragraph of the indictment is reversed, severe limitations on the prosecution of that branch of the indictment are implicitly imposed. These limitations could only stem from an acceptance of appellees' contention that, because there exist no Equal Protection Clause rights against wholly private action, a conspiracy of private persons to interfere with the right to equal utilization of state facilities described in the second numbered paragraph is not a conspiracy to interfere with a "right . . . secured . . . by the Constitution" within the meaning of § 241. In other words, in the Court's view the only right referred to in the second numbered paragraph that is, for purposes of § 241, "secured . . . by the Constitution" is a right to be free—when seeking access to state facilities—from discriminatory conduct by state officers or by persons acting in concert with state officers.[2]

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thing else, is unquestionably secured by the Equal Protection Clause. It would therefore be unnecessary to decide whether the right to travel from State to State is itself a right secured by the Constitution or whether paragraph one is defective either because of the absence of an allegation of a racial discriminatory motive or because of the exclusive remedy provision of Civil Rights Act of 1964, § 207 (b), 78 Stat. 245, 42 U. S. C. § 2000a–6 (b) (1964 ed.).

[2] I see no basis for a reading more consistent with my own view in the isolated statement in the Court's opinion that "the rights under the Equal Protection Clause described by this paragraph [two] of the indictment have been . . . firmly and precisely established by a consistent line of decisions in this Court. . . ."

I cannot agree with that construction of § 241. I am of the opinion that a conspiracy to interfere with the right to equal utilization of state facilities described in the second numbered paragraph of the indictment is a conspiracy to interfere with a "right . . . secured . . . by the Constitution" within the meaning of § 241—without regard to whether state officers participated in the alleged conspiracy. I believe that § 241 reaches such a private conspiracy, not because the Fourteenth Amendment of its own force prohibits such a conspiracy, but because § 241, as an exercise of congressional power under § 5 of that Amendment, prohibits *all* conspiracies to interfere with the exercise of a "right . . . secured . . . by the Constitution" and because the right to equal utilization of state facilities is a "right . . . secured . . . by the Constitution" within the meaning of that phrase as used in § 241.[3]

My difference with the Court stems from its construction of the term "secured" as used in § 241 in the phrase "a right . . . secured . . . by the Constitution or laws of the United States." The Court tacitly construes the term "secured" so as to restrict the coverage of § 241 to those rights that are "fully protected" by the Constitution or another federal law. Unless private interferences with the exercise of the right in question are prohibited by the Constitution itself or another federal law, the right cannot, in the Court's view, be deemed "secured . . . by the Constitution or laws of the United States" so as to make § 241 applicable to a private conspiracy to interfere with the exercise of that right. The Court then

[3] Similarly, I believe that § 241 reaches a private conspiracy to interfere with the right to travel from State to State. I therefore need not reach the question whether the Constitution of its own force prohibits private interferences with that right; for I construe § 241 to prohibit such interferences, and as so construed I am of the opinion that § 241 is a valid exercise of congressional power.

premises that neither the Fourteenth Amendment nor any other federal law [4] prohibits private interferences with the exercise of the right to equal utilization of state facilities.

In my view, however, a right can be deemed "secured . . . by the Constitution or laws of the United States," within the meaning of § 241, even though only governmental interferences with the exercise of the right are prohibited by the Constitution itself (or another federal law). The term "secured" means "created by, arising under or dependent upon," *Logan* v. *United States*, 144 U. S. 263, 293, rather than "fully protected." A right is "secured . . . by the Constitution" within the meaning of § 241 if it emanates from the Constitution, if it finds its source in the Constitution. Section 241 must thus be viewed, in this context, as an exercise of congressional power to amplify prohibitions of the Constitution addressed, as is invariably the case, to government officers; contrary to the view of the Court, I

[4] This premise is questionable. Title III of the Civil Rights Act of 1964, 78 Stat. 246, 42 U. S. C. § 2000b (1964 ed.) authorizes the Attorney General on complaint from an individual that he is "being denied equal utilization of any public facility which is owned, operated, or managed by or on behalf of any State or subdivision," to commence a civil action "for such relief as may be appropriate" and against such parties as are "necessary to the grant of effective relief." Arguably this would authorize relief against private parties not acting in concert with state officers. (This title of the Act does not have an exclusive remedy similar to § 207 (b) of Title II, 42 U. S. C. § 2000a–6 (b).)

The Court affirmatively disclaims any intention to deal with Title III of the Civil Rights Act of 1964 in connection with the second numbered paragraph of the indictment. But, as the District Judge observed in his opinion, the Government maintained that the right described in that paragraph was "secured" by the Fourteenth Amendment and, "additionally," by Title III of the Civil Rights Act of 1964. 246 F. Supp., at 484. That position was not effectively abandoned in this Court.

think we are dealing here with a statute that seeks to implement the Constitution, not with the "bare terms" of the Constitution. Section 241 is not confined to protecting rights against private conspiracies that the Constitution or another federal law also protects against private interferences. No such duplicative function was envisioned in its enactment. See Appendix in *United States* v. *Price, ante.* Nor has this Court construed § 241 in such a restrictive manner in other contexts. Many of the rights that have been held to be encompassed within § 241 are not additionally the subject of protection of specific federal legislation or of any provision of the Constitution addressed to private individuals. For example, the prohibitions and remedies of § 241 have been declared to apply, without regard to whether the alleged violator was a government officer, to interferences with the right to vote in a federal election, *Ex parte Yarbrough,* 110 U. S. 651, or primary, *United States* v. *Classic,* 313 U. S. 299; the right to discuss public affairs or petition for redress of grievances, *United States* v. *Cruikshank,* 92 U. S. 542, 552, cf. *Hague* v. *CIO,* 307 U. S. 496, 512–513 (opinion of Roberts, J.); *Collins* v. *Hardyman,* 341 U. S. 651, 663 (dissenting opinion); the right to be protected against violence while in the lawful custody of a federal officer, *Logan* v. *United States,* 144 U. S. 263; and the right to inform of violations of federal law, *In re Quarles and Butler,* 158 U. S. 532. The full import of our decision in *United States* v. *Price, ante,* is to treat the rights purportedly arising from the Fourteenth Amendment in parity with those rights just enumerated. arising from other constitutional provisions. The reach of § 241 should not vary with the particular constitutional provision that is the source of the right. For purposes of applying § 241 to a private conspiracy, the standard used to determine whether, for example, the right to discuss public affairs or the right to vote in a

federal election is a "right . . . secured . . . by the Constitution" is the very same standard to be used to determine whether the right to equal utilization of state facilities is a "right . . . secured . . . by the Constitution."

For me, the right to use state facilities without discrimination on the basis of race is, within the meaning of § 241, a right created by, arising under and dependent upon the Fourteenth Amendment and hence is a right "secured" by that Amendment. It finds its source in that Amendment. As recognized in *Strauder* v. *West Virginia*, 100 U. S. 303, 310, "The Fourteenth Amendment makes no attempt to enumerate the rights it designed to protect. It speaks in general terms, and those are as comprehensive as possible. Its language is prohibitory; but every prohibition implies the existence of rights . . . ." The Fourteenth Amendment commands the State to provide the members of all races with equal access to the public facilities it owns or manages, and the right of a citizen to use those facilities without discrimination on the basis of race is a basic corollary of this command. Cf. *Brewer* v. *Hoxie School District No. 46*, 238 F. 2d 91 (C. A. 8th Cir. 1956). Whatever may the status of the right to equal utilization of *privately owned facilities*, see generally *Bell* v. *Maryland*, 378 U. S. 226, it must be emphasized that we are here concerned with the right to equal utilization of *public facilities owned or operated by or on behalf of the State*. To deny the existence of this right or its constitutional stature is to deny the history of the last decade, or to ignore the role of federal power, predicated on the Fourteenth Amendment, in obtaining nondiscriminatory access to such facilities. It is to do violence to the common understanding, an understanding that found expression in Titles III and IV of the Civil Rights Act of 1964, 78 Stat. 246, 42 U. S. C. §§ 2000b, 2000c (1964 ed.), dealing with state facilities. Those provi-

sions reflect the view that the Fourteenth Amendment creates the right to equal utilization of state facilities. Congress did not preface those titles with a provision comparable to that in Title II [5] explicitly creating the right to equal utilization of certain privately owned facilities; Congress rightly assumed that a specific legislative declaration of the right was unnecessary, that the right arose from the Fourteenth Amendment itself.

In reversing the District Court's dismissal of the second numbered paragraph, I would therefore hold that proof at the trial of the conspiracy charged to the defendants in that paragraph will establish a violation of § 241 without regard to whether there are also proofs that state law enforcement officers actively connived in causing the arrests of Negroes by means of false reports.

II.

My view as to the scope of § 241 requires that I reach the question of constitutional power—whether § 241 or legislation indubitably designed to punish entirely private conspiracies to interfere with the exercise of Fourteenth Amendment rights constitutes a permissible exercise of the power granted to Congress by § 5 of the Fourteenth Amendment "to enforce, by appropriate legislation, the provisions of" the Amendment.

A majority of the members of the Court [6] express the view today that § 5 empowers Congress to enact laws

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[5] "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination or segregation on the ground of race, color, religion, or national origin." 42 U. S. C. § 2000a (a) (1964 ed.).

[6] The majority consists of the Justices joining my Brother CLARK's opinion and the Justices joining this opinion. The opinion of MR. JUSTICE STEWART construes § 241 as applied to the second numbered paragraph to require proof of active participation by state officers

punishing *all* conspiracies to interfere with the exercise of Fourteenth Amendment rights, whether or not state officers or others acting under the color of state law are implicated in the conspiracy. Although the Fourteenth Amendment itself, according to established doctrine, "speaks to the State or to those acting under the color of its authority," legislation protecting rights created by that Amendment, such as the right to equal utilization of state facilities, need not be confined to punishing conspiracies in which state officers participate. Rather, § 5 authorizes Congress to make laws that it concludes are reasonably necessary to protect a right created by and arising under that Amendment; and Congress is thus fully empowered to determine that punishment of private conspiracies interfering with the exercise of such a right is necessary to its full protection. It made that determination in enacting § 241, see the Appendix in *United States* v. *Price, ante,* and, therefore § 241 is constitutional legislation as applied to reach the private conspiracy alleged in the second numbered paragraph of the indictment.

I acknowledge that some of the decisions of this Court, most notably an aspect of the *Civil Rights Cases,* 109 U. S. 3, 11, have declared that Congress' power under § 5 is confined to the adoption of "appropriate legislation for correcting the effects of . . . prohibited State laws, and State acts, and thus to render them effectually null, void, and innocuous." I do not accept—and a majority of the Court today rejects—this interpretation of § 5. It reduces the legislative power to enforce the provisions of the Amendment to that of the judiciary; [7] and it

in the alleged conspiracy and that opinion does not purport to deal with this question.

[7] Congress, not the judiciary, was viewed as the more likely agency to implement fully the guarantees of equality, and thus it could be presumed the primary purpose of the Amendments was to augment

attributes a far too limited objective to the Amendment's sponsors.[8] Moreover, the language of § 5 of the Fourteenth Amendment and § 2 of the Fifteenth Amendment are virtually the same, and we recently held in *South Carolina* v. *Katzenbach*, 383 U. S. ——, ——, that "[t]he basic test to be applied in a case involving § 2 of the Fifteenth Amendment is the same as in all cases concerning the express powers of Congress with relation to the reserved powers of the States." The classic formulation of that test by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316, 421, was there adopted:

> "Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional."

It seems to me that this is also the standard that defines the scope of congressional authority under § 5 of the Fourteenth Amendment. Indeed, *South Carolina* v. *Katzenbach* approvingly refers to *Ex parte Virginia*, 100 U. S. 339, 345–346, a case involving the exercise of the congressional power under § 5 of the Fourteenth

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the power of Congress, not the judiciary. See James, The Framing of the Fourteenth Amendment, 184 (1956); Harris, The Quest for Equality, 53–54 (1960); Frantz, Congressional Power to Enforce the Fourteenth Amendment Against Private Acts, 73 Yale L. J. 1353, 1356 (1964).

[8] As the first Mr. Justice Harlan said in dissent in the *Civil Rights Cases*, 109 U. S., at 54: "It was perfectly well known that the great danger to equal enjoyment by citizens of the rights, as citizens, was to be apprehended not altogether from unfriendly State legislation, but from the hostile action of corporations and individuals in the States. And it is to be presumed that it was intended, by that section [§ 5], to clothe Congress with power and authority to meet that danger." See *United States* v. *Price*, *ante*, p. ——, and Appendix.

Amendment, as adopting the *McCulloch* v. *Maryland* formulation for "each of the Civil War Amendments."

Viewed in its proper perspective, § 5 appears as a positive grant of legislative power, authorizing Congress to exercise its discretion in fashioning remedies to achieve civil and political equality for all citizens. No one would deny that Congress could enact legislation directing state officials to provide Negroes with equal access to state schools, parks and other facilities owned or operated by the State. Nor could it be denied that Congress has the power to punish state officers who, in excess of their authority and in violation of state law, conspire to threaten, harass and murder Negroes for attempting to use these facilities.[9] And I can find no principle of federalism nor word of the Constitution that denies Congress power to determine that in order adequately to protect the right to equal utilization of state facilities, it is also appropriate to punish other individuals—neither state officers nor acting in concert with state officers—who engage in the same brutal conduct for the same misguided purpose.[10]

III.

Section 241 is certainly not model legislation for punishing private conspiracies to interfere with the exercise of the right of equal utilization of state facilities.

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[9] *United States* v. *Price, ante.* See *Screws* v. *United States,* 325 U. S. 91; *Williams* v. *United States,* 341 U. S. 97; *Monroe* v. *Pape,* 365 U. S. 167.

[10] Cf. *Atlanta Motel* v. *United States,* 379 U. S. 241, 258, applying the settled principle expressed in *United States* v. *Darby,* 312 U. S. 100, 118, that the power of Congress over interstate commerce "extends to those activities intrastate which so affect interstate commerce or the exercise of the power of Congress over it as to make regulation of them appropriate means to the attainment of a legitimate end . . . ."

It deals in only general language "with Federal rights and with all Federal rights" and protects them "in the lump," *United States* v. *Mosely*, 238 U. S. 383, 387; it protects in most general terms "any right or privilege secured . . . by the Constitution or laws of the United States." Congress has left it to the courts to mark the bounds of those words, to determine on a case-by-case basis whether the right purportedly threatened is a federal right. That determination may occur after the conduct charged has taken place or it may not have been anticipated in prior decisions; "a penumbra of rights may be involved, which none can know until decision has been made and infraction may occur before it is had." [11] Reliance on such wording plainly brings § 241 close to the danger line of being void for vagueness.

But, as the Court holds, a stringent scienter requirement saves § 241 from condemnation as a criminal statute failing to provide adequate notice of the proscribed conduct.[12] The gravamen of the offense is conspiracy, and therefore, like a statute making certain conduct criminal only if it is done "willfully," § 241 requires proof of a specific intent for conviction. We have construed § 241 to require proof that the persons charged conspired to act in defiance, or in reckless disregard, of an announced rule making the federal right specific and definite. *United States* v. *Williams*, 341 U. S. 70, 93–95 (opinion of DOUGLAS, J.); *Screws* v. *United States*, 325 U. S. 91, 101–107 (opinion of DOUGLAS, J.) (involving the predecessor to

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[11] Mr. Justice Rutledge in *Screws* v. *United States*, 325 U. S., at 130.

[12] *Ante*, pp. 7–8. See generally, *Boyce Motor Lines, Inc.* v. *United States*, 342 U. S. 337, 342; *American Communications Assn.* v. *Douds*, 339 U. S. 382, 412–413; *United States* v. *Ragen*, 314 U. S. 513, 524; *Gorin* v. *United States*, 312 U. S. 19, 27–28; *Hygrade Provision Co.* v. *Sherman*, 266 U. S. 497, 501–503; *Omaechevarria* v. *Idaho*, 246 U. S. 343, 348.

18 U. S. C. § 242). Since this case reaches us on the pleadings, there is no occasion to decide now whether the Government will be able on trial to sustain the burden of proving the requisite specific intent *vis-à-vis* the right to travel freely from State to State or the right to equal utilization of state facilities. Compare *James* v. *United States*, 366 U. S. 213, 221–222 (opinion of WARREN, C. J.). In any event, we may well agree that the necessity to discharge that burden can imperil the effectiveness of § 241 where, as is often the case, the pertinent constitutional right must be implied from a grant of congressional power or a prohibition upon the exercise of governmental power. But since the limitation on the statute's effectiveness derives from Congress' failure to define—with any measure of specificity—the rights encompassed, the remedy is for Congress to write a law without this defect. To paraphrase my Brother DOUGLAS' observation in *Screws* v. *United States*, 325 U. S., at 105, addressed to a companion statute with the same shortcoming, if Congress desires to give the statute more definite scope, it may find ways of doing so.

The CHAIRMAN. I want to say, Mr. Attorney General, that you have given us a rather heavy burden. You probably recognized that yourself, but I am sure that we will carry that burden with care, wisdom, and strength. I think that we will be successful in carrying it.

Attorney General KATZENBACH. Mr. Chairman, I recognized that it is a heavy burden, and I recognize also that this committee has carried a heavy burden in the past, and it has carried it with distinction on both sides of the aisle.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Thank you, Mr. Chairman.

Mr. Attorney General, the question I propound is for the purpose of clarification of certain sections, since we will be compelled to defend them on the floor of the House once this is reported. I think the first change that you make in selection of Federal jurors in title I, is set forth in section 1864, dealing with the master jury wheel.

As I understand the present law, the jury commission is authorized to select competent jurors to serve, and to place their names in the jury wheel.

You intend by this section (b) to say that the commission shall place in the master wheels the names of at least 1 percent of the total number of persons listed on the voter registration lists for the district or division and in no event less than 2,000 names shall be placed into that jury wheel.

Now as an example, my State, Colorado, constitutes one judicial district. There are no divisions. Now do I interpret this to say with a voter registration of 800,000 people, that 1 percent would be 8,000, and they make a selection of at least 1 percent of the registered voters.

Can and will the chief judge in a district prescribe rules that will make it necessary for the jury commission to select the names from the registered voters in the 63 separate counties of the State?

Would they have to select at least some voters from each of the counties of the State?

Attorney General KATZENBACH. No, that would not in and of itself be required, Congressman. The only requirement is that the selection has to be a random selection there from those lists so that it would be possible on a random selection not to have people in from any particular county. Now where they are taking the—well, the provision, I stand corrected on.

It says the master jury list shall contain names of persons residing in all counties, parishes, or similar subdivisions within the judicial district or division, but there is no requirement of any particular number or any particular proportion in that, you see.

It is to be taken from those jury lists, and one of the systems is you take every name, well, you put a piece of cardboard over the names, and it has certain holes cut out, and you just take those names.

You can take it from every fourth page, and the third name down, or any other completely random sort of system.

Now under the present law, there really is no provision of this kind.

Mr. ROGERS. Well, that is right.

Attorney General KATZENBACH. You see, under the present law, all that is required is that 300 qualified jurors be stuck in a wheel.

It does not tell you how to get qualified jurors, and that is somethin that is worked out within each district, the system of putting the 3C names into the wheel.

Now there are some districts that have a two-wheel system, such a we prescribe here, have a master wheel, with a lot of names to put in names of prescribed, names are taken out for that, their qualifications are then checked, they are then put into the jury wheel, as needed.

Mr. ROGERS. The objective of the question is to see what the responsibility of this commission may be, and whether or not we spell it out specifically here. As you know, in most States, there is a registration list of those qualified to vote. That list is usually left with the county clerk and recorder and the election commission, and when the jury commission gets ready to make the selection, what obligation is he under to go to all, as in my State, all of the 63 counties and get at least someone from every county, or can it merely go to the city and county of Denver, where the court sits, and select 2,000 names?

Attorney General KATZENBACH. Well, let me first put it this way. One each district, within each district, the selection of the jurors on the master wheel can come from the area covered by the divisions of that district, or if they are not formal divisions, from the areas around where the court sits, in fact.

Mr. ROGERS. That leaves——

Attorney General KATZENBACH. So that a court sitting in the southern end of Colorado—I don't know how many places the Federal court sits in Colorado.

Mr. ROGERS. The court is authorized to sit in about five or six different places within the State of Colorado.

But as a matter of practice, you don't get very many of those judges away from the home base at Denver, and I would say nine-tenths of the cases that are tried are tried in the city and county of Denver.

Now what I am trying to find out is what if a man in the southern part of the State is charged with a crime, and brought to Denver for trial is he entitled to have some of the people from his home county on this jury list, or can the jury commissioner merely go to the elections commissioner, at the city and county of Denver, and say, "Look, give me 2,000 names, or give me your complete voter registration list, and I will make the selection."

That is what I am trying to figure out. What the duty and responsibility of this commission may be, and how far must they go, to see that the venire is representative of the entire district.

Attorney General KATZENBACH. Because there is also the consideration of traveling, costs of travel and the travel time involved with jurors, where the court in fact sits in a number of different places to try cases, where that, in fact, occurs, we provide here that the jurors need only be taken from that locality that is covered by where the court sits.

Now I would suppose—perhaps it is not as clear as it should be in the law—that if there are several divisions but the court never sits in any save one, if that is the proposition, then I would think that in those circumstances, the jury list should be selected on a statewide basis, despite the difficulties of time and trouble.

It is not specified that way, Congressman.

It may require clarification.

Mr. ROGERS. In other words, you feel that under section 1864(c) which provides that "The chief judge of the district shall prescribe, by rules, definite and certain procedures to be followed by the jury commission in making the random selection of names required by subsection (a) and (b) of this section," the commission may consider registration voting lists of all 63 counties or only 1 county, or 10 counties.

Attorney General KATZENBACH. Well, he has to take all the ones within the division for which he is sitting at this point. I would think that was clear.

Now beyond that if, although authorized to sit in several places, there is in fact no term of court ever held anywhere else, then I would think that it would be appropriate for the judge in those circumstances to prescribe it on a broader basis.

Otherwise, the people are not again having an opportunity to serve.

Mr. ROGERS. Well, now, turning to title II——

Mr. MCCULLOCH. Would the gentleman yield for one question there?

Mr. ROGERS. Yes, sir.

Mr. MCCULLOCH. I wonder if some of the questions just asked could not be answered by article 6 of the Constitution—and I quote—"in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed."

If the jury is not selected within the district, then we run afoul of the basic constitutional provisions.

Attorney General KATZENBACH. That is clear, Congressman. The difficulty, I think, is where you have one State, one district, and several divisions, but I would think we had prescribed here that you had to have people from every county where there was a sitting court.

In other words, ordinarily, you have your separate divisions, a person in the South is tried down in that locality.

That is normally the practice, and they don't just continue to sit in one place. Now it may be that there is a special problem in Colorado, where they have just a single district, that they don't want to sit in the other divisions.

Mr. ROGERS. Well, we have only the one district, and as I point out, as a practical situation, they very seldom ever go to any of the other places to try the cases. Now could a man who may reside in a remote part of the State raise the question that the names of qualified voters from his area, or county, were not even put in the master wheel?

Would that be cause for error, if such names were not included.

Attorney General KATZENBACH. I don't honestly think that situation can arise.

Mr. ROGERS. We have one county that has probably less than a hundred qualified registered voters, compared with my county, where you have over 260,000. Now it is very easy for the jury commissioners not to run up to Lake County and Summit County, to get the registered voters up there.

Attorney General KATZENBACH. It does seem to me, Congressman, that it says they have got to get it, whether they want to or not.

Mr. ROGERS. That is what I want to know. Have they got to include that county?

Attorney General KATZENBACH. They have got some in there in their master list from that county. Maybe only one from that county with a hundred, but one.

Mr. ROGERS. That answers my question. Thank you.

Now the next thing I want to discuss is title II, wherein it states: "No person or class of persons shall be denied the right to serve on grand and petit juries in any State court, on account of race, color, religion, sex, national origin, or economic status."

I assume that we can agree that race, color, religion, sex, and national origin is fully covered or the authority for such is fully covered by the 14th amendment to the Constitution of the United States.

What I would like to ask you is what do you understand to be the meaning of this term, economic status? Does a man have to have a job, or can he be on welfare, or just what does that mean.

Attorney General KATZENBACH. I think it would mean that you could not exclude people because they did not pay taxes, and could not exclude people who failed to own a certain amount of property, or some other provisions of that kind. I think all those people would be entitled to sit on a jury.

Mr. ROGERS. Well now, the constitutionality of that prohibition is based on what provision?

Attorney General KATZENBACH. Based on the equal protection clause, and on article 5, Congress can make legislation. It in fact follows the fact, really, the suggestion of the Supreme Court in this regard, where they said it was contrary to our traditions to exclude on this kind of a basis, and where they suggested that the difficulty was that Congress had not prescribed as explicitly as it might just who should and who should not be exempted, and for what.

Mr. ROGERS. Now this is going into the question of qualifications of jurors in a State, as distinguished from qualifications in a Federal court.

Attorney General KATZENBACH. That is right.

Mr. ROGERS. And in order to do that, you cite the 14th amendment and the 5th section?

Attorney General KATZENBACH. Section 5 of the 14th amendment. I would think this would be quite appropriate.

Mr. ROGERS. Well, is it a question of an economic status? Is that one of the rights protected under the 14th amendment?

Attorney General KATZENBACH. I would think the Court had ruled that out quite clearly in the Virginia poll tax case, Mr. Congressman. I think the *Harper* case would be very strong authority for that.

Mr. ROGERS. You think that the decision in the poll tax case recently is ample authority and justification for the constitutionality of this, which would prohibit a State from using economic status as a qualification for jury service?

Attorney General KATZENBACH. Yes, sir. And it follows other cases that have suggested the same thing more explicitly with respect to juries.

Mr. ROGERS. Well now, if a State requires that jurors must be able to read and write the English language, that is not a discrimination prohibited in title II. In other words, a State could pass such a law and enforce it?

Attorney General KATZENBACH. Yes, sir.

Mr. ROGERS. And can you envision any difficulties that we may encounter because the 1965 Voting Rights Act authorizes certain people to register and vote who cannot read or write the English language?

Attorney General KATZENBACH. No, sir.

Mr. ROGERS. Then if——

Attorney General KATZENBACH. I mean, the fact that you are a voter does not automatically qualify you to be a juror. It is simply that that is where you take your master list from. Now in addition to that, you have to establish some literacy, both in the Federal and State requires it in the State system, but I don't see—perhaps I don't understand the question.

I don't see the difficulties involved in having a master wheel which may include some people who are not eligible. It may include some people for other reasons.

Mr. ROGERS. Of course you are talking about a master wheel in the Federal court?

Attorney General KATZENBACH. Yes.

Mr. ROGERS. Now I am talking about the qualifications of jurors in State court.

Attorney General KATZENBACH. There is no requirement that they take them off voting lists. They can if they want to.

Mr. ROGERS. I beg your pardon? No requirement of what?

Attorney General KATZENBACH. No requirement they take them from voting lists. They can just select them any system they want to, as long as it is not prohibited by section 201.

The CHAIRMAN. I think we will leave juries a moment. On the housing proposition, suppose you have some of these homes for the aged which are conducted by philanthropic or religious bodies, Catholic homes, or Jewish homes.

Homes for the aged, fraternal order homes. How will that jibe with these housing provisions?

Attorney General KATZENBACH. I think then on the housing provisions, only one of the instances there that gives me any difficulty, and I think it might be exempted, would be the religious one. As far as the others are concerned, they are not discriminating in violation of this.

If members of a certain group, actors equity, or whatever you want, if members of a certain group are eligible to come into and only members of that group, the only one that would give me any difficulty would be the religious home, and I think probably there should be an exemption as long as it is philanthropic.

The CHAIRMAN. There should be an exemption for these religious homes.

Attorney General KATZENBACH. I think there should be.

Mr. RODINO. Mr. Attorney General, what about the case of an ethnic home for the aged?

Attorney General KATZENBACH. If it is——

Mr. RODINO. There are homes for Serbians you might say, aged Serbians, or aged Italians. What do you do in a case of that kind?

Attorney General KATZENBACH. I have no objection to specifying it in that kind of a situation.

There I would think they are including, they want really—there they were not excluding somebody else because of his ethnic origin, they were just including everybody who was a Serbian. [Laughter.]

Mr. RODINO. Well, I doubt that many non-Serbians would get into such a home.

Attorney General KATZENBACH. But would an Italian going to that be excluded because he was an Italian, or would it be simply because he was not a Serbian?

Mr. RODINO. I don't know. It could be just because he was not Serbian.

Attorney General KATZENBACH. I think if the Congress is troubled by that, that there is no reason not to write an exemption, as long as it is philanthropic, and not run for profit.

Mr. RODINO. Mr. Attorney General——

Mr. CRAMER. Would the gentleman yield on that point?

Mr. RODINO. Let me just——

Mr. CRAMER. Would the gentleman yield?

The CHAIRMAN. Mr. Cramer.

Mr. RODINO. Go ahead.

Mr. CRAMER. What does its being run for profit have to do with the nature of the people occupying it, or the limitations placed upon it? If it is agreed to be a Lithuanian home, run for profit or not for profit, what does that have to do with it? It either discriminates or does not. I don't see what profit has to do with it.

Attorney General KATZENBACH. My reason that I would be concerned with on that is that you would get a series of commercial ventures which did not have the integrity of the kind of ventures that Congressman Rodino was talking about. There would be various ways of trying to, as we have had to some extent, on the public accommodations, with some fairly phoney so-called clubs, so that we have had to bring suit in some instances.

Mr. CRAMER. I am not saying it is not perfectly legitimate. If there is a way that the problem that I am talking about can be avoided, perhaps the profit motive would come in. The reason I asked that is that I thought the profit motive added an incentive in that situation.

I don't think in fact many of these are run for profit, but there are some that are. I did not think you wanted to express any opinion against the profit motive.

Attorney General KATZENBACH. No, there is nothing wrong with the profit motive.

Mr. RODINO. Mr. Attorney General, going back to the selection of jurors, and the drawing of names from the master jury wheel, I would like to ask why there is a need that the form elicit not only the name and address and age and sex and education, but also the race, religion, and occupation.

Just why is this necessary for juror qualification?

Attorney General KATZENBACH. The reason that it is necessary, Congressman, is because if you are saying that you can't discriminate on this kind of a basis, then you want some kind of record to see whether or not there has been discrimination on that kind of basis.

Now I might say, if you are troubled by it, that if there is nothing in the law that said that if a person fails to fill out his religion or his

sex or his national origin on there, just fails to put that in, that he is thus excluded from jury duty but it does give you a record, and it is helpful, if you have to get into that, if you are trying to test whether or not there has been discrimination, to have that kind of a record, but if any particular person has a reluctance to write that down, there is nothing in the law that requires him to, and he is not forbidden to serve on the jury merely by failing to fill that out.

Mr. RODINO. But the jury commission nonetheless has this information before it on which it makes the determination as to whether or not that person is primarily qualified.

Attorney General KATZENBACH. Since that is not a qualification for serving on the jury, they can't disqualify him because that is blank.

Mr. RODINO. But if they find that the person is of a certain race, and of course this is a fact that will be evident when the person answers the question, or a certain religion, this could be a basis for disqualification on the part of the jury commissioner without having noted it as the reason for the actual disqualification.

Attorney General KATZENBACH. Well, he has to note the reason. I don't really follow the question, Congressman, because if he says he is too physically infirm to serve on the jury, that is what he writes on that, but really, he is doing this because the person was a Catholic or a Jew or a Protestant, or something, I think your jury commissioner has violated the law.

Mr. RODINO. What I am talking about is this—if a person says he is a Catholic, and notes that he is Catholic, and the person who is making the judgment as to whether he is qualified, does not note that he is disqualifying him because he is a Catholic, but for some other reason, I can't see the use of having this information on here. I think it just helps discrimination, rather than eliminates discrimination.

Attorney General KATZENBACH. I most respectfully disagree with you. I think that if you look at it, why is he going to be disqualified?

He is going to be disqualified because he is physically infirm, and can't do it, he is mentally incompetent, or he is unable to fill out the form.

That is the only reason the commissioner can disqualify somebody on that list. Now it would be extremely helpful, I would think, to have a record of the fact that this person—have the religion in there, and then if you ever got into these records, you would notice that he found every Catholic to be physically infirm.

But if you did not have that, you could not do it.

Mr. RODINO. In other words, you feel that the information is useful?

Attorney General KATZENBACH. I think it is useful at that point; yes.

The CHAIRMAN. That is a quorum call, Mr. Attorney General. We have to terminate our proceeding this morning, and I hope that the Attorney General can be back tomorrow morning at 10 o'clock.

Attorney General KATZENBACH. Yes, Mr. Chairman. I will be happy to.

The CHAIRMAN. Thank you very much.

(Whereupon, at 12:10 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, May 5, 1966.)

CIVIL RIGHTS, 1966

THURSDAY, MAY 5, 1966

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

The subcommittee met at 10 a.m., pursuant to adjournment, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Donohue, Corman, McCulloch, Cramer, MacGregor.

Also present: Representatives Conyers, Gilbert, Tenzer, McClory; also present: William R. Foley, general counsel; Benjamin L. Zelenko, counsel; and Martin Hoffmann, associate counsel.

The CHAIRMAN. We will come to order.

The Chairman wishes to state that the Voting Rights Act of 1965 has borne good fruits. Witness the good results of the voting in Alabama.

STATEMENT OF ATTORNEY GENERAL NICHOLAS deB. KATZENBACH, ACCOMPANIED BY STEPHEN POLLAK, FIRST ASSISTANT, CIVIL RIGHTS DIVISION, AND ALAN MARER—Resumed

Attorney General KATZENBACH. Yes. A large number of people who never voted before registered and voted freely and comfortably. And my present information is that the problems on that are relatively isolated.

The CHAIRMAN. Mr. Rogers, I think you were interrogating.

Mr. ROGERS. Yes, sir.

Mr. Attorney General, directing your attention to what is known as title IV, dealing with housing, you base the Federal jurisdiction on interstate commerce. And as you point out in your statement, it may be possible for any number of things to take place in the construction of a house, that is, the lumber may come from one State and the financing may come from another, and the workers from another, and so forth. Now, at what point, if any, would the Federal Government's jurisdiction in housing end? You are familiar with the doctrine that when goods in interstate commerce come to complete rest, interstate commerce ends. Is there any way that you can remove the interstate commerce feature from the housing section of the legislation?

Attorney General KATZENBACH. The short answer to that is "No, Congressman, there is not."

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But I would also like to just make it clear that I did not intend to base title IV exclusively on the commerce clause. I think it could be based exclusively on the commerce clause, but I would be reluctant to do so, because I think it is equally justifiable as an implementation of section V of the 14th amendment.

I might add a point that has been called to my attention here, Congressman. In the *McClung* case which upheld the 1964 act in the Supreme Court this language appears on page 302 of the opinion:

Nor are the cases holding that interstate commerce ends when goods come to rest in the State of deposition apposite here. That line of cases has been applied with reference to State taxation or regulation, but not in the field of Federal regulation.

Mr. CORMAN. Would the gentleman yield?

Mr. ROGERS. Yes.

Mr. CORMAN. I recall that when we started hearings in 1964 there was considerable discussion as to whether we ought to rely solely on the interstate commerce clause or on the 14th amendment plus interstate, and I assume that is precisely what we are doing with respect to the housing provisions of this bill.

Attorney General KATZENBACH. That is correct, Congressman. I think as a general proposition in defending the constitutionality of any bill before Congress obviously the Members of Congress should be satisfied that it is constitutional. But it makes very little difference, if they satisfy themselves on different grounds that it is constitutional.

In addition to that, I think that it is a mistake to confine the Department of Justice, in defending the constitutionality of a bill, to express legislative theory in the act itself.

Now, you will recall that was done in the Civil Rights Act of 1866, where it was based exclusively on the 14th amendment. And the court said that because of that, in terms of that act at that time, they held sections of it unconstitutional, which was an indication that they might have upheld on the commerce clause basis.

Mr. ROGERS. Of course, the objective of my question is to get your view of them so that we will be in a better position to defend the bill when it is reported from the committee.

Attorney General KATZENBACH. Yes, indeed, Congressman. And of course, these arguments as you will recall and as I recall were made at great length with respect to the 1964 act which was upheld 9 to 0 by the Supreme Court.

Mr. ROGERS. Now, the next question relates to housing, and particularly to section 409—

Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State, or of any other jurisdiction in which this title shall be effective, that grants, guarantees, or protects the same rights as are guaranteed by this title: but any law that purports to permit any action that would be discriminatory housing practice under this title shall to that extent be invalid.

Now, by that you mean if, as an example, the State my friend on the left adopted some legislation last election which deals with the housing problem, this bill would invalidate their law to that extent?

Attorney General KATZENBACH. As I recollect—Mr. Corman would know better than I—but as I recollect, the effect of proposition 14 in

California was to prohibit the State or municipalities from legislating in this particular field. While the constitutionality of that is, I think, presently being contested, I would say the effect of this on that law would simply be to have the Federal law operative in the State of California, and leave what the State of California were to do to its own laws and legislature.

Mr. CORMAN. Would the gentleman yield for a comment at this point?

Mr. ROGERS. Yes.

Mr. CORMAN. The specific act passed by the legislature provided a particular kind of enforcement procedure relying very heavily on the law. That was a specific remedy in California. Now, the State of California has long prohibited by case law the enforcement of covenants or other kinds of discriminatory measures in deeds. The thing which the constitutional amendment did was to set aside that particular remedy and put some restrictions on future kinds of remedies that the State or jurisdiction within the State might adopt. It was substantially different from the thing which we are discussing in this bill.

Mr. ROGERS. Now, applying that language of section 409 to my own State, which has adopted a very extensive antidiscrimination housing practice, do I understand the intention of section 409 that it is not to interfere with my State law in any manner whatsoever, and that complaints can continue to be filed as they are now filed with the Antidiscrimination Commission of the State of Colorado?

Attorney General KATZENBACH. That is correct, Congressman. This merely superimposes or puts side by side that with the Federal law on the subject. And one reason for this is that in many instances such as that in Colorado there are administrative remedies which will cover many if not all of the situations covered by this act, and there is no desire to interfere with those at all.

Mr. ROGERS. Section 406(e) of this bill provides for punitive damages up to $500. If the Colorado State law provides a method whereby damages may also be collected, you would have a remedy in both cases; would that be correct?

Attorney General KATZENBACH. Yes; I think that is correct. I think if it was in violation of this law and a violation of Colorado law, and he was able to join the two together, that he would be entitled to get whatever damages under the Federal law, and/or whatever damages under the State law.

Mr. ROGERS. Now, directing your attention to title V of the bill, and particularly your statement on page 27, wherein you say that title V would not require proof of a specific intent such as is required in 18 U.S.C. 241, the bill states that "Whoever, whether or not acting under color of law, by force or threat of force." Now, must there be some action of actual physical force or threat of force before this title V comes in operation?

Attorney General KATZENBACH. Yes.

Mr. ROGERS. What about threats of economic interference?

Attorney General KATZENBACH. Threats of economic interference are not covered in title V. They are covered in existing law with respect to some of the same things that are covered in title V.

Mr. ROGERS. Now, if an organization like the Ku Klux Klan should attempt to interfere with any person because of race, color, religion, or national origin, would it be necessary for them to use force before they would be considered to violate the sections of this law, or would the mere fact that they may belong to that organization be sufficient within itself to bring about prosecution?

Attorney General KATZENBACH. The former would have to be either force or threat of force, and merely membership in that organization would not be relevant to that point. Membership in that organization might be relevant to establish that the action was racially motivated.

Mr. ROGERS. Would the same be true with membership in a Black Muslim organization which is supposed to be against the white race? Would some definite action by them be required before this section 5 would come into play?

Attorney General KATZENBACH. Yes, the same would be true, this legislation is color blind in that respect, it applies equally to whites and Negroes in terms of what is protected, and in terms of what is punishable.

Mr. ROGERS. Now, directing your attention to page 32, which is section 501(a)4, where it says:

> Applying for or enjoying employment, or any prerequisites thereof, by any private employer or agency in the United States or any state or subdivision thereof, or of using the services or advantages of any labor organization or using the services of any employment agency.

Now, under the answers that you have heretofore given, before an individual could be guilty of that particular violation, there would have to be force, attempts to use force, for instance, to prevent an individual from joining a labor union before it would violate this law?

Attorney General KATZENBACH. Yes, Congressman, it would be. May I point out that there is a typographical error in that paragraph. The word is "perquisites," not "prerequisites."

Mr. CRAMER. We will agree to that change.

Mr. ROGERS. Then the question is, if you went to a labor union, and said, "I want to join, I have all the necessary qualifications," and the business agent said "No, we won't take you in," that is not a violation of this particular section, is it? Or is it?

Attorney General KATZENBACH. No, it is not a violation of this particular section. It is a violation of title VII of the Civil Rights Act of 1964, which provides for civil remedies in that regard. Now, if he went further than this and said, "If you come around again I am going to knock your head off," then he would be getting closer to this.

Mr. ROGERS. Or if he said something like that to intimidate, or threaten, or use force?

Attorney General KATZENBACH. Yes.

Mr. ROGERS. I think that will be all.

The CHAIRMAN. Mr. Corman.

Mr. CORMAN. Mr. Attorney General, I notice in the preamble of the Constitution that one of the reasons we formed this Union was to provide for domestic tranquility. I know there has been considerable discussion during the hearings of 1963 and 1964 on the

Civil Rights Act as to what we might anticipate if we involved ourselves in this area of the Federal Government desegregating public accommodations privately owned. We are all aware of the history that led up to those proposals. I wonder if you could comment for us as to what the experience has been in those communities before and after passage of that act?

Attorney General KATZENBACH. Before the passage of that act, as I think all the members of the subcommittee will recall, there were many demonstrations, there were many sit-ins in restaurants, racial tensions ran very high indeed in many communities. But since the enactment the demonstrations in this regard have been really very few. There have been a few communities where there was resistance, but this has been resolved by the bringing of a lawsuit.

There was in general very good compliance with the public accommodations features of the 1964 act, and I think it did a good deal to improve domestic tranquility.

I don't want to overstate that point. I think that the compliance among the larger motels and restaurants was fast, quick, and really complete, with the exception of Mr. McClung and others who wanted to raise the constitutional question, and did, and lost.

In some rural communities I have no doubt that in practice a good deal of segregated facilities continue. But even here it is not becoming a major issue, and I think even here where it is tested there is compliance.

Mr. CORMAN. I thought one of our objectives was to remove disputes from the streets to the courthouse.

Attorney General KATZENBACH. Yes.

Mr. CORMAN. Would you think that we have succeeded tolerably well in that objective?

Attorney General KATZEBACH. I think we have succeeded extremely well in that objective, Congressman, even though I think in the whole field of race relations obviously a great deal more has to be accomplished, not merely by the Federal Government and by State governments, but by private industry and employees and people everywhere. One piece of legislation does not in itself solve the race problems of a century. But with respect to improving domestic tranquility, to easing tensions, and to taking disputes off the streets, that act was indispensable and successful.

Mr. CORMAN. I was thinking particularly of the area of discrimination to which we addressed ourselves, which was that of certain kinds of public accommodations.

Attorney General KATZENBACH. Yes.

Mr. CORMAN. Now, we have had some 12 years of experience of attempting to desegregate some facilities which are publicly owned and publicly controlled. And many observers would be disheartened by the speed with which we have done that. And it has seemed to me that we have been able to move up much more rapidly and with less friction in tension in desegregating those things that were privately owned. There was apparently a more rapid compliance on the part of those businesses to which the act directed itself. Is that a reasonable observation?

Attorney General KATZENBACH. Yes.

Mr. CORMAN. Because it seems to me that we are going to discuss from this point on in title IV what our problems are when we are dealing with something that is privately owned as distinguished from something that is publicly owned. But our experience in this case is that there may be more willing and rapid compliance as to those who compete for commerce than those who compete for votes.

There have been some proposals before the Congress concerning removal statutes to remove certain kinds of cases from the State and Federal courts. I wonder if you would care to comment at this point as to what considerations were given, and whether or not you think it is necessary that we include any removal provisions in the 1966 act.

Attorney General KATZENBACH. I believe, Congressman, that many of the problems which were aimed at by various removal statute proposals are dealt with in section V simply by giving direct authority to the Federal Government to prosecute for a Federal crime, at least on the prosecution side, if you will, trying to deal with terrorist activity. I think with the enactment of title V here there would be no need for that.

Now, with respect to the possibilities of prosecution, of people who are being prosecuted for racial reasons, the possibility is there of removal of this trial to a Federal court.

There are provisions in existing law in that regard. Just how broad these provisions are, I am not prepared to say, because that is a matter which is presently in litigation in the Supreme Court in the *Peacock* case which will be decided, I assume, this term. The Government is in that case as an amicus. And our brief took a broad view of the removal—of the interpretation of the existing removal provisions. Indeed, in some respects—we argued, at least—I don't know what the court will decide, but we argued at least for rather broader removal provisions than I believe any of the statutes that have been proposed to this committee.

So it may be that the removal provisions here in that regard that have been put to this committee narrower—are narrower than and broader than what the existing law is, although I don't think that is the intent of the proponents.

Mr. CORMAN. There has been considerable discussion about the possibility of governments, both State and Federal, assuming some obligation to the victims of criminal conduct, and indemnification obligations generally that deal with criminal activity, and more specifically in civil rights. Would you care to comment on the Department's attitude as to this specific area of criminal activity?

Attorney General KATZENBACH. I am interested in the possibility of indemnification for victims of criminal activity. And I am sympathetic to proposals of that kind, although it is extremely difficult to get estimates as to what the cost of this would turn out to be. There are some problems with respect to the possibilities of fraudulent claims of one kind or another, and there has been some suggestion by some commentators that this would be an inducement to rather than a deterrent to crime. But after all those arguments have been made, I would be inclined to be sympathetic with them.

I would have some reluctance, in a period of considerable crime throughout the country, where people are innocent victims of a variety

of kinds of criminal assaults and criminal activities, to single out one particular group for indemnification. I would have no objections, where the municipality involved had failed to perform its duties, or where its people had participated in this, to making a municipality liable for that. If you try to make the State liable for that to a private party, you obviously run into the 11th amendment. And that creates difficulties.

I would not be sanguine in such community about the capacity to recover a verdict from a jury in that situation. I would be inclined to doubt that it might occur.

I guess that is a sort of a summary of my views on that. I know that there are proposals that have been made in that regard. I have some particular difficulties with some of them.

For example, I get a little bothered by saying that someone who is injured when arguing for various civil rights should be indemnified, but somebody who is arguing against civil rights also protected by the first amendment is not indemnified if he is injured. I think that raises some constitutional question.

There are difficulties with it, but I am not unsympathetic.

Mr. CORMAN. Thank you. I have no more questions. But I would just like to say in conclusion that I agree with your analysis of the constitutionality of this bill. And in consideration of you and the Senator from Illinois, I would hope the Illinois homebuilders could find something more edible than bricks with which to make chimneys.

The CHAIRMAN. Any further questions?

Mr. McCulloch?

Mr. MCCULLOCH. I notice in your statement of yesterday which was so ably presented, the statements that titles I and II seek to end discrimination in our jury system.

Does the Department of Justice have any substantial evidence of jury discrimination by reason of race, color, religion, sex, national origin, or economic status, for instance, in my home State of Ohio?

Attorney General KATZENBACH. No, sir; I don't believe that we do in Ohio. Within the Federal system I have no evidence anywhere of discrimination which is unconstitutional, and which has been engaged in by the Federal Jury Commission.

At the same time the systems which have been variously adopted of selecting juries do indicate, in the cases that we have, and on the basis of what I confess to be an inadequate survey, because we don't have all the records available, so that it is based largely on samples of juries in various districts—we have found that the proportion, for example, of Negroes—and this is primarily what we were looking at—is very substantially less than the proportion of Negroes within that district. I have assumed—and I believe that this is because of the method of selection not because of a desire to exclude Negroes from those juries within the Federal system—that it is not intended, and I think if it is not intended it would not in my judgment be in and of itself unconstitutional, it would in my judgment indicate some inadequate supervision of the jury system. And our problem in that respect is complicated by the fact that a number of Federal judges have taken the view that they do not have the power to supervise the jury commissioner. I disagree with that view. But there is no way

that I can persuade those Federal judges who disagree with me to undertake that responsibility.

Mr. McCULLOCH. I agree with the Attorney General's statement about that.

So generally, the proposed legislation would uniformly make over the selection of juries in the Federal system regardless of whether there was evidence of discrimination on account of race, color, religion, sex, national origin, or economic status in any district or court.

Attorney General KATZENBACH. Yes, it would, Congressman.

Mr. McCULLOCH. Let me ask you this question, Mr. Attorney General: In view of your statement—with which I said I am in agreement—that there has been authority in the Federal courts to enter orders and provide for the selection of jurors without discrimination, why hasn't that been done in many of the districts in the country where there is alleged to be discrimination for the reasons set forth in 9, 10, 11 and 12 of page 2 of the chairman's bill?

Attorney General KATZENBACH. You are referring to the Federal system?

Mr. McCULLOCH. I am referring now only to the Federal courts.

Attorney General KATZENBACH. Well, I think in the past when this problem has been considered as it was by the judicial conference in 1960, they faced this kind of a problem. While a number of places did use voter records, I think it was recognized at that time that to use voter records in part of the United States would have the effect of discriminating rather than the opposite. So for that reason they adopted a keyman system to avoid using something which was automatic, and which had a built-in discrimination within it.

Our thought here has been twofold. And I think it is important for this committee to realize that our theory on this involves the fact that we believe that jury service is a right and a privilege of citizens of the United States. Because of the system of testing juries today, what has to be shown is either that a jury itself was unconstitutional, which is a difficult burden, or that because of the method of selection it was somehow prejudiced to a particular defendant. That is a quite different point. A jury could be selected in the ways in which I indicate, and could have quite a disproportion, and still it would not be possible to show that that particular jury had not prejudice against this particular defendant. We have attempted to go beyond that and give a positive affirmation with respect to the jury service as a duty, as a right, as a privilege of citizens of the United States.

Mr. McCULLOCH. Again with that I agree substantially, if not wholly.

Now, in view of the known discrimination that has existed in some Federal district courts, has the Judicial Conference made any recommendations other than in 1960 and in one other instance, as I recall, which would seek in substantial part to end the discrimination of which we complain here?

Attorney General KATZENBACH. No, sir; the Judicial Conference has not. And as I say, I think until the Voting Rights Act and the successful implementation of the Voting Rights Act it would have been difficult for them to have done so. We have discussed our proposals here, and our bill with a great number of judges, including those that

sit on that committee. And while they have not spoken as a conference on it, I have not run into objections from judges to this sort of thing.

We have an interest in it, because we are the prosecuting arm. It is not always difficult to implement it. And sometimes you find a jury commissioner in a district where a judge believes he can't exercise supervision using lists that clearly—I think this one district, for example, that we discovered that they were using PTA lists, and thus discriminating against all bachelors and all people without children in school.

Mr. McCULLOCH. You have concluded that bachelors therefore are not eligible to be members of the Parent-Teachers' Association?

Attorney General KATZENBACH. I concluded that very few are.

Mr. McCULLOCH. I find that I can't quite agree with the Attorney General about the inability of the Judicial Conference or the Supreme Court to have sought to remedy the discrimination of which we complain by reason of the fact that there were so many people not on the voters list. As a matter of fact, as this legislation recognizes, Mr. Attorney General, there are many places in the United States in which there is no voting registration list, and in which there is no voter list a month or two after an election. I think it is worthwhile to say that at this time, because you know the voting procedures are not identical in all places in this country, that there are tens of thousands of precincts in this country where there is no voting registration of any kind. The potential voter comes in and establishes his identity. And after establishing that identity he votes. The record lasts only a few weeks or a few months thereafter, and is destroyed as a matter of necessity and economy of space.

So we have had this problem in various parts of the United States for a long time. That was one of the reasons why I asked this very first question, did the Department of Justice find discrimination in all Federal district courts in the United States?

It is my opinion—and I join with the answer, I don't even need to say that it is an opinion—that there has been no discrimination in some of those districts in the United States by reason of these facts set forth on the four or five lines of the chairman's bill that I have indicated. The keyman selection of jurors has been reasonably satisfactory to all segments of the population during that entire time.

I would like to say this. I am sure that statement is justified by the expected answer that I will get to this question. You notice I say the expected answer. Did the Department of Justice in the last 25 years recommend to the Judicial Conference or to any other body to which it could make recommendations that there be a uniform system of jury selection in the United States which was free from discrimination?

Attorney General KATZENBACH. No, sir; not to the best of my knowledge. But we did recommend, and this committee did in fact pass, a law which would have made it clear that the judges had the capacity to supervise the commissioners.

But I would take issue with you, Congressman, with respect to the keyman system. I think that the keyman system virtually as it operates anywhere has some built-in bias. It is extremely difficult to have a keyman system that does not tend to upgrade your juries over

what a cross section of the population would be. I think you tend to get almost inevitably more white-collar people than blue-collar people.

Mr. McCULLOCH. I agree with that statement, because the keyman enters into getting a jury in either a civil or criminal case. It is hard to discharge the technical duties that fall upon juries in these difficult times.

I may be belaboring this point a bit, but we have long had the keyman system in Ohio. I am jealous of the good work that we do in Ohio in this and other fields, and I am jealous of the excellent reputation that we have in both the State and Federal court by that type of selection. Until this time I am convinced—and able lawyers and laymen with whom I have conversed are convinced—that that was the best system there has been to date in the selection of jurors.

Attorney General KATZENBACH. Many people feel that the keyman system is a good system for the selection of jurors. I think it would be fair to say, Congressman, that many of the same people who feel that way feel that it is desirable to upgrade the jury from what a cross section of the population would be. I think the two tend to go hand in hand. And of course, as you are aware, this legislation would not affect the use of the keyman system by the State judicial system within Ohio.

Mr. ROGERS. Will the gentleman yield?

Mr. McCULLOCH. Yes.

Mr. ROGERS. There is a practice in many States that when the jury panel is exhausted—and even in the Federal court in my State—you send the sheriff out to get somebody off the street, or you send the deputy U.S. marshal out to get somebody off the street to come in and serve as a juror. Would this legislation prohibit that practice?

Attorney General KATZENBACH. Yes, sir. In the event—in the Federal system it would.

Mr. ROGERS. It would?

Attorney General KATZENBACH. Yes, sir.

Mr. ROGERS. Then if they run out of the panel in trying a case, you would have to wait until the jury commission gets together to put another group in there and draw them before you finish the case?

Attorney General KATZENBACH. I don't think it is quite that difficult, Congressman, because of the two-wheel system that we use there, you already have the master grand jury wheel. And you ought to be able to keep enough names in the other wheel of qualified people so as to avoid that contingency. This happens very rarely in the Federal system. It has happened from time to time in an extremely populous district like the southern district of New York. But it would be our view that——

Mr. ROGERS. What about the State system?

Attorney General KATZENBACH. States could do that, yes, sir, it would not interfere with their doing that.

Mr. McCULLOCH. I might say, Mr. Rogers, within our experience it has worked very well.

I wonder if at all times we are keeping in mind that in the selection of the jury the paramount interest is to the litigants and not to the people who are selected as jurors? Are we keeping that in mind here?

Attorney General KATZENBACH. I would hope that we were keeping both in mind, and I think it is possible to keep both in mind. I see no reason——

Mr. MCCULLOCH. Isn't the paramount interest the persons in the trial of the case, the litigants?

Attorney General KATZENBACH. The paramount interest in the trial of the case is clearly the litigants. And if there is anything—what I cannot see is how you can conceivably get in a conflict on that situation. I don't see how the litigants can find the conflict in having a fair cross section of the population decide that case. After all, in a civil case they can waive it and let the judge decide if they want it.

Mr. MCCULLOCH. I am afraid we are in disagreement in that field, Mr. Attorney General. There are some cases that are so difficult and so complicated that to call it, if you wish, a blue ribbon jury, that they are probably about the only kind of a jury that can weigh the evidence, even look at the evidence, and read it intelligently, so that the final verdict will be in accordance with law and fact. It is not a cross section of the people of this Nation that necessarily make the most competent jury, in my opinion.

Attorney General KATZENBACH. I guess we are slightly in disagreement on that, Congressman. I dont know whether you are talking of a criminal or a civil case. But I think in a criminal case you are entitled to be tried by a fair cross section of the population. And the Federal decisions don't permit the selection in any kind of a case of the sort of jury you describe, they simply don't permit it.

The CHAIRMAN. Would the gentleman yield?

We have a great many patent cases in New York State, which are very difficult cases to try. Much depends upon the knowledge and the patience and the wisdom of the judge in explaining to the jury what it all means. Even then in very complicated technical patent cases juries seem to be able to comprehend the difficulties in matters which do not enter into their daily experience whatsoever.

Attorney General KATZENBACH. I think, Mr. Chairman, that we always have to ask the question, which litigants, plaintiff or defendant. I think that a fair cross section comes closer to satisfying all litigants in all cases than any other device that you could come up with.

Mr. MCCULLOCH. Well, of course, I have indicated that there is a difference of opinion in that matter. And I trust that as long as the Attorney General remains the Attorney General, that in the trial of all antitrust cases that the essence of capability will not be too important in the selection of the jury, provided I am not a litigant, and that the cases——

Attorney General KATZENBACH. Congressman, I said yesterday that I thought most prosecutors would prefer to have a blue ribbon jury, I acknowledge that. I am trying to think of the defendant, I don't think they would agree with that.

The CHAIRMAN. We have abolished blue ribbon juries in New York. We used to have them. In other words, most of the blue ribbon panel was taken from the suburbs, Westchester County, and those primarily from the urban areas, in and around the borough of Manhattan and the Bronx, it was thought that they were not intelligent up there. But after the abolition of the blue ribbon jury system, justice was just meted out as well as it was before.

Mr. McCULLOCH. In any event, you know, there is the built-in provision for the selection of at least a part of the jury as a blue ribbon jury with peremptory challenges, isn't that correct?

Sure, it is limited, but suppose you get one or two or three people who thoroughly understand the case. In my opinion you are apt to have a better result in the overall litigation.

Attorney General KATZENBACH. I think, Mr. McCulloch, that is the merit. I think you have made the argument there for the merits of a cross section as well as it can be stated.

Mr. CRAMER. Would the gentleman yield for one brief question?

Mr. McCULLOCH. Yes.

Mr. CRAMER. Then, as I understand it, if the economic status remains in the bill as proposed, cases such as antitrust and cases that require considerable ability and knowledge, there would be no possibility of a challenge for cause based upon economic status?

Attorney General KATZENBACH. I don't think that you could challenge for cause on economic status today, Congressman. I do not think you could say—I think you could make a peremptory challenge, and a peremptory challenge is a peremptory challenge, you do not have to give——

Mr. CRAMER. You can challenge them on education, can you not?

Attorney General KATZENBACH. No.

Mr. CRAMER. A lack of information or knowledge relating to the business or what have you?

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. On the difficult cases?

Attorney General KATZENBACH. No, sir.

Mr. RODINO. Do you not have to show prejudice and bias?

Mr. CRAMER. By using economic status in an attempt to show prejudice and bias.

Attorney General KATZENBACH. If you can show that a person is going to be able to render impartial service you can do it. But I don't think you are going to show that by asking how much his income was last year, in fact I do not think the judge would permit the question.

Mr. CRAMER. It is a composite of factors. They could be challenged on the basis of whether they could render impartial judgment?

Attorney General KATZENBACH. Yes sir; and we do not touch that. You do not want a juror that cannot be impartial. So that is not at issue.

Mr. McCULLOCH. Did I understand you, Mr. Attorney General, to say that this legislation would not nullify the selection of juries in State courts, for instance, by a system such as Ohio now has?

Attorney General KATZENBACH. Yes; you could use the keyman system such as I believe Ohio uses, and it would not nullify that, it would only go to the key—the keyman would have to be told that they could not discriminate on the grounds expressed in this legislation.

Mr. McCULLOCH. Of course, I believe that the Ohio jury commissioners have not discriminated in Ohio.

But on the other hand, your legislation would bind the Federal courts in Ohio or in Oklahoma or in every State in the Union to proceed strictly in accordance with this legislation?

Attorney General KATZENBACH. Yes, it would be a uniform system for all Federal courts, unless the chief judge were to find that the use of the voter list was impossible.

Mr. MCCULLOCH. Could you give us an example, Mr. Attorney General, of other sources for jurors' names, if you had no voter registration list, as we could not have in some parts of Ohio? Would you have the Rotary Club membership, and the XYZ Club membership, and the church membership, and the telephone directory, or what would you suggest?

Attorney General KATZENBACH. Well, of course, there are other ways of doing this. As far as this operation would be concerned, we require that the books be refilled every 2 years in the even years between—what is it, December, November or something—November and December. So that date was picked, because you always have a list of voters from the years of Federal elections, so at least you have a list of the people who actually voted. And I think you have that at these times in every State and in every county. So that I do not see any difficulty in filling the master jury wheel freshly with that device.

Now, there are, of course, other things that could be used. We in the process of drafting this went over this at great length with the Census Bureau as to what other lists were available to see whether there was any other list that would give a cross section of this kind. In many jurisdictions they supplement the keyman by a phone directory, by a city directory. As I said, they even use PTA lists, and church membership lists, and all kinds of things. But I don't know of any list other than voting which does not have some built-in biases. Only some people can afford to have telephones. And it does rather hurt the rural juror, and so forth.

We just simply were not able to find another large list or combinations of lists that would be as good as the voter list if you adopt the proposition that you are looking for a fair cross section.

Mr. MCCULLOCH. As I recall, the bill provides for the selection of a given number of names for the master jury wheel; is that right?

Attorney General KATZENBACH. Minimum, yes.

Mr. MCCULLOCH. A minimum of 2,000?

Attorney General KATZENBACH. A minimum of 1 percent of the population of the district or division, as the case may be, and a minimum of 2,000 names if 1 percent is not 2,000. Now, that would be very gravely in excess of 2,000 names in the chairman's district, for example. I have forgotten what the high on this ranges up to, about 200,000—about 60,000 in the southern district of New York would go into the master wheel. And, of course, we use a lot more juries in that area. So I think it is fairly in proportion to the litigation that we use a jury.

Mr. MCCULLOCH. Do I properly conclude, Mr. Attorney General, that if I were a new jury commissioner confronted with this legislation, and asked you as the Attorney General of the United States, or the U.S. district attorney, for your instructions as to just what lists I should use, that there will be in due course a uniform set of lists which will meet the approval of the Justice Department and which would in their opinion be the lists that are contemplated by this legislation?

Attorney General KATZENBACH. The chief judge, sir, not the Justice Department. But the lists exist, provisions are contained in the legislation to obtain the list from the requisite voting authorities. And it is up to the chief judge to prescribe a random selection from that list, taking into account all the counties which are within the district. And if there were additional lists needed in our exception here, if that list was not enough, that would be done by the circuit court, by the judicial council for that district.

Mr. MCCULLOCH. And can the same general practice be followed after this legislation is enacted as is followed now if the wheels become exhausted of competent persons?

Attorney General KATZENBACH. No, sir. If the master list becomes exhausted it is to be refilled in the same way. And there is a compulsory refilling of 2 years, which I think is a very desirable feature. We found in some instances the same jury wheel and list had been used for 8, 9, or 10 years, not taking into account that other people were becoming eligible for jury service, and so forth.

Mr. MCCULLOCH. That is a partial answer to the question, but it is only a partial answer, because you again get back to your districts or your political subdivisions where there is no registration, and there is no mandatory reason for keeping the names of the voters who voted in the last presidential or congressional election for more than a minimum number of days. Thus, there is no source from the voters' list, or there would be no source from the voters' list.

Attorney General KATZENBACH. But Congressman, that is only true if, having gotten the list to fill the jury wheel, the court goes ahead and destroys the list it just has.

Mr. MCCULLOCH. I tried to say that if the list were exhausted in the basic jury wheel, and then there were cases undisposed of, where do you get your prospective jurors? Or can you go out, as our colleague Mr. Rogers mentioned, and find a jury from the street? Because I repeat, where there has been no corruption in the voting process—and Ohio is one of those States that meets that definition—and there is no registration, there is no obligation to hold the names of those who voted either at the congressional or the presidential election for a period of 2 years, or any substantial part thereof.

Attorney General KATZENBACH. I will try to see if I can answer your question, Congressman.

I assume that you would initially fill the books with a list of all the people who are either registered to vote, or in those counties which don't keep that, a list that all of the people who actually vote would be available so I think the likelihood of such list being available is very great, since they are required to keep those lists by the 1960 Civil Rights Act in any event for 22 months, that you would have such a list.

Mr. MCCULLOCH. They are required to keep those voting lists in every precinct in the United States pursuant to the voting rights legislation of 1960, I believe?

Attorney General KATZENBACH. Yes, 22 months after a Federal election—that is my recollection—they are required to keep those lists.

But in any event—what I was trying to say before is that if the court gets a list of all the people, if we can assume an initial list, the

first time you fill the box, you have got a list of all the registered voters or all the people who are actually voters, and the court has that list, has physical possession of that list. Now, it fills the master jury box wheel from a random selection from that list. If the master jury wheel is then exhausted, the master jury wheel would be filled by another random selection from that list. If it was exhausted again, this process would continue to be done.

Now, to run out of jurors off that list would, I think, require that every person eligible to serve as a juror who was a registered voter or who had in fact voted had in fact served on a jury.

I would think that the statistical odds against the occurrence of that would be very, very great that every registered voter or every person that voted within any district was in fact ineligible for service or had served.

Mr. McCULLOCH. Then it is contemplated that the jury commissioner will have access to the names of every person registered to vote in a presidential election, or who voted in one, in order to select the voter list?

Attorney General KATZENBACH. Yes.

Mr. McCULLOCH. All right. In the northern district of Ohio I suppose there are somewhere from 3 to 4 million people eligible to vote. And the district court will have to assemble that number of names in one form or another in order that they be accessible to the jury commissioners.

Attorney General KATZENBACH. That is correct; yes, sir.

Mr. McCULLOCH. And that will be necessary in every judicial district in the United States?

Attorney General KATZENBACH. Yes, sir.

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. Mr. Attorney General, I have a few questions relating to some aspects of the proposed legislation. I am seeking information and also trying to determine what effect some of these proposals will have on existing law and how it modifies existing law. And, as I am sure you know, although I didn't feel it was as good a job of draftmanship as we could have made it, I supported the Voting Rights Act last year.

I would like to ask a couple of questions relating to title III, "nondiscrimination in public education and other public facilities", which I assume we have to consider somewhat in conjunction with the 1964 Civil Rights Act.

In that connection I note that there is a change in the 1964 act relating to the Attorney General bringing the suit. Present law provides—and I am referring to page 23, lines 7 through 11, of the proposed bill:

"The Attorney General may institute, in the name of the United States, civil action." The present law under section 301(a) of the 1964 act provides that he can do so when he receives a complaint in writing So the complaint will no longer be necessary; is that correct?

Attorney General KATZENBACH. That is correct.

Mr. CRAMER. How do you expect to exercise your discretion in determining whether to and when not to bring a suit under this proposed bill?

Attorney General KATZENBACH. I would believe here that if we found people who had attempted to apply, or there had been intimidation against people who had attempted to apply to transfer their children to school, that that would be appropriate for the exercise of this discretion. I think perhaps the shorter way of saying it, Congressman, is that unless I believe or unless the Attorney General believes that he can establish the fact that this school district has preserved an unconstitutional discrimination, unless he feels he can prove that, there is not much point in bringing suit. And we have yet, I might say, to lose a case to speak of.

Mr. CRAMER. I understand. This gives you complete discretion, does it not, to select the cases and the places where suit shall be brought; whereas under the present law a complaining party has something to say about it through filing a complaint?

Attorney General KATZEKBACH. That is correct.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes.

The CHAIRMAN. I am reading from Survey of School Desegregation in the Southern and Border States ordered by the U.S. Commission of Civil Rights, February 1966. Mr. Attorney General, in connection with the questions asked by the gentleman from Florida, we have this significant situation. And I am reading from page 34:

> Negro school administrators and teachers frequently have an interest in maintaining the dual school system.

In other words, in a number of instances they do not want desegregation. One of the reasons given is that the Negro teachers would lose their jobs.

Now, in a case of that sort, where there is no disposition on the part of the Negro population to desegregate, what would be your suggestions as to whether you should or should not bring an action?

Attorney General KATZENBACH. My judgment would be that if there is—if you have a free choice system, which has presently been held to be a constitutional system, and they are exercising a free choice fairly, squarely, and in the exercise of that free choice there are no Negro children who want to go to a white school, and no white children who want to go to a Negro school, then I think I would have a heck of a time proving that there was any unconstitutional segregation within that school district. And I would not——

The CHAIRMAN. Would you go beyond that and find out why there is a disposition on the part of the Negro parents not to send their children to white schools? Would you try to find out by questioning whether there is any threat of intimidation or reprisal of one sort or another if desegregation occurs.

Attorney General KATZENBACH. If there was any reason to believe that this was such, yes, sir, of course we would. And my guess would be that such a completely segregated free-choice system would be improbable without at least some discouragement of applications.

Of course, you have also got your initial assignment to schools. And that has been our experience; we have had complaints within this area, and then people have withdrawn complaints within this area, and as a result of investigation we found out that they were at least discouraged from filing those complaints. And, of course, the very filing of a complaint to some extent exposes the complainant, and

even if we keep that, as we can, until trial or until the proof of our case, keep that information confidential. But the exercise of this discretion here we are proposing is merely to give the Attorney General really the same discretion that he has in other aspects of the Civil Rights Act. We do not have to be dependent on these complaints in other regards. And so we simply in that sense are making it uniform here.

Here it is a limitation upon the Attorney General's authority.

The CHAIRMAN. But would the fact that Negro teachers would lose their jobs, would that be sufficient reason to you not to proceed?

Attorney General KATZENBACH. No, sir. There might be reasons why in your decree you would prevent the firing of Negro teachers, if that in itself was racially motivated.

Mr. CRAMER. But the point is, you in your discretion make that determination under this new language?

Attorney General KATZENBACH. Yes, Congressman. And you know, I cannot think of a suit brought by the United States which does not involve the discretion of the Attorney General in bringing it.

Mr. CRAMER. Yes, but the discretion is in carrying out the specific proscribed and described prohibitions as proposed in enacting the law by Congress?

Attorney General KATZENBACH. That is right.

Mr. CRAMER. That in effect gives us the authority to determine when, in relation to schools, "desegregation" exists, and in relation to public facilities, when "equal protection" is involved. That is a very broad discretionary authority, is it not?

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. Let me ask you this: I would like to bring out the specifics as to how you intend to exercise your discretion. Of course, this is a very difficult approach that we are forced into on this legislation, because there may be another Attorney General, and there probably will be some time in the future. So, without describing specifically what you have power to do, if it is not tied into complaints file, it appears to me that you have extremely broad discretion.

Attorney General KATZENBACH. The desegregation is defined in the act which this amends.

Mr. CRAMER. Yes. Your proposal is to strike a portion of the language relating to suits brought by the Attorney General. Now I want to read that language you propose striking from the present law, section 407, on suits by the Attorney General relating to desegregation in public education, title V. The language you propose striking is section 407(a) and all the way—well, the entire section 407?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. What does that section say in 407(a)(2)? It says in the first place, after getting a complaint. You want to strike that.

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. It says:

"Secondly, after giving notice of such complaint to the appropriate school board or college authorities, and after certifying he is satisfied such board or authority has a reasonable time to adjust the conditions alleged in such complaint, to institute for this in the name of the United States a civil action.

So the thrust of the 1964 act was that the local college authorities or school authorities should be notified of a complaint, and given the

opportunity to correct the situation. That is being stricken, is that not correct?

Attorney General KATZENBACH. That is correct.

Mr. CRAMER. Why don't you think that that should continue to prevail?

Attorney General KATZENBACH. I will give you one example, Congressman, of why I do not.

We went down to a school district in one State where we had 21 complaints to give them an opportunity to adjust those complaints. They did adjust those complaints. They adjusted those complaints by going around to each one of the parents and telling each one of the parents that they were the only one that was complaining and would they withdraw their complaint. So this adjustment was to have on misrepresentation some 21 or 22 complaints withdrawn.

Mr. CRAMER. I understand that. But under your proposal now, even if that were to occur, you could still bring a suit because you do not have to have a complaint?

Attorney General KATZENBACH. That is right, and the suit should be brought.

Mr. CRAMER. I am not saying it should or should not; that is not the point. The point I am making is that not requiring a complaint, and not requiring that the party not be able financially to bring the suit, that too is being stricken.

Attorney General KATZENBACH. Yes; it is.

Mr. CRAMER. You are also striking—and the bill would give you complete authority to bring a suit, even in the case you mentioned—you are striking any necessity of advising the school board or the college of the fact that you believe that there is discrimination in existence. Now, how do you justify that? We are talking about Federal-State relationships. I am sure that you want, do you not, to get voluntary compliance wherever possible?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. So why do you not think it would be wise to maintain that language? We are talking about public official to public official, are we not, the school board to Attorney General?

Attorney General KATZENBACH. That is right.

I think there is one additional ingredient in this which is perhaps important to call to your attention, Congressman.

This is the fact that HEW has forms which go out to all school districts which do not certify that they are already completely desegregated and completely in compliance. Where there is a free choice system, and where they have maintained in the past a segregated system, they seek to come into compliance with the requirements under the HEW formula if they are to be entitled to Federal moneys under titles 1 and 3 of the Federal Education Act.

Now, insofar as the school district is willing to sign such a form, and is in fact complying with such a form, I would suppose that the Attorney General could not have, could not possibly have reasonable ground to believe, which is what this law requires.

So let's remove all those school districts that have already in public official-to-public official discussions agreed to do their utmost to comply with this, filed a plan acceptable to HEW, or in compliance with that

plan, and if they are not, then there are steps that can be taken there administratively to deal with it.

So now we are dealing with what? We are dealing with districts who are unwilling to either say they are in compliance with the Constitution, or unwilling to file an acceptable plan with HEW. So those are the only districts we are talking about. Within those districts I have to have further evidence which would allow me to have reasonable grounds to believe that they were in violation for the reasons expressly stated in this provision.

Mr. CRAMER. So that, in effect, although there is nothing in this proposed bill that would require you to, or suggest that you do so, you expect to consult with and follow the regulations put out by HEW, is that correct, relating to school desegregation? That is what I understand your answer to be.

Attorney General KATZENBACH. Let me try again, Congressman. My point was that if they are in complete compliance with HEW regulations, I would not believe I would have reasonable grounds.

Now, I do not say you can turn that over to say that if they are not in compliance with HEW regulations I automatically do have reasonable grounds. I don't think one statement follows as a matter of logic from the other.

Mr. CRAMER. You do have authority to disagree if you see fit with HEW's application of its standards?

Attorney General KATZENBACH. I have authority to disagree with that. And if I can persuade a court in this regard, then it would be a part of the decree. What we have actually urged, as I am sure you are familiar with, is that the courts adopt in their decrees the same standards as HEW has adopted.

Mr. CRAMER. Then it would follow, would it not, that you would not necessarily be bound if HEW does accept a plan?

Attorney General KATZENBACH. It would follow as a matter of law that I would not be bound by HEW accepting a plan; that is correct.

Mr. CRAMER. Now, HEW has——

Attorney General KATZENBACH. Nor am I today if I receive complaints, Congresman.

Mr. CRAMER. Yes; I understand that. I am not trying to be argumentative, I just want to find out what the thrust of this proposal is and how it affects existing law. We just passed this law on July 2, 1964. The section stricken has this language—and I am very familiar with this, as I offered it on the floor of the House as an amendment, it was adopted and accepted unanimously, even with approval of the chairman—

***Provided*, That nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another, or one school district to another, in order to achieve such racial balance, or otherwise enlarge the existing power of the court to insure the compliance with the constitutional standards.**

Your proposed draft would strike that language, would it not?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Do you believe that statement of policy on the part of the Congress should be reversed?

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. Do you believe that you should have authority to get into that question of racial balance?

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. Then why do you strike the language?

Attorney General KATZENBACH. Because I cannot read that language to have any meaning whatsoever, Congressman.

As I read that language in there, there being nothing in the bill which does authorize what is forbidden there, if the court were to decide that this were required—and I do not predict that this will occur, but if the court were to decide that the Consitution required this, then that provision would in and of itself be unconstitutional, and I fail to see exactly what its operative control is.

Mr. CRAMER. It is your opinion, is it not, that racial imbalance or the bussing of students, de facto segregation, has not been outlawed by the court?

Attorney General KATZENBACH. That is correct.

Mr. CRAMER. Then why would you object to the Congress saying, to make certain that HEW and your office understands that is the thrust and intention, why would you object to including the language, restating it in existing law?

Attorney General KATZENBACH. Well, just simply as a matter, I suppose, of esthetics, if nothing more, I would object to the inclusion of language in a law passed by the Congress of the United States which can have no conceivable operative effect. I say that on esthetic grounds rather than on substantive grounds.

Mr. CRAMER. You have suggested that you would be influenced, at least—and I do not think that is a misinterpretation of your testimony—by the regulations proposed by HEW, and their acceptance or rejection of a school district's activities as complying with "desegregation," is that correct?

Attorney General KATZENBACH. Yes, I think that is a fair statement.

Mr. CRAMER. I think it has been fairly widely interpreted, the latest regulations of HEW, that with the percentages required in HEW's regulations, that it, in effect, does require the bussing of students. Then what would you do in that instance?

Attorney General KATZENBACH. Well, Congressman, it has been already interpreted in some areas by some people in that regard. That is not an accurate, or correct, or fair reading of HEW's regulations, and it does not require percentages. There is no way in which those guidelines can be read to state that they require percentages if they are read in that way. But the guidelines say—and it is quite clear from the guidelines what they say, and even clearer as explained at the time by the Commissioner of Education, and as explained subsequently by the Secretary—that although guidelines say in that regard is that we would expect these results to be achieved. If they are not achieved we are going to relook at this school district to see if, in fact, the free choice system is operating fairly. That is all they say.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. I know what the Chairman is going to point out, because I just pointed it out myself. There is a definition of desegregation.

The CHAIRMAN. I want to get the legislative history clear. I think it would be well to get the legislative history.

Mr. CRAMER. That was my next question. So I yield to the Chairman.

The CHAIRMAN. The Attorney General states that the definition contained in that section 401(b) of the act of 1964, namely, "desegregation means the assigning of students in the public schools, and within such schools without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance," is unaffected by the legislation we are now considering, am I correct in that?

Attorney General KATZENBACH. Yes, that provision remains in.

The CHAIRMAN. It remains as is?

Attorney General KATZENBACH. It remains in the law, yes, sir.

Mr. CRAMER. I was going to point that out myself, that that also is my amendment on the floor of the House.

And my next question is, then, why do you agree to leave that definition in under desegregation being defined, but want to take it out under section 407(a), which specifically spells out the question of the power of the court to issue an order relating to racial imbalance? Why not agree to keep both in?

Attorney General KATZENBACH. If you want the definition in two places, I have no objection to the definition being in two places.

Mr. CRAMER. That is the answer I was hoping I would get, mainly because this is a subject that I think has been substantially misunderstood. If HEW does not intend to cover bussing, or to cover de facto segregation, it appears to me that that is one of the most misunderstood drafts of proposed regulations ever put out, because it is being interpreted in many places, as I am sure you know, to mean that. I hope that perhaps this colloquy, including your answer to my last question, will help clarify this question for the future.

Attorney General KATZENBACH. They were only intended to insure that the free choice system were operating freely.

Of course, Congressman, if we should have other decisions, if you had a court decision which said that a free choice system was not good and could not be used, then I suppose HEW would have to amend its regulations in accordance with that.

Mr. CRAMER. I understand that. And then they would have to pass on this legislation, probably, to do so.

In title 3, the new draftsmanship relates on lines 14 and 15:

"On account of his race or color the equal protection of the law." The present law reads, section 407(a)(2), "relating to colleges and schools by reason of race, color, religion, or national origin." Why do you believe religion and national origin should no longer be protected on a constitutional basis relating to desegregation of schools and public facilities? That is the fact, is it not, of the new language in your bill?

The CHAIRMAN. Why can't we put it in?

Mr. CRAMER. That is why I am asking, I want to find out why they left it out. I can only read what he submitted, which differs from what is now in the law. So I am asking, why did you leave it out?

Attorney General KATZENBACH. I cannot answer the question. It was not left out with any intention of changing the law in this respect.

I think our problems have been so concentrated in that area that in terms of redrafting this we simply——

The CHAIRMAN. There is no reason why you could not put it in there, is there?

Attorney General KATZENBACH. No, there is no reason why.

Mr. CRAMER. Likewise, relating to public facilities the present law reads under title 3, section 301(a), "On account of race, color, religion or national origin."

This new title 3 includes both education and public facilities. So again you are eliminating it. And you have no objection to it being reinstituted?

Attorney General KATZENBACH. That is right.

Mr. ROGERS. Will the gentleman yield?

Mr. CRAMER. I also note that sex is out of this, it is in the jury section, and it is in FPC, but it is out of this.

Attorney General KATZENBACH. It has never been in this section.

Mr. CRAMER. There is no sex appeal to that aspect relating to public facilities and housing?

Attorney General KATZENBACH. Congressman Corman, I think, pointed out on floor debates that occasional segregation by sexes is customary in his State.

Mr. CRAMER. You are not trying to do away with the YMCA and the YWCA, and that sort of thing, I take it?

One other question relating to this title. In section 303, page 24, you say:

As used in this title, a public school and public college shall have the same meaning as 401(c) of title IV.

Meaning the present law; is that correct?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. And the present law reads, section 401(c):

"Public school" means elementary, secondary institution, and public college means any institution of higher education or any technical or vocational school above the secondary school level, provided that such public school or public college is operated by a State, subdivision of a State, or governmental agency within the State, or—

And this is what I am principally interested in—

or operated wholly or predominantly from or through the use of governmental funds, or property derived from a governmental source.

As revised, if that private college is operated wholly or predominantly through the use of Government funds or property or funds or property derived from a governmental source, it too would be covered, would it not?

Attorney General KATZENBACH. Yes, it would, Congressman.

Mr. CRAMER. I would like to turn now briefly to title IV relating to housing. Again we don't have sex in that section, race, color, religion, or national origin, page 25, lines 5 and 6.

Now, as I understand it, the definitions used relating to dwellings, for instance, includes—

Any building or structure or portion thereof, whether in existence or under construction, which is in or designed or intended or arranged for introduction or use by one or more individuals.

And then also this entire title, is it not, is subject not only to th $500 civil punitive damages plus such other such damages relating t "humiliation and mental pain and suffering," but it is also subject t the criminal penalties of title V on page 31, is it not? You have bot civil and criminal penalties?

Attorney General KATZENBACH. Title V only applies if it is some body who is using force.

Mr. CRAMER. "Injure, intimidate or interfere with"; is that correct the top of page 32?

Attorney General KATZENBACH. Yes, sir, by force.

Mr. CRAMER. "By force or threat of force."

Attorney General KATZENBACH. Yes.

Mr. CRAMER. So the criminal section does apply as it relates to force or threat of force and interfering with?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Now, in the present law relating to public accommodations—and again I want to try to discuss what effect it has on present law—for instance, the present law says, section 201(e):

> The provisions 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 customers on person of the establishment within subsection (b).

Which has nothing to do with this question. So that in effect under the language of this proposed title IV clubs would be included, would they not? We are not talking about housing as compared to public accommodations.

Attorney General KATZENBACH. Yes, I think in at least one instance, that is, if the club discriminated with respect to the use of those facilities by nonmembers of the club, then I think it would be covered.

Mr. CRAMER. Your definition of dwelling would clearly cover a club, would it not, on page 25?

Attorney General KATZENBACH. "Intended for residential use."

Mr. CRAMER. "Any building or structure, or portion thereof, intended or intended, or arranged for, residence or use by one or more individuals or families." Certainly a building for rental purposes is for more than one family.

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. And therefore, if there were discrimination under section 401, a club would be covered. In other words, if he was denied, if a person were denied, "the right to use, purchase"—I am reading on line 6—"purchase, rental, lease, finance or use, and occupancy"—I am referring now to use and occupancy. It clearly covers it, does it not, and prevents discrimination in use and occupancy relating to race, color, religion, or national origin?

Attorney General KATZENBACH. Yes. I think the club that opens up its facilities to nonmembers could not discriminate on these grounds. That would be my view of what the language says and what was intended.

Mr. CRAMER. Then a club could be considered by the language even though it were specifically excluded in the public accommodations act presently in existence?

Attorney General KATZENBACH. I think if there is——

Mr. CRAMER. What happened to Mrs. Murphy's Boarding House?

Attorney General KATZENBACH. They are still operating.

Mr. CRAMER. On title II——

Attorney General KATZENBACH. She is still in business, Congressman.

Mr. CRAMER. I do not know, you have put clubs here, and I am afraid you have put Mrs. Murphy's Boarding House in.

Attorney General KATZENBACH. I do not think clubs are in it, but I would be happy to clarify that point.

Mr. CRAMER. You would not object to the same language or similar language being put in this as it is in the present law relating to clubs?

Attorney General KATZENBACH. No.

Mr. CRAMER. But as to Mrs. Murphy, section 201(b)(1), title II, "public accommodations:"

> Any inn, hotel, motel or other establishment which provides lodging to transient guests, other than establishments located within a building which contains not more than five rooms for rent or hire, and which is actually occupied by the proprietor—

Is excluded; correct? There is no such exclusion in a definition of dwelling in section 402(b) of your proposed housing title IV; is that correct?

Attorney General KATZENBACH. That is right, Congressman; yes.

Mr. CRAMER. The reason I ask the question is that it seems pretty clear that that subject was well exhausted, was it not, in a discussion of this matter in 1964? The Congress clearly determined that it did not intend to have Mrs. Murphy affected? But under the definition in title IV, and the definition of dwelling, she would be a building designed, intended, and arranged for residential use by one or more individual families, would she not?

Attorney General KATZENBACH. Yes, I think so, Congressman.

Mr. CRAMER. And what bothers me, I happen to represent a district where there are a lot of senior citizens, and many of them buy homes—or there are perhaps widows, with a few extra rooms for rental purposes to make a little income. And this is the important social security bill. And she wants not only to rent a couple of rooms for an additional income, but she also wants some companionship. And she might want to be a little bit selective as to who her companions are going to be. Now, as this is drafted, she has no choice, isn't that correct?

Attorney General KATZENBACH. She has a choice as long as she does not discriminate on these particular grounds.

Mr. CRAMER. But not as it related to race, color, religion or national origin, if she wants a Methodist with her, or a Christian Scientist with her, or someone of her own nationality, this would exclude her discriminating in that respect, would it not?

Attorney General KATZENBACH. She could make the choices if she didn't make them on this particular basis, she could make choices on the basis——

Mr. CRAMER. Exactly. But you are looking into her mind. Let's look into the mind of the person she turns down. He is the fellow who under this title, he or she, has an absolute right to bring a suit, and with the Federal Government providing the attorney and cost.

Attorney General KATZENBACH. With the Federal Government providing the attorneys——

Mr. CRAMER. She has a right to bring the suit absolutely, as the party aggrieved, with an appointed lawyer, is that correct?

Attorney General KATZENBACH. The court appoints the lawyer.

Mr. CRAMER. The principal question I am asking is, the party who believes he or she is aggrieved—I am not looking in the mind of the party that did it—the widow, the social security widow in the home that wants to have companionship, I am looking at the person she turns down, that person, as this bill is drafted, has a right to bring suit, a civil action, and claim the damages of $500 plus other damages, and the court has power to appoint an attorney in order to provide reasonable attorneys fees, is that not correct?

Attorney General KATZENBACH. That is correct.

Mr. CRAMER. Do you think that is right?

Attorney General KATZENBACH. Do I think it is right? Yes.

Mr. CRAMER. Do you not think there should be some property rights and some individual discretion somewhere?

Attorney General KATZENBACH. Let me make two points on that if I may, Congressman. The issue here is somewhat different, even if you arrive at the same conclusion, it is somewhat different than the issue which was raised under public accommodations. The issue is somewhat different because there you are talking about transients, people whom you did not know, who came and knocked on your door, as to whose background, as to what kind of people they were, and so forth, you would have no opportunity to make an investigation of. So there is that factual difference between the two situations. So they are not totally comparable. And the effort here was not to abandon what I think is sound in that regard.

I think in addition to that there was a feeling by many Members of Congress that with respect to rooming houses dealing with transients for a short period of time, that this typically put people in a sometimes closer social relationship than exists in many other aspects. Some of that argumentation is valid here.

I do not think it would greatly affect or impede what is attempted to be accomplished in this act if Mrs. Murphy's type exemption were inserted into this act. And since I think that the basic problem that we are trying to strike out here could be accomplished with or without that kind of exemption, I would have no problems with exemptions of that kind as the committee and this Congress might wish to direct.

Mr. CRAMER. All right. I appreciate that very candid answer, because I think it is a very real problem. And certainly some property rights should be weighed in considering how race, color, religion, or national origin would be protected at the same time, would it not?

Attorney General KATZENBACH. Yes, sir. I would not think of it in terms of property rights myself, I would think of it in really how close the relationships in this sort of situations are.

Mr. CRAMER. Do you think there should be any type of exemption relating to the sale of vacant land under your definition of dwelling, subclause 2, vacant land which is offered for sale?

Attorney General KATZENBACH. No, I have difficulty in distinguishing between vacant land and home, because I think the purchase of the

vacant land is normally to construct a home in this situation. So I would think it ought to be handled in the same way.

Mr. CRAMER. If Mrs. Murphy only had a vacant lot next door she would be under it in relation to the vacant lot?

Attorney General KATZENBACH. Yes, I believe so.

Mr. CRAMER. Do you really believe that the Congress should go so far?

Attorney General KATZENBACH. Yes, I do.

Mr. CRAMER. As in the commerce clause application. And let's assume that you are correct in saying that it would be a constitutional question. I am not necessarily satisfied myself, but let's assume that that is a correct statement, do you think as a matter of policy that the Congress should go so far as to include vacant land on which nothing is grown, there is no house, in this proscription?

Attorney General KATZENBACH. Yes, I do, Congressman. It is intended to be vacant land, to be secured for residential purposes. I do not know that it says that in the definition. But—yes, it does say that in the definition. And I would say so. And I would think this is of major importance as a matter of policy. Because after all, the developers have to purchase land to build developments, and very often these are composed of vacant land. I think that is an important inclusion within this. And I think—to repeat, I think it is based as much on the 14th amendment as it is on the commerce clause.

Mr. CRAMER. How could you justify proscribing the right to sell a piece of vacant land on a constitutional basis, the definition being keyed to what the purchaser intends to do with it? In other words, you can sell a piece of vacant land, apparently, if the buyer does not intend to put a house on it, is that right, or the place of residence?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. How did you justify that distinction on a constitutional basis?

Attorney General KATZENBACH. Well, I don't see any difficulty with it really if you are talking about some—it is really just something you or I or anybody else can see visually here, that if you have got land way out in the country, and nobody intends to build any house, and it is to be used for agricultural purposes, and it is bought by a farmer who is going around and looking for more land for wheat, I think it is not covered here. If it is sold by a developer who has been advertising this, that, and the other thing for residential purposes, I think it ought to be covered. I don't think the factual determination implied in this definition here is a very tough one, frankly, I think it is pretty easy.

Mr. CRAMER. Let me pursue very briefly some other differences as compared to present law, and perhaps what the thrust of this is.

Your section 404 relates to prevention of discrimination in the financing of houses?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Now, knowing how HEW, in issuing its regulations, has interpreted the law, could this possibly be construed as requiring a financial institution to have a mixed portfolio, that is, some who are included in race, color, religion, or national origin?

Attorney General KATZENBACH. No, sir. That defies my imagination.

Mr. CRAMER. In other words, can a regulatory agency go to these financial institutions, and on the mere basis that there are no Negro sales who have loans from that institution try to bring enforcement under section 404?

Attorney General KATZENBACH. On the mere basis?

Mr. CRAMER. On the basis that there are no Negro financings in existence?

Attorney General KATZENBACH. On that basis alone, no, sir.

Mr. CRAMER. But that could possibly give a basis for the Federal agency looking into the matter further, could it not?

Attorney General KATZENBACH. Yes, it could.

Mr. CRAMER. So the effect could be the requirement that portfolios be integrated in effect, financial portfolios?

Attorney General KATZENBACH. No, I don't think that follows.

Mr. CRAMER. Again looking to the differences between existing law and your proposals, page 28, "enforcement by private persons," section 406, "The rights granted"—previously enumerated—"may be enforced by civil action." And then in subsection (d), "upon application by the plaintiff." The present law under section 204(a) provides that the action be brought "by the party aggrieved." As I read this, anyone could be a plaintiff even though not the party aggrieved, someone could bring an action in his behalf, as this is drafted, as compared to the present statute. Why would the party aggrieved be excluded?

Attorney General KATZENBACH. It was excluded, Congressman because we were unable to read this in the way you just stated you read it. Now, if other people can read it in that way, put it in.

Mr. CRAMER. You would not object to it being included?

Attorney General KATZENBACH. I would not object to it being included. I think it is unnecesary, but I don't object to it.

Mr. CRAMER. It was not unnecessary in 1964. As a matter of fact, your Department, as I recall, recommended some language.

Attorney General KATZENBACH. Perhaps we did.

Mr. CRAMER. Let's get to another point.

The CHAIRMAN. What line is that on, what page?

Mr. CRAMER. Section 406, page 28, lines 9 to 15, and line 16, describing the plaintiff. The present law, section 204(a) describes the party entitled to relief as "the party aggrieved." And the Attorney General indicated that he would have no objection to designating this party, so that you do not have a third party coming in and suing, unless he is the party aggrieved.

The CHAIRMAN. And the party aggrieved is the one who has the cause of action?

Mr. CRAMER. Correct.

Attorney General KATZENBACH. I assume that he can bring his action on behalf of himself if he is aggrieved, and also on behalf of a class, as he would ordinarily be entitled to do under civil rights.

Mr. CRAMER. Again looking at the language you proposed compared to the present law, page 29, "enforcement by private citizens the right to reasonable attorneys' fees, lines 6 and 7 "The court may allow prevailing plaintiff a reasonable attorney fee as part of the costs." The present language in present law is "section 204(b) the pre-

vailing party," meaning the defendant or plaintiff. And I know you recall how much that was discussed in committee, and otherwise, before the language was finally used, and it was determined that both parties shoud have a right to reasonable—and the prevailing party should have a right to attorneys' fees. Would you object to the inclusion of that language?

Attorney General KATZENBACH. No, I do not support, but I do not object to it. If that is the judgment of the committee, I don't feel strongly about it.

Mr. CRAMER. I was wondering why it was drafted in that manner.

Attorney General KATZENBACH. Well, it was drafted in that manner because I think putting the thing on both sides has some tendency to discourage suits that might otherwise be brought, and are not frivolous cases. If it is Congress' judgment that they want to award it on both sides, I do not have any feelings about it.

Mr. CRAMER. Of course, the court has power to make a determination?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Likewise in section 407, when you have power of enforcement as well as under this housing proposal, "whenever the Attorney General has reasonable cause to believe that any person or groups of persons engaged in a pattern or practice of resistance," you retain the requirement of pattern or practice when you as Attorney General bring the suit, is that correct?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. So it is not contemplated that you as the Attorney General would bring a suit in an individual case of an individual homeowner in an individual community, such as I previously described?

Attorney General KATZENBACH. No, not unless we are talking here about a big subdivision, conceivably a large owner of several apartment houses, that kind of situation. I would regard that as having an impact of a pattern or practice, not just talking about individual homeowners.

Mr. CRAMER. You have a right also under your draftsmanship to intervene when "it is of general public importance," similar language to the present law, is that correct?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Now, the question I want to ask relating to that, however, is on page 30, lines 1 and 2 "in such action the United States shall be entitled to the same relief as if it had instituted the action." That is new language, is it not, as compared to the present law? It is not contained in the present accommodations law, for instance.

Attorney General KATZENBACH. It parallels the language of section 902 of the present law with respect to intervention on equal protection of the laws.

Mr. CRAMER. Does that mean, then, that there can be two judgments relating to damages, one to the Federal Government and one to the plaintiff?

Attorney General KATZENBACH. No, sir, I do not think the Federal Government would be entitled to damages in any event.

Mr. CRAMER. What do you mean by equal remedies, the same relief? What is meant by relief?

Attorney General KATZENBACH. Injunctive relief.

Mr. CRAMER. Let's get to the contempt of court, section 410. And of course, that was a very heatedly debated subject, relating to criminal contempt as a means of carrying out this, it is based, is it not, on section 410?

Attorney General KATZENBACH. Yes, sir. And we are—I can anticipate you in the dilemma of not knowing whether Congress wanted to follow the 1964 precedent or the 1965 precedent.

Mr. CRAMER. Precisely.

Attorney General KATZENBACH. And as far as I am concerned, the Congress can follow whichever one of their own precedents they wish to follow in this. I had to pose it one way or other, Congressman, and you could have asked your question either way.

Mr. CRAMER. So as far as you are concerned, that is an issue you would just as soon stay out of.

Attorney General KATZENBACH. That is an issue—either one, either the way it was done in the 1964 act, or the way it was done in the 1960.

Mr. CRAMER. You would not object to Congress protecting the right of trial by jury in a criminal protective proceeding?

Attorney General KATZENBACH. I would object to that expression of it, because it is an issue that we have in the courts. But I would not object to what they did in these instances by legislation.

Mr. CRAMER. What bothers me is that the 1964 act, I believe, provides for the trial by jury in criminal contempt cases where the fine is in excess of $300.

Attorney General KATZENBACH. Yes.

Mr. CRAMER. And the fine that you propose is $500, punitive damages, on page 29. Now, what is going to be the effect of that? Is the court going to be inclined to award less than that amount if there is a possible criminal contempt result?

Attorney General KATZENBACH. No, I think there is a misunderstanding there on this, Congressman. The $500 that is referred to here is damages, it has nothing to do with contempt. It is not a fine.

Mr. CRAMER. So there is no inconsistency as it relates to those two figures?

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. Still, though, the courts will have the discretion that it has under present law in determining in effect whether there should be a jury by fixing the amount of the damages for criminal contempt?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Mr. Chairman, I hope the chair feels that my questions have been constructive. May I ask if the Attorney General will be asked to return this afternoon?

The CHAIRMAN. We have not been given the right to sit in the afternoons.

Mr. CRAMER. Or tomorrow? I just wanted to know whether we are going to have an opportunity to pursue some further brief questions.

Mr. MCCULLOCH. The caseload is particularly heavy for the minority members of this committee, Mr. Chairman. We have a number of subcommittees in operation on various days of the week, and

for that reason the elected minority leadership of the House, as well as the ranking member of this committee, have not allowed this subcommittee to sit during the time the House is in session in the afternoon. It is just too much of a burden.

I would rather suggest, Mr. Chairman, if it is convenient to the Attorney General, that he return next Tuesday morning at a time that is agreeable to the Attorney General and the committee.

The CHAIRMAN. Will the Attorney General be able to come at 9 o'clock Tuesday morning?

Attorney General KATZENBACH. Yes, I am available to this committee any time day or night that it wishes me to be here.

The CHAIRMAN. The Chair wishes to make this statement. The Chair wants to give everybody an opportunity to be heard on this very important bill. It has many ramifications. And therefore, the Chair is going to rule that hereafter hearings will begin at 9 o'clock in the morning instead of the usual hour. And so we will ask you respectfully to be back at 9 o'clock.

(Whereupon, at 12 noon, the committee recessed, to reconvene, Tuesday, May 10, 1966, at 9 a.m.)

CIVIL RIGHTS, 1966

TUESDAY, MAY 10, 1966

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

The subcommittee met at 9 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rogers, Corman, McCulloch, Cramer, and MacGregor.

Also present: Mr. Hungate.

Also present: William R. Foley, general counsel, Benjamin L. Zelenko, counsel, Martin R. Hoffmann, associate counsel.

The CHAIRMAN. The committee will come to order.

The Chair wishes to make a statement. I make the statement as to the so-called Mrs. Murphy's boardinghouse. The Chair will not give up so easily. I as chairman want to go all the way, not part of the way. The greatest blight in the Nation is caused by rotten and rotting housing. If we are to strike down the ghettos, and raze slums, we can't do it with halfway measures. You can't dig a well with a needle. The boardinghouse is a multiple dwelling, and multiple dwellings should no longer house discrimination on race or color.

In principle, a five-tenant apartment house is no different than a five-boarder rooming house. A boarder and a tenant are the same. I want the bill as it was introduced and shall fight for it every inch of the way. Mrs. Murphy's boardinghouse, so-called, must go.

We are now on the third day of hearings, and Mr. Katzenbach, the Attorney General, is here for the continuing of questioning.

STATEMENT OF ATTORNEY GENERAL NICHOLAS deB. KATZENBACH; ACCOMPANIED BY STEPHEN POLLAK, FIRST ASSISTANT, CIVIL RIGHTS DIVISION; AND ALAN MARER

The CHAIRMAN. I would like to ask you, Mr. Attorney General, the following. Can you give the committee some estimate of the number of personnel and the amount of money that may be required to undertake to enforce title V of the bill?

Attorney General KATZENBACH. I don't think that the enforcement of title V of the bill will result in great increases in costs, Mr. Chairman. We have asked for another hundred agents, as far as the Federal Bureau of Investigation is concerned, and I think that would be helpful. The reason I don't think it will result in great increases in the need for personnel is that I think these incidents are relatively

rare, and we presently, under the existing law, investigate most of them under sections 241 and 242 anyhow.

The difficulty is just that we aren't always able to make a case under those provisions of the law in order to try them, but we have investigated the matter; they would normally be investigated in any event.

The CHAIRMAN. Do you think the prosecution of a number of cases will chasten certain groups in certain sections in the South?

Attorney General KATZENBACH. Yes; I would hope that this would have a deterrent effect, as I think the general progress that we have been making in the South, the vote, and so forth, has had a deterrent effect. I don't believe that the kind of conduct that title V is aimed at is tolerated by decent people in any State in the country, and I think we are here just dealing with a few extremists, who turn to violent means from time to time. There is an impact of fear from that. It is an important matter, but I don't think that it happens with great frequency, nor will it.

The CHAIRMAN. When you say that title IV of the bill limits the ability of the landlords to discriminate, suppose, for example, he limits the tenants in an apartment building on the basis, say, of the number of children one has, or financial ability, or any other nonracial or nonreligious factor.

Attorney General KATZENBACH. No; it doesn't limit his ability to choose his tenants on any nonracial, nonreligious, nonethnic factor.

The CHAIRMAN. Would title IV of the administration bill eliminate the need for additional State fair housing laws?

Attorney General KATZENBACH. No; title IV would not supersede any existing State laws, or any future State laws, and I think that State laws, city ordinances, or mechanisms of enforcement of open housing are desirable and should be encouraged.

The CHAIRMAN. Where there is inconsistency, the Federal statute would supersede it?

Attorney General KATZENBACH. Yes; the Federal statute would continue to operate alongside the State law. If the State law gave remedies unavailable under the Federal law, those remedies could be pursued under the State law.

The CHAIRMAN. And you would say that the State law could conceivably be made stronger than the Federal statute?

Attorney General KATZENBACH. Well, it might have. Yes, it could conceivably. I don't think it would in its coverage. I think the coverage of the Federal law is broad, but it might have remedies, and, for example, administrative remedies, which could be pursued under State law, which are not provided here, which conceivably could in a particular instance be thought to be more effective.

The CHAIRMAN. What would happen to exemptions that you have under the State law that you do not have under the Federal law?

Attorney General KATZENBACH. Well, then, in that event, you would have to pursue the Federal law. The exemptions under State law would continue to exist, but only under State law, and the exemptions would not exist under Federal law.

The CHAIRMAN. Well, by saying that, do you mean, then, that the exemptions under State law would have to go, wouldn't they?

Attorney General KATZENBACH. They don't really have to go. The exemptions would no longer exist, because the Federal law would apply within those areas. You wouldn't expand your State remedies into areas exempted by the State law, but you would have Federal remedies within those areas.

The CHAIRMAN. Does the term "pattern or practice" as used in title IV, page 29, line 11, which refers to enforcement by the Attorney General, mean the same as in the existing voting rights, public accommodations, and fair employment law?

Attorney General KATZENBACH. Yes; they are intended to mean exactly the same as they do under title II and title VII of the 1964 act.

The CHAIRMAN. Would you mind restating for the historical record exactly what is meant, then, by "pattern or practice"?

Attorney General KATZENBACH. Well, I think I can give you examples of what I would think pattern or practice might be. This would be where a number of real estate brokers were engaged in selling to whites only. It would be where a number of apartment house owners, or where a single apartment house owner, owning a number of apartments, was engaged in discrimination. It would be where or could be where a developer, single developer with many developments or with one large development was engaged in discriminating. That would be the sort of thing that would apply, would be a pattern or practice of discrimination.

In other words, it is intended not to include the single isolated occasion, but to include occasions in which a number of people are involved, or in which a good deal of available housing is involved.

The CHAIRMAN. Suppose a large bank in a community would not make loans because of race or religion. Would that in itself establish a pattern or practice?

Attorney General KATZENBACH. Yes, I think it could, Mr. Chairman, if that bank was very large, in the mortgage business within that particular community, and that could happen, then I would think that would be a pattern or practice; yes.

The CHAIRMAN. I am going to place in the record a list of States which have State fair housing laws, where discrimination in housing is prohibited. They are quite impressive as to the number of States, and in the State fair housing laws, covering discrimination in private housing. The first list covers public housing. The second list covers private housing. I notice in the second list the States of Connecticut, Indiana, Massachusetts, Michigan, Minnesota, New Jersey, New York, Ohio, Pennsylvania, Wisconsin, District of Columbia. In other words, they are the States with the greatest centers of population. This, in my opinion, principle of fair housing without discrimination seems to be established already in the centers of population, particularly in the States that I have mentioned. You agree with that, do you not?

Attorney General KATZENBACH. Yes, Mr. Chairman, I would agree.

The CHAIRMAN. Now, it seems also that all the States listed under the second category provide for criminal penalties for violation, and all the States listed in that second list except the last one, Michigan, cover real estate brokers. That data will be placed in the record.

(The document referred to follows:)

SUMMARY OF FAIR HOUSING LAWS[1]

A. STATE FAIR HOUSING LAWS

1. Alaska
2. California
3. Colorado
4. Connecticut
5. Illinois
6. Indiana
7. Maine
8. Massachusetts
9. Michigan
10. Minnesota
11. Montana
12. New Hampshire
13. New Jersey
14. New York
15. Ohio
16. Oregon
17. Pennsylvania
18. Rhode Island
19. Washington
20. Wisconsin

District of Columbia
Puerto Rico
Virgin Islands

B. STATE FAIR HOUSING LAWS COVERING DISCRIMINATION IN PRIVATE HOUSING

1. Alaska
2. Colorado
3. Connecticut
4. Indiana
5. Maine (rental housing only)
6. Massachusetts
7. Michigan
8. Minnesota
9. New Hampshire (rental housing only)
10. New Jersey
11. New York
12. Ohio
13. Oregon
14. Pennsylvania
15. Rhode Island
16. Wisconsin

District of Columbia
Puerto Rico
Virgin Islands

[1] Derived from Library of Congress materials.

All States listed under B provide criminal penalties for violations.
All States listed under B except Alaska and Michigan cover real estate brokers.

The CHAIRMAN. Now, we have, in New York State, provisions which are called private housing exemptions under the State fair housing laws, including, for example, the following: "The rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations."

I take it that the bill, if we pass it, would eliminate that exemption, would it not, in the New York State law?

Attorney General KATZENBACH. Yes, it would, Mr. Chairman.

The CHAIRMAN. And we have a similar provision in the Pennsylvania statute, for example, and a similar provision in the Ohio statute. I will also have that placed in the record.

(The document referred to follows:)

C. PRIVATE HOUSING EXEMPTIONS UNDER STATE FAIR HOUSING LAWS

New York—(Statutory language)—"(T)he rental of a housing accommodation in a building which contains housing accommodations for not more than two families living independently of each other, if the owner or members of his family reside in one of such housing accommodations."

Pennsylvania—(Statutory language)—"(A) building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups, or two families living independently of each other and used by the owner thereof as a bona fide residence for himself and any members of his family forming his household."

Ohio—Exempts "personal residence" which is defined as follows: (Statutory language)—" 'Personal residence' means a building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups or two families living independently of each other and occupied by the owner thereof as a bona fide residence for himself and any members of his family forming his household. If a personal residence is vacated by the owner it shall continue to be considered owner-occupied until occupied by someone other than the owner or until sold by the owner, whichever occurs first."

The CHAIRMAN. Mr. Attorney General, do you know of any other Federal statute that goes as far as title IV in limiting the use of private property? Are there any other types of statutes that do that?

Attorney General KATZENBACH. Well, in the first place, Mr. Chairman, while your question was confined to Federal statutes in this regard, if the issue is one of limiting somebody's rights to dispose of private property or is cast in those terms, it seems to me equally relevant to underline what you have just pointed out, and that is that the 17 States and the District of Columbia, Puerto Rico, and the Virgin Islands, and something in excess of 40 cities, already have comparable provisions.

Now, if you turn to Federal laws of this kind, I think the first thing that I would point out would be the public accommodations section of the 1964 Civil Rights Act. I then would point out the Fair Labor Standards Act, which regulates hours and wages, and numerous other details of private business; the Food, Drug, and Cosmetic Act, which goes so far as to regulate the type of label that can be put on drugs and cosmetics, on the shelf of the smallest corner drugstore, no matter how long that has been there; the Federal statute which regulates public consumption of margarine, and requires its labeling; and then, of course, again the 1964 Civil Rights Act, which applies to movie theaters, restaurants, hotels, and so forth.

So I think there is a good deal of Federal precedent for this kind of thing.

The CHAIRMAN. So this bill is not so revolutionary as some would think.

Attorney General KATZENBACH. No, it is hard for me to feel that a bill is revolutionary if 17 States, including many of those with the largest populations in the country, have already dealt with it in the same way. The States of New York, Pennsylvania, Ohio, New Jersey, and others.

The CHAIRMAN. Now getting back to the jury system, a part of the jury system includes challenges for cause and peremptory challenges. As I understand it, challenges for cause require an explanation and a judicial determination, but a peremptory challenge requires neither reason nor review.

Now does title I, section 1862, or title II, section 201—one, the Federal jury; one, the State jury—affect the peremptory challenge or the challenge for cause procedure in the Federal or State courts?

Attorney General KATZENBACH. No. It does not.

The CHAIRMAN. You still can challenge peremptorily without giving or assigning any reason.

Attorney General KATZENBACH. That is correct.

The CHAIRMAN. Now, those peremptory challenges have been used, have they not, in the South, on the basis of race or color?

Attorney General KATZENBACH. I am sure they have been used in the South and in the North on that basis.

The CHAIRMAN. I read you from the case of *Swain* v. *Alabama:*

> To subject prosecutor's challenge in any particular case to the demands and traditional standards of the equal protection clause would entail a radical change in the nature and operation of the challenge. The challenge, pro tanto, would no longer be peremptory, each and every challenge being open to examination, either at the time or at a hearing or afterward. The prosecutor's judgment underlying each challenge would be subject to scrutiny for reasonableness and sincerity. And a great many uses of the challenge would be banned.

The minority opinion in that case called attention to the fact that these challenges were actually used on the basis of race, but the Court, nonetheless, held that despite that the peremptory challenges could be used, no matter what may have been in the mind of the challenger when he made the challenge. That still remains in the law, if we pass this statute.

Attorney General KATZENBACH. Yes, it does, Mr. Chairman. A peremptory challenge is just that—peremptory.

The CHAIRMAN. Now, Mr. Attorney General, in title V, which proscribes various interferences with enumerated rights, is the threat of physical injury an essential element of the prohibited acts? Must there be violence, actual contact?

Attorney General KATZENBACH. Well, there has to be force, or the threat of force, but I think that would apply both to threat of physical injury to an individual, or the actual threat or use of force to property interest. If he says, "I am going to bomb your home" or "burn your garage" or something of that kind, I would think that that would be included within the meaning of "by force or threat of force."

The CHAIRMAN. Mr. Attorney General, I am reading now from the Survey of School Desegregation of the Southern and Border States, 1965–66 by the U.S. Commission on Civil Rights. The heading is "Fear and Intimidation, Harassment":

> A substantial factor in the reluctance of Negro parents and children to select white schools is fear. Many Negro parents in Webster and Calhoun County, Mississippi, and Americus and Sumter County, Georgia, and in Anniston, Alabama, expressed such fear. Anniston Negro parents were unable to cite any specific instance of intimidation, but referred to television and newspaper accounts of trouble in connection with the school desegregation elsewhere. Frequently, however, the fear was based on actual incidents of harassment and intimidation of Negro parents and pupils.

Now, would you be inclined to start a suit if, for example, there were television and newspaper accounts of trouble, not necessarily in a particular spot, but not too far away?

Attorney General KATZENBACH. Well, as far as starting a suit under title III is concerned, I think that would be the sort of ground that would justify the Attorney General bringing suit, if he had the facts at the same time to establish that the school was in fact discriminating. That is, they would have to have had some applications, or some activity on the part of the school board or school superintendents which would have kept it from being desegregated. At least, if the free choice system has been held to comply with the constitutional requirements, the statute doesn't go beyond that, doesn't eliminate free choice system.

The CHAIRMAN. For example, the particular place had a large number of Negro children, and few of them attended an integrate school, that would be a very important factor in your determinatior too, would it not?

Attorney General KATZENBACH. Yes, it would be important, M Chairman, but the Attorney General wouldn't bring a suit any mor than a private party could, merely because of statistics involved in thi. You would have to show that there were people who, in fact, wer being denied a free choice under the system.

Now, any free choice system has a starting point on it, so you woul be in a completely segregated system, you would be starting from a assignment that was completely segregated, and you would show tha and then you would have to show that there were Negroes who wante to attend white schools within that area, and had been denied tha choice, or had they themselves been discouraged by the school author ities from exercising that choice freely. You still have to prove you case. There is nothing, and your case could not be proved on purel a statistical basis.

The CHAIRMAN. What would you do under the following circum stance—and I am reading again from page 36 of this report—

Two Negro families in Webster County told staff attorneys they had selecte formerly all-white schools for three children scheduled to enter the first grad September 1965. In each instance, it was related, within hours after the form had arrived at the office of the superintendent, the families were visited by white citizen of the county, who wondered whether a "mistake"—

Quote, "mistake"—

could not have been made. Both families stated that as a result of these visits they altered their "choice" and selected a Negro school. Nevertheless, they asserted, within a short time, they were told by their white landlords to move out of their houses.

Thus a Negro parent related to staff attorneys how he decided not to sen his two eligible children to the white school, because he feared eviction from his farm. He also said that he had heard a county law enforcement official say that Negroes had better not attend white schools.

What do you do under those circumstances?

Attorney General KATZENBACH. Well, under section 301(b), assuming those facts to be true, you would deal directly with the intimidation involved. The language there permits you to sue directly those who are intimidating others who are seeking to exercise their free choice, and I would think the way in which you would deal with that situation, assuming those facts to be accurate, would be to deal with the intimidation directly, and thus, through doing that, hope to create the conditions whereby free choice could be exercised.

The CHAIRMAN. Now going back to title I, does title I authorize any arrangement by which jurors need not have to travel great distances to court?

Attorney General KATZENBACH. It does by its provision that you can have separate jury panels for separate divisions of the court, and it goes even further than that, and it says, well, you don't have separate divisions, but where the court sits in other places, throughout the

State, and it is authorized to do so, and I think, in fact, does so, then you could draw your jury panels from the surrounding environs of that place, and this would eliminate the need to travel great distances.

Now, if the court only sits at one place, and there aren't separate divisions, or it doesn't sit in those divisions, then I suppose the distances traveled would be greater.

The CHAIRMAN. What is the constitutional basis for the Congress to outlaw discrimination on account of economic status in selection of State court juries?

Attorney General KATZENBACH. Well, the constitutional basis for that is the section 5 of the 14th amendment, and the power of the Congress to enact appropriate legislation. I don't think you could argue that it is appropriate for the State to deny the opportunity to serve on the jury to anyone on an arbitrary or discriminatory basis. And I think that economic status is within the legislative power of Congress to prescribe.

As I think I stated in prior testimony, I think the *Harper* case in particular supports that. There, the Court held, even without legislation explicitly enacted by Congress, that you couldn't deny a person the right to vote on the basis of economic status, and thus knocked out the poll tax.

The CHAIRMAN. Well, would it knock out property owner requirements?

Attorney General KATZENBACH. Yes.

The CHAIRMAN. Under existing State law?

Attorney General KATZENBACH. Yes, I would think that it would.

Now, as far as jury service is concerned, I think it is within the power of Congress to so prescribe, whether or not the Court would come to that conclusion in and on its own. I say that for the reason that usually, in reviewing these matters in courts, the question has been whether or not the jury was so selected as to have a bias of some kind against particular defendants. The theory here, in part, with respect to jury legislation, is that every citizen has a right and a duty for jury service, and can't be discriminated against in that regard. So that I would think that it was comparable to the poll tax decision. There, the Court said that you couldn't dilute a vote on account of economic status, and to quote in part from what the Court said, it said the 14th amendment denies the State the right to dilute a citizen's vote on account of his economic status:

> Wealth, like race, creed, or color, is not germane to one's ability to participate intelligently in the electoral process. Lines drawn on the basis of wealth or property, like those of race, are traditionally disfavored. To introduce wealth or payment of a fee as a measure of a voter's qualifications is to introduce a capricious or irrelevant factor—

and I believe exactly the same words could be used to apply to the capacity to serve on a jury.

The CHAIRMAN. Now, to determine the economic status of an applicant—put it that way—would it be meet and proper on the form that is used in the selection of Federal juries to ask a man what his income is?

Attorney General KATZENBACH. I should think not.

The CHAIRMAN. How would you find out, then, whether or not there is any economic discrimination? Do you leave it to the man himself

to protest in the event that he is not selected, or do you leave it to the defense counsel?

Attorney General KATZENBACH. Well, as far as the Federal jury is concerned, it has been selected, if this procedure is followed, on a completely random basis, from voter lists, so that we start with a list that is purged, as far as that is concerned, from the very outset.

Now, we do ask occupation, and I suppose that would be saying something about economic status, but you start from that purged list, and giving the jury commissioner very little discretion in terms of who he can exempt from jury service in this, and requiring him to state the reasons for it, a person has to be too ill to do it, or mentally incapacitated, or convicted of a prior crime, or unable to fill out a relatively simple form; so as far as the Federal system is concerned, I think that the statute itself does away with any possibility of economic status being used.

The CHAIRMAN. Section 205 on page 20 and following—205(a), page 20, requires State jury officials to preserve their records and their papers for 4 years after the completion of service of jurors. Isn't that a burdensome and onerous record-keeping requirement—4 years?

Attorney General KATZENBACH. Well, I would point out, Mr. Chairman, in the first place, that it doesn't require them to keep any records other than what they keep themselves. At least, at this stage of the proceedings, the only records they are required to keep are whatever they keep under their own law.

I don't think the period of 4 years is an onerous time to keep and store those records. They keep them for longer than that under the voting rights legislation, and the only conceivable difficulty that has occurred to me there—and I don't think it is a real one, but it may exist—is, the 4 years, as we intended it here, runs really from the time you fill a new box and then you keep your records until such time as you fill it again, and then you have to keep it for 4 years, the old box.

Now, if you have a system—which is difficult for me to conceive, but if you have a system—where you never fill a box anew, then it would be hard to find a period from which you measure the 4 years, as this is drafted.

It may be that, as a technical matter, something should be done to deal with that, but I must say I think States should be encouraged to empty their jury boxes every so often and fill them up again anew, so that I am not too enthusiastic about tolerating a system such as we discovered in Lowndes, where they had had the same bunch of jurors for the last 13 or 14 years.

The CHAIRMAN. Now turn to page 15, title II, section 201. The bill prohibits discrimination on account of race, color, religion, sex, national origin, and economic status. Would you say that that section would prohibit so-called "blue-ribbon" juries?

Attorney General KATZENBACH. No, sir, I don't think it prohibits blue-ribbon juries in terms of its actual words; yet in terms of its operation, I think it would make it much more difficult to have so-called blue-ribbon juries. I say this for the two reasons: one, they can put reasonable educational standards with respect to juries, and this would move in the direction of encouraging blue-ribbon juries; on the

other hand, they can't discriminate, having done that, on the other grounds expressed in section 201, which would tend to open up the panel somewhat more; so my answer would be, it doesn't——

The CHAIRMAN. Well, the ban on discrimination on account of economic status would help, too, wouldn't it?

Attorney General KATZENBACH. Yes; that would move in the direction of eliminating, but there is still, the State has reasonable educational requirements, and requires these with respect to all people serving on juries, and then having put those in, does not discriminate on account of race, color, religion, sex, national origin, or economic status. Then the system would not be touched.

To the extent the blue-ribbon juries are now selected by both educational requirements and requirements of economic status, then a part of that system would be interferred with.

The CHAIRMAN. Do the disclosures required in title II override any State laws or practices permitting more liberal access to jury information and records?

Attorney General KATZENBACH. No, sir; these are intended to be minimum requirements. If the State makes more information available, then that would continue to be available.

The CHAIRMAN. Now, under 204 of the act, on page 17, could the State officials be required to identify the race of the various persons on the State jury lists or in the jury boxes or wheels? Would they be required to identify the race?

Attorney General KATZENBACH. Only under certain circumstances, as if they kept these records and there was some evidence of discrimination, then they could be required to produce those records which would show the race.

In addition, if you had gone through sufficiently in the proceedings so that the court was persuaded there was some evidence of this, of discrimination, then it would seem to me possible that the Federal court could require the State jury commissioner to identify jurors on the basis of race.

It would not require them to keep records of that kind. There is nothing in it, there is no recordkeeping requirement, so if they don't presently keep that, or don't presently have that information, then there will be nothing here that would require them to have it.

The CHAIRMAN. Now changing to another title, I have been asked repeatedly since the introduction of this bill why the situation on housing could not have been covered by Executive order rather than by statute. What is your reaction to that?

Attorney General KATZENBACH. Well, to go beyond the existing Executive order, which covers housing that is either directly financed or the financing of which is directly guaranteed by the Federal Government to go beyond that, in the first place, does raise some questions as to how far the Executive authority goes. To do anything meaningful within this area, you would have to, it seems to me, cover all of the federally chartered savings banks. You would have to cover all national banks also, and then I think you would have to go beyond that and probably cover everything that was insured by the Federal Deposit Insurance Corporation.

Each time you take one of those bites, you create a different regulation for the nationally chartered banks, for the nationally chartered

savings and loan banks, than you do for the State banks with whom they are in direct competition. So that you would be attempting, I would think, to try to take the biggest bite that you could on this.

Although the existing laws make reference only to various banking factors and there is nothing in the history of those laws that would indicate that this type of coverage by Executive order was contemplated, and indeed, nothing that I can think of that really makes it a precedent, still you can make a respectable argument for the coverage.

As I say, it is a difficult legal question, I am not saying that it would be unlawful for that to be done. I am saying that it raises some difficult legal questions. Assuming that it was done, you could then add to the approximately 20 percent of the housing that is now covered. You could build that figure up to something better than 60 percent. You still would not be covering all of the housing today that is financed by insurance companies. You still would not be covering all financed by pension funds, and by people who are not insured in the Federal deposit insurance scheme, or nationally chartered banks.

Now, what the effect of this would be on the banking industry, I don't know. I don't know whether in some areas this would mean that banks would withdraw from the FDIC in order to be freed from these provisions. I can envision certain States setting up their own insurance schemes, and having banks withdraw.

I can imagine banks withdrawing from a nationally chartered system to a State-chartered system, if, by so doing, they could get out from under this kind of provision, at least in certain areas of the country, or places where they felt there was a good deal of prejudice, and that might be North or South, depending on the particular community; I can imagine thus unintentionally creating quite a change in the banking system, which is extremely difficult to predict at this point.

But even if you assumed that you have the legal authority to do it in the first place, that you are not going to disturb the banking industry, that there would be no harm in the rather major exemptions that would continue to exist with respect to insurance companies, pension funds, and institutions which aren't covered by this—even then, you can't set up an effective system by Executive order. The question is: How on earth are you going to administer that kind of a system?

The only way you can administer it is through the banks, and the only way you can administer it through the banks is to put the burden on the banks themselves to police the discrimination that goes on. They would have to carry this burden, and I would think the only effective way you could do it would be to say, well, if some builder has discriminated, then you are going to call his mortgage. Despite any financial conditions on it, you are going to make that mortgage due, or his financing due, because he has discriminated.

Now, I think that is really quite a burden to put on private groups, to police a law of this kind. I think the policing of this ought to be and preferably should be left to either the people discriminated against or to the Government. I have no problems with the banks not discriminating in their own loans, but I have problems in terms of making the banks police the real estate industry, police the building

industry, police all the apartment rentals, and everything else within a community. That is a big job.

For all those reasons, I believe that legislation is necessary to really do an effective job.

The CHAIRMAN. And to do an effective job, must you not have some sanctions, even criminal sanctions, and you couldn't do that by an Executive order.

Attorney General KATZENBACH. That is correct. You can't create sanctions, other than the sort of sanctions making a loan callable, or that kind of thing, which would really be on the basis of nonbanking factors. There is some question as to whether it is appropriate to call a loan or mortgage on a totally nonbanking factor. I think that raises a difficult question, as to whether those who regulate banks in terms of banking factors can, in addition to that, require them to call loans or not to lend money on nonbanking factors. I think that goes to the legal question, which I said was difficult.

Mr. CORMAN. Mr. Chairman.

Pardon me, Mr. Attorney General. Have you had any specific instances under the existing Executive order where that has been a useful tool in breaking down the barriers to integrated housing? In other words, has it been a useful tool?

Attorney General KATZENBACH. Yes, it has under the existing Executive order, because there, it is policed by the Department of Housing and Urban Development, and they are able to control within that area, I think, quite well, Congressman, but they are covering only 20 percent of the housing when they do that.

Mr. CORMAN. I take it also this is because of the fact that they are involved before or during the period of construction, so that they can set up some regulations at that point.

Attorney General KATZENBACH. Yes.

Mr. CORMAN. Thank you.

The CHAIRMAN. Would title IV catch, for example, a newspaper that advertises apartments on the basis of race or religion?

Attorney General KATZENBACH. Yes.

The CHAIRMAN. Yes, I see, on page 26, line 19.

Attorney General KATZENBACH. Yes. But it prohibits various people from so advertising. It doesn't actually punish the newspaper for carrying the ad.

The CHAIRMAN. Is there any evidence that real estate values do not decline after Negroes move into a previously all-white neighborhood?

Attorney General KATZENBACH. Yes, Mr. Chairman, there is a good deal of evidence with respect to that. Now, let me be quite clear about it. If you get into a block-busting situation, which is attempting to play upon fears and panic, you can have a momentary or even quite quick decline in real estate values. In other words, if you have a previously all-white block, or community, or development, and a Negro family moves in there, and then people are concerned, and the unscrupulous play upon that concern; you can get a number of people who may have most of their life savings involved in this panic, and try to sell their property, and there can be a momentary and quite fast drop in those property values which results from that kind of sale. In the areas, the studies that have been done, and there are some,

with respect to what happens to values within an area that is integrated, or you don't have this panic selling, the evidence is that not only do the property values go up, but on the control studies that have been done in a few communities, the evidence is that the values in the integrated community went up faster than the values in similar all-white communities.

The CHAIRMAN. Would that be the fact that the white landlords possibly charge Negroes more rent, or what?

Attorney General KATZENBACH. No; I think that it is simply because of the fact that this was a stable, integrated neighborhood. There were more people anxious to live in that neighborhood, with a rising Negro middle class, than in other neighborhoods. I did collect some material on this, because it is——

The CHAIRMAN. Yes, I would like to have something in the record.

Attorney General KATZENBACH. It is important, and I wonder whether I could simply submit for the record about eight exhibits which tend to establish what I have been stating.

The CHAIRMAN. I think it would be very, very helpful to have those documents in the record. How many cities did you say?

Attorney General KATZENBACH. These are eight different studies that have been——

The CHAIRMAN. Eight studies.

Attorney General KATZENBACH. Eight studies that have been done in various different parts of the country.

The CHAIRMAN. Can you give me an idea where these studies were conducted, what cities were involved?

Attorney General KATZENBACH. Well, I have got New Haven, Conn.; Washington, D.C.; California; one, I believe in Philadelphia.

The CHAIRMAN. Can you tell us who conducted them?

Attorney General KATZENBACH. Well, they have been done by various different people. Some are university studies that were sponsored, some have been done by the Housing and Home Finance Agency, in cooperation with some local people. One of these is a statement of Mr. Eichler, for example, who is one of the largest homebuilders in California and, since 1955, has had open occupancy in his developments. One in Washington here is done by an urban sociologist, Sherwood Ross, and so forth.

The CHAIRMAN. Well, they will be accepted for the record.

(The matter referred to follows:)

EXHIBIT No. 1

Laurenti, Property Values and Race—Studies in Seven Cities (University of California Press, Berkeley and Los Angeles 1960) 47, 50–52.

EXHIBIT No. 2

Race and Property, University Extension Series on Public Issues, John H. Denton, Editor, University of California, Berkeley (Diablo Press, Berkeley, California 1964) 108, 113.

EXHIBIT No. 3

Equal Opportunity in Housing, A Series of Case Studies, Housing and Home Finance Agency, Office of Program Policy and Intergroup Relations Service (1964) 1, 6.

EXHIBIT No. 4

Palmore and Howe, Residential Integration and Property Values, Social Problems (Summer 1962) 52, 53–54.

EXHIBIT No. 5

Statement of Edward Eichler, one of the largest home builders in California, on the results of operating on an "open occupancy" basis since 1955. (Quoted in *Pearl and Terner, Fair Housing Laws: Halfway Mark*, 54 *Georgetown Law Journal* 156, 168n. n.66).

EXHIBIT No. 6

Study by Sherwood Ross, Urban sociologist and Consultant on Racial Affairs, Washington, D.C., reported in *The Washington Post*, January 27, 1966, and press release dated January 26, 1966.

EXHIBIT No. 7

"Special Report, Neighbors, Inc., The Story of an Effort to Build an Integrated Community," *The Evening Star*, January 13, 1965, page 1, columns 1 & 2, and page A–6, columns 1 through 7.

EXHIBIT No. 8

"100 Negro Families Find Housing in White Areas" *The Washington Post*, January 7, 1965.

KATZENBACH—EXHIBIT No. 1

GENERAL CONCLUSIONS

The major statistical finding of the present study is that during the time period and for the cases studied the entry of nonwhite into previously all-white neighborhoods was much more often associated with price improvement or stability than with prices weakening. A corollary and possibly more significant finding is that no single or uniform pattern of nonwhite influence on property prices could be detected. Rather, what happens to prices when nonwhites enter a neighborhood seems to depend on a variety of circumstances which, on balance, may influence prices upward or downward or leave them unaffected.[1]

These conclusions are at variance with the belief that nonwhite entry always provokes a fall in property values. Instances of sudden decline have been observed. But so have cases of rising values and, as noted, these have appeared in the data of the present study much more frequently than the cases of decline.

INFLUENCING FACTORS

To set these conclusions in proper light, and before looking at them in more detail, it is first necessary to examine briefly the factors that may influence prices when nonwhites move into a neighborhood as well as special factors affecting this study.

The major variables interacting in these local situations appear to be: (1) strength of whites' desire to move out; (2) strength of nonwhites' desire to move in: (3) willingness of whites to purchase property in racially mixed neighborhoods: (4) housing choices open to whites; (5) housing choices open to nonwhites; (6) absolute and relative purchasing power of nonwhites; (7) absolute and relative levels of house prices; (8) state of general * * *.

HOUSING MARKET CONDITIONS SINCE 1940

Housing market conditions prevailing during the time period covered by the present study were generally such as to minimize the vulnerability of local markets to price dislocations associated with racial changes. This should be borne in mind in assessing the significance of the factual data and the conclusions based on them.

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[1] The reference to prices in this paragraph, it will be understood, is to neighborhood price movements which can be connected with the racial factor and which are measured relative to price movements in all-white areas.

In general, the period was characterized by strong demand for housing and by rising real estate prices. The housing demand of nonwhites in northern and western cities was undoubtedly stronger than ever before, both because of improved economic condition and the nonwhite's heavy in-migration to those cities. At the same time, racial restrictions on residence continued to be fairly tight in most cities, resulting in the concentration of nonwhite house purchases in relatively few "open" areas. Finally, there seems reason to believe that along with the general movement toward racial equality of rights and the improving economic position of minority groups, white populations have become more "sophisticated" toward neighborhood racial change than in the past. While instances of violent resistance to nonwhite entry or panic flight from "invaded" neighborhoods have not been lacking, they appear to have been less frequent than in some past periods. More often than not, in recent years, racial transition of neighborhood occupancy has been a peaceful process.

SUMMARY OF FINDINGS

Price behavior in San Francisco, Oakland, and Philadelphia

Basic information for the present original study came from these three cities. Price data over the period 1943–1955 were gathered for house sales in single-family, largely owner-occupied, residential neighborhoods.

A total of 5,417 individual sales prices was collected from 20 formerly all-white neighborhoods which underwent some degree of nonwhite entry during the time of observation. Another 4,495 sales prices were gathered from 19 closely comparable neighborhoods which remained all-white over the same period. Neighborhoods were deliberately selected to give as much diversity as possible in price class, degree of nonwhite occupancy, and other factors.

The movement of house prices in the neighborhoods entered by nonwhites (test areas) was compared with price movements in matching all-white neighborhoods (control areas). For each pair of neighborhoods, two types of price comparisons were made:

(*a*) *The relationship of test prices to control prices before and after nonwhite entry.* On the assumption that the relationship between test and control prices during the time when *both* areas were all-white is the normal one, it becomes significant to see whether that relationship continued in essentially the same fashion after nonwhite entry began in the test area. For this purpose, the percent ratio of average test prices to average control prices for the last four quarters of the observation period is compared with the corresponding ratio for the entire period preceding nonwhite entry.

(*b*) *The relative change in test versus control prices* from the average pre-entry level to the last four quarters of the observation period. In order to adjust for differing durations of the observation period, the percent change so obtained is divided by the number of quarters from the entry date to the end of the period. The result is a figure expressing the average rate of increase or decrease in price, per quarter, for the period following the date of nonwhite entry. For the control areas the figure is computed for the same time interval so that the test figure may be directly compared with it.

Studying these comparisons yielded the following principal conclusions on price behavior:

1. In 41 percent of the comparisons, test prices stayed within 5 percent of control prices over the observation period. This is taken as indicating no significant difference in price behavior.

2. In 44 percent of the comparisons, test prices ended relatively higher than control prices, by margins ranging from over 5 to 26 percent.

3. In the remaining 15 percent of the comparisons, test prices ended the observation period relatively lower than control prices, by margins ranging from over 5 to 9 percent.

4. From the date of first nonwhite entry to the end of the observation period, 59 percent of the comparisons showed larger percentage increases per quarter for test prices than for control prices. The remaining 41 percent showed larger ficant difference in price behavior.

5. Neither the price class of the test neighborhood nor its percentage of nonwhite occupancy showed any regular relationship to observed price movements. All ranges of price and nonwhite occupancy displayed both superior and inferior test price behavior, as compared with control prices.

Four of the twenty test neighborhoods had nonwhites living in them before the period for which adequate price data could be gathered. In these cases no "before-and-after entry" comparisons could be made. The price performance of these areas—compared with that in five control areas—was judged by using the first four quarters of available price data as a measurement base. The findings for these four test areas were found to be generally consistent with those for the sixteen for which pre-entry price data exist.

The findings for all areas place in doubt existing beliefs concerning the harmful effects of nonwhite occupancy on property values. Were such beliefs rooted in fact, the statistical evidence of this study would have shown downward shifts in test neighborhood price levels, relative to control prices, following changes in the racial pattern. Few such shifts took place in the areas studied, and where they did occur they were moderate.

Two broad conclusions stand out: *first*, price changes which can be connected with the fact of nonwhite entry are not uniform, as often alleged, but diverse. Depending on circumstances, racial change in a neighborhood may be depressing or it may be stimulating to real estate prices and in varying degrees. *Second*, considering all of the evidence, the odds are about four to one that house prices in a neighborhood entered by nonwhites will keep up with or exceed prices in a comparable all-white area. These conclusions are chiefly based on observations of real estate markets in a period of generally rising prices. This period, moreover, was characterized by unusually strong demand for housing, * * *.

KATZENBACH—EXHIBIT NO. 2

* * * greatest problems is its choice of neighborhoods. The neighborhood is often thought to be the determinant of many other aspects of life: schools, friends, recreation, and other social outlets. A whole complex of personal and environmental experiences, one generally believes, is determined once and for all by neighborhood. Once established, most Americans expect their neighborhoods to remain as originally assumed—if not more so.

But America is dynamic; and fear of change is contrary to this dynamism, which is based on a general belief in the progress of the individual. Mobility is an inherent part of progress. Presently, the main group seeking change in the United States and indeed in the world is the nonwhite community. This change will have its economic as well as its social repercussions. From the economic point of view, change in our neighborhoods often raises the fear of instability caused by the "newcomer." Fear is compounded by the possible loss of social status, prestige, and neighborhood friends. A host of other doubts arise as the most "outside" of all groups, nonwhites (and particularly Negroes), seek to enter a neighborhood.

In spite of mounting evidence proving that these fears are not valid, many lending institutions still follow old policies of making loans on properties to nonwhites only in those areas where nonwhites reside. In recent years, with the increase of state and local laws designed to eliminate discrimination in housing, more of them have been willing to lend to qualified nonwhite buyers. They do not preclude areas for which nonwhites qualify economically, although many are still reluctant to make the first such loan in an area. Their explanation, when queried, is usually that it is now illegal to discriminate. Thus laws have enabled them to make qualified loans without fear, by placing the responsibility for practices of nondiscrimination on the legislatures and courts.

The Myth of Declining Value.—In recent years, fewer lenders have cited declining values, supposedly caused by the entry of nonwhites into a residential area, as a reason for turning down a loan applicant. Numerous studies of the impact of race on property values have altered the view that such declines are inevitable, or even that they take place.[8] Old concepts about neighborhood homogeneity, the relationship of changes in value to housing supply, the price mechanism as a controlling factor in family mobility, the significance of panic-selling and block-busting techniques, and property maintenance habits of nonwhite families are being revised and are no longer supported by responsible literature in the field. One of the other papers in this volume reviews recent findings on the rela-

tionship of property values and race and concludes that the factor of race alone does not adversely affect values.' Fear of offending clients or other businessmen has become the more frequently used justification for refusing to finance the first nonwhite entry into neighborhoods.

OUTSIDE INFLUENCES IN MORTGAGE LENDING PRACTICES

Two other developments have increasingly influenced change in mortgage investment policy toward nonwhite borrowers: (1) an increase in the number and size of mortgage lending institutions owned and operated by nonwhites and (2) changes in local, state and federal laws concerning racial discrimination in housing.

Negro-Owned-and-Operated Lending Institutions.—Before World War II, institutions owned and operated by Negroes represented relatively little accumulated capital. For the most part, this was held by small life insurance companies and a few Negro-owned banks and savings and loan associations.

After World War II, some of the larger Negro-owned-and-operated insurance companies began to invest in larger residential subdivisions for Negroes. Most of these investments were in the South where there were relatively larger numbers of middle-income Negroes. Yet total national investments of these institutions were inadequate to meet the demand for mortgage funds by nonwhites.

In more recent years, the growth of Negro-owned insurance companies has been substantial, and their investments in home mortgages have increased accordingly. In 1921 the National Negro Insurance Association was organized with an initial representation of 13 companies. At the 43rd annual session, the association (now called the National Insurance Association) listed for the year ending December 31, 1962, a total of 45 companies with assets of $343,155,674. These companies reported mortgage loans on real estate totaling $94,356,101. The Golden State Mutual Life Insurance of Los Angeles, for example, has developed assets of more than $22 million without acquiring other financial institutions or merging with them, and in spite of the strong competition for the nonwhite savings and * * *.

KATZENBACH—EXHIBIT NO. 3

The case studies presented here a sampling of situations where nonwhites have been able to exercise freedom of residential choice. The developers in these studies are representative of those who have sold, rented or leased their housing on an open-occupancy basis. These builders have lost neither business nor reputation by dealing with Negroes. On the contrary, their operations in existing market conditions were successful.

The examples were drawn from diverse types of areas—in city centers on the west coast, in rapidly growing suburban and fringe areas of the east and midwest, on vacant "passed over" sites near some older Negro residences, in a large urban renewal area in Chicago adjacent to a predominantly Negro private development, and outside a small city with specialized employment. Increasing educational and employment opportunities among Negroes, coupled with increased exurban location of industry and commerce, are resulting in expanded home market potentials among these families. These factors and the growth of urban populations make inevitable the movement of Negroes into residential areas previously closed to them, in cities and in suburbs, as well as into newly developed areas. The Executive Order on Equal Opportunity in Housing, and an increasing number of state and local ordinances outlawing discrimination in housing will facilitate this trend.

The studies suggest that there are ways in which builders and their sales firms, selling on an open-occupancy basis, can enjoy success in the face of these new market facts. They also point to practices which may lead to failure.

The experience reported in these studies should provide useful guidelines to the housing industry in the years ahead.

Demand for dwellings by nonwhite families throughout metropolitan areas will certainly grow as employment opportunities expand to outlying areas and as income increases. We can expect that the movement of minority families into better homes and better neighborhoods will accelerate. This will not happen

all at once. Minority families, like others when they move, like to choose their own time, their own houses, and their own locations.

Availability of a large volume of housing to nonwhites—big enough to provide freedom of choice from among a full range of prices, designs, and locations is important not only to them but to the building industry and to each community.

This will mean that the transition to integrated neighborhoods will be based on individual voluntary family decisions rather than on involuntary pressures of restricted ghetto patterns. In turn, this new free movement will facilitate the acceptance of these newcomers in the neighborhoods. It will also mean that communities will find it easier to deal with development and redevelopment needs. And it means that many builders will have the opportunity of expanded markets.

Prior to President Kennedy's Executive Order on Equal Opportunity in Housing of November 1962, many developers were successfully selling or renting units to nonwhite households. Since issuance of this Order, the number of such developers has increased throughout the Nation.

The case studies presented within this text describe the experiences of several developers who are operating on an open-occupancy basis. While the limited number of cases prevents generalization, it is gratifying to note that in no case did a developer or builder handling units with an open-occupancy policy suffer an economic loss. In many instances, developers found their market widened and project sales insured by a first come first served policy.

It is our hope that the presentation of a variety of experiences of open-occupancy developers will encourage others to engage in the practice with confidence.

ROBERT C. WEAVER,
Administrator, Housing and Home Finance Agency.

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KATZENBACH—EXHIBIT NO. 4

RESIDENTIAL INTEGRATION AND PROPERTY VALUES

(By Erdman Palmore and John Howe, Yale University)

There is a widespread fear among white home owners that when Negroes move into white neighborhoods property values fall. A recent survey of whites in interracial neighborhoods shows that 40 percent thought their property value had decreased since Negroes had moved in.[1] Many realtors share this belief, although many others have challenged it since the 1940's.[2] In contrast, the systematic studies carried out in California, Oregon, Kansas, Illinois, Michigan, and Pennsylvania all agree that nonwhite entry was usually associated with rising rather than falling prices.[3]

However, as far as we know there has been no such systematic study in New England prior to the present study. This study measures the effects of Negro entry on property values in nine neighborhoods of a New England city: New Haven, Connecticut. It also describes the degree of Negro influx, the rate of turnover, and compares the occupational class of the Negroes with that of their white neighbors.

THE NEIGHBORHOODS

We restricted our study to those neighborhoods which were primarily residential, in which no Negro family had lived prior to 1950, and into which one or more Negro family had moved between 1950 and 1960. The Housing Committee

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[1] 28 percent thought it had remained the same, 8 percent thought it had increased, and 25 percent had no opinion. Henry G. Stetler, "Racial Integration in Private Residential Neighborhoods in Connecticut" (Connecticut Commission on Civil Rights, Hartford, Conn., 1957).

[2] Luigi Laurenti, *Property Values and Race*, Berkeley: University of California Press, 1960, pp. 8–27.

[3] *Ibid.*, pp. 53–55.

of the Greater New Haven Human Relations Council provided an initial list of Negro families and their neighborhoods which they thought would qualify. This list was supplemented by the New Haven Relocation Agency, by Negro community leaders, and by some of the Negroes on our initial list. Each Negro family was then checked for date of entry and whether there had been any Negro family living within a three block radius prior to this date of entry.

We found nine neighborhoods into which Negroes first moved between 1950 and 1960. They were distributed among four towns in the greater New Haven area. Most of the houses in these neighborhoods were single-family, owner occupied, middle and upper class. Two or three neighborhoods were relatively new projects, but most had been built a decade or more ago.

TABLE 1.—*Property value increase, Negro influx, turnover, and occupational class*

Neighborhood	Percent increase in value [1] (1)	Number Negro families (2)	Number years elapsed [2] (3)	Turnover [3] (4)	Negro class [4] (5)	White class (6)
A	0	1	5	19	2.0	4.4
B	3	1	1	14	1.0	3.6
C	4	1	5	9	1.0	2.0
D	5	4	10	20	2.5	4.0
E	5	1	11	11	1.0	3.2
F	8	2	4	12	1.0	2.4
G	13	1	4	8	3.0	4.4
H	15	3	5	17	2.0	4.2
I	15	1	4	28	1.0	2.0
Averages [5]	5	1.7	5.3	17	1.8	3.4

[1] Percent annual increase in property values.
[2] Number of years elapsed since first Negro entry.
[3] Average number of years between sales per property.
[4] 1 is highest class, 7 is lowest class.
[5] Average for column 1 is the median; all the other averages are means.

INCREASE IN PROPERTY VALUES

Our method for estimating the trend in property values for each neighborhood since Negro entry is as follows. First, we compiled a list of the ten houses closest to the first Negro entering the neighborhood. We then checked these addresses in the Town Clerk's office which keeps a record of all property deeds and sales. If there were less than five sales among these addresses since the period beginning two years before Negro entry, we added more addresses of close neighbors until we had records of from five to ten sales on which to base the trend.

We examined the records of 165 properties and found 61 sales among them. The deeds do not usually state the exact sale price, but they do state the amount of mortgage involved, back taxes paid, and have tax stamps affixed at the rate of 55 cents for every 500 dollars cash paid. Adding all these items gives a close estimate of the actual sale price. It is true that some sellers may affix slightly more tax stamps than needed in the hope of making their property appear to be worth more than it is. However, this error should not affect over-all trends such as those we were estimating because the error should occur as frequently at the beginning as at the end of the time periods involved.

Next we divided the sales price by the assessed valuation made by the Town Assesor in the year prior to Negro entry. This ratio of price to assessed valuation controls for diversity of type and size of house sold and yet reveals over-all price trends.[4] Then we plotted these ratios on a scattergram by year of sale and fitted a trend line. Finally we computed from this trend line the average annual percent price change for each neighborhood.

There are at least three advantages to this method. First, it is based on actual market prices rather than on appraised values. Any kind of appraised value is

[4] This is the ratio used by Laurenti, *op. cit.*

necessarily based on the subjective standards of the appraiser which may obscure the very trends this study seeks to measure. Second, it is based on *all* the sales of houses close to the Negro rather than those sales which happen to be listed in a multiple listing agency or certain real estate agents.[5] Third, it is based on the property values of *close* neighbors rather than on those who may live several blocks away.

Column 1 of Table 1 presents the average annual percent increase in property values for each of the nine neighborhoods. We see that in no case was there a decrease in property values. Neighborhood A shows no increase, but all the others show increases ranging from 3 to 15 percent per year.

How does this compare to the trend in home prices for New Haven as a whole? Data supplied by the New Haven Real Estate Board indicates that home property values in New Haven have been rising at about 3 percent per year during the last 10 years. Thus our study shows that 8 out of our 9 interracial neighborhoods have kept up with or surpassed the general trend of increasing prices. The median annual increase for these neighborhoods is five percent, which is well above the average increase for New Haven as a whole.[6] Apparently then, New Haven is similar in this respect to all the other cities studied.

Many people find it hard to believe that property values usually go up after Negro entry. They point to the obvious fact that some whites do not want to live in integrated neighborhoods and therefore conclude that Negro entry should reduce the demand for houses in that neighborhood, which should reduce their price. What they fail to consider is the probability that Negro entry will open up a new market for those houses, the market of potential Negro buyers. In most cases, this new Negro demand apparently equals or exceeds the loss in demand from the white home owners.[7]

DEGREE OF NEGRO INFLUX AND RATE OF TURNOVER

Another fear of white home owners is that the entrance of one Negro in their neighborhood will shortly be followed by an "invasion" of large numbers of Negroes until their neighborhood becomes predominantly Negro. Column 2 shows that this has not occurred in any of the neighborhoods studied. In most of the neighborhoods, no Negro families have followed the initial Negro entrant. The largest number of Negro families to enter any one neighborhood is four and this has occurred over a ten year period. On the average, less than two families (1.7) have entered over a period of more than five years. Thus it is clear that all these neighborhoods have remained predominantly white and that there has been only a low degree of Negro influx.

Regardless of the degree of Negro influx, some might expect that many of the white homeowners would decide that they no longer want to live in the neighborhood since Negroes came in and thus would sell their houses and move out. This would result in a high rate of turnover. We measured the amount of turnover in each neighborhood by multiplying the number of properties we examined times the number of years since Negro carry and dividing by the number of sales that occurred. This gives the average number of years between sales for each property. Looking at Column 4 we see that this rate of turnover ranged from a low of 8 to a high of 28 with an over-all average of 17 years between sales. How does this compare with turnover in other New Haven middle and upper class neighborhoods? The New Haven Real Estate Board estimated that the average middle and upper class home is roughly held from 10 to 15 years between sales. Thus it seems that these neighborhoods have roughly average or below average rates of turnover. Apparently few white homeowners decide to sell out because of the Negro entry.

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[5] Laurenti used multiple listing files and individual real estate offices which yielded less than 50 percent of all area sales.

[6] Using the one-tailed binomial test of significance, these higher rates of increase have a p of less than .04.

[7] This seems to be true despite the fact shown in the next section that few Negroes actually bought homes in these neighborhoods. The mere existence of this new Negro market apparently helps keep prices up, regardless of whether any additional Negroes actually move in or not. This is only a hypothesis. There may be other forces operating which our data do not reveal.

OCCUPATIONAL CLASS

The final fear we will deal with is the fear that the incoming Negroes will be from the lower classes and thus have inferior educations, occupations, cultural standards, health and morals. We were able to estimate the class levels of the Negroes and their white neighbors by rating their occupations as listed in the New Haven City Directory. We used the Hollingshead Occupational Scale which ranges from a score of one for the higher executives, proprietors of large concerns, and major professionals, to a score of seven for unskilled employees. Column 5 presents the average occupational scale score for the Negroes in each of the neighborhoods and Column 6 presents the average score for their white neighbors.

In each case the Negroes have a higher occupational class than the whites.[8] Thus not only is the fear of Negro entrants being from a lower class groundless, the exact opposite seems to be true. This is probably due to two factors. Negroes often have a lower income than whites in the same occupation. Thus, they may be able to afford homes only in areas where the average white class is a little below theirs. Secondly, they may find less resistance to their entry when their class is a little higher than the whites'.

DISCUSSION AND SUMMARY

To what extent are these neighborhoods typical of the rest of New Haven or of neighborhoods in other cities? Certain characteristics of these neighborhoods which limit their representativeness should be borne in mind. First of all, these are predominantly middle and upper class, owner-occupied neighborhoods. Thus they do not represent the lower class or renter-occupied neighborhoods found around the center of the city. It may well be that the latter type of neighborhood would experience heavier turnover and more Negro influx following Negro entry. Secondly, Negroes have been in these neighborhoods, on the average, only about five years. It is possible that the patterns would be different if Negroes had been there several times as long. But our data show no significant differences between the neighborhoods in which Negroes have been for ten years and the other neighborhoods.

There are several characteristics of New Haven that probably make it unrepresentative of many other cities. Obviously one would not expect to find such patterns in Southern cities. Second, although the Negro population in New Haven has more than doubled in the last ten years, there still seems to be a relatively small Negro upper class. This may have limited the amount of Negro influx in these neighborhoods. Finally, New Haven may have more tolerance toward integrated neighborhoods than many cities, perhaps due to the presence of a university and several colleges, perhaps due to the active work of several civic organizations promoting tolerance and integration.

On the other hand, all the previous studies in other areas agree in general with our findings that property values usually rise following Negro entry and that the class of the Negro entrants is usually higher than that of their white neighbors. As far as we know the rate of turnover has not been computed in previous studies. The one finding clearly different from most previous studies is the low degree of Negro influx in all the neighborhoods we studied. This low degree of influx may be due to any or all of the above special characteristics of these neighborhoods.

Thus, bearing in mind the above qualifications, we believe that the nine neighborhoods we studied are typical in most respects of most middle or upper class, owner occupied, and relatively tolerant neighborhoods.

In summary, our study of the nine New Haven neighborhoods into which Negroes have entered between 1950 and 1960 shows that: 1) the property values in all but one of these neighborhoods has increased as much as or more than average; 2) there has been a low degree of Negro influx; 3) there have been stable rates of turnover; and 4) the Negroes have higher occupational class levels than their white neighbors. These findings agree in general with

[8] Using the one-tailed binomial test of significance, p equals .002.

previous studies in other areas and should help to allay the fears of whites about the effects of residential integration.

[From the Georgetown Law Journal, Vol. 54, p. 156]

KATZENBACH—EXHIBIT NO. 5

* * * to decline. The second is the contention that fair housing laws unlawfully destroy the basic rights of all property owners.

Although property values were once considered to be most secure in racially homogeneous neighborhoods, responsible research refutes this contention. One of the most detailed studies concerning the effect on property values of Negroes moving into formerly all white neighborhoods is a five-year investigation of 10,000 real estate transactions in seven cities across the nation. "The major statistical finding of the present study," the author states, "is that during the time period and for the cases studied the entry of nonwhites into previously all-white neighborhoods was much more often associated with price improvement or stability than with price weakening." In comparing the behavior of prices in several cities, the author concluded that in 85 percent of the cases, the percentage increase in prices in areas entered by nonwhites equalled or exceeded that in comparable all white neighborhoods. In only 15 percent of the cases were the percentage increases lower than those in all white areas.

Research of this character, at the least, raises considerable doubt that there is any relationship between property values and race. It is clear, however, that in some cases fear of declining property values resulting in panic sales can become by its own force a self-fulfilling prophesy. As the 1959 report of the United States Civil Rights Commission pointed out: "In a real sense, the only thing people in this situation have to fear is fear itself." According to one of the largest home builders in California who has enjoyed commercial success with open-occupancy projects, this policy clearly is good business.

[From: Sherwood Ross, Washington, D.C.]

KATZENBACH—EXHIBIT NO. 6

JANUARY 26, 1966.

WASHINGTON, D.C.—Do home values decline when Negro families move in?

A mammoth new study of 1,323,762 homes in 47 major cities over a 10-year period by an urban sociologist here says they do not.

"In fact," says Sherwood Ross, a Washington consultant on racial affairs, "home values are soaring all over the nation, in white, Negro and changing census tracts. Trying to find a neighborhood that declined is like looking for a needle in a haystack."

The new study, based on official U.S. Census data, took a long, hard look at 1,810 census tracts and noted their changes between 1950 and 1960. It found:

Some 1,793 tracts showed hefty increases in the median value of homes; 2 remained the same and only 15 declined—less than one per cent.

Tracts of Negro homes skyrocketed on an average of 61 per cent over the decade compared to 35 per cent for white communities. Integrated neighborhoods jumped 45 per cent and changing neighborhoods 42 per cent.

"The swift growth of the Negro middle-class—financially, and culturally" has produced the gain, Ross says. "Negro families are pouring every available nickel and dime into their housing in an effort to catch up with the white families."

Nearly two per cent of the non-white neighborhoods chalked up gains of 100 per cent or more in home values.

Of the 15 tracts which declined in home values (out of 1,810), four were in Houston, 5 in Memphis, 2 in St. Louis, and one each in Indianapolis, Richmond, Springfield, Mass., and Atlanta. Nearly all were in the South, 60 per cent were in white neighborhoods and the sharpest dip, in one Houston tract, was only 14 per cent.

Most losses were under five per cent. But gains—recorded in 99 per cent of all the tracts studied—averaged between 25 and 50 per cent and often rose over

80 per cent. One white tract in Atlanta rose 380 per cent and one Negro tract there 225%.

"I think this should kill the myth that home values fall when Negroes move in," Ross says. "White homeowners talked into selling short by crooked real estate swindlers and panic-peddlers would find their homes rising steadily in value if they would only hold on to them. No white homeowner in America need lose a dollar on his house."

"Unless the public unravels the property value myth, bitterness and acrimony will keep the races apart in our big cities and borderline warfare will continue."

Previous surveys by urban sociologists for isolated census tracts in cities here and there tended to suggest that home values were not dropping but rising during integration. This, however, is the first survey to measure all possible tracts in a large number of cities using impartial Census data.

"Nevertheless," says Ross, "I think the findings, however startling, will be modest when the effects of the burgeoning prosperity of recent years are repeated in the 1970 Census."

Ross sifted through Census data for nearly two years to make his study. Last year, also using Census figures, he reported on the condition of Negroes in 68 urban centers for the National Urban League, a social work organization.

A native Chicagoan, Ross took his B.A. in race relations at the University of Miami, Florida, in 1955. Afterwards, he worked for newspapers and served four years as assistant to the director of public relations for Mayor Richard J. Daley of Chicago. He has written for numerous national magazines and newspapers.

He resides with his wife, Kathleen, and two sons, Sean, age 3, and Karl, 1, at 114 7th Street S.E., Washington, D.C.

SURVEY SAYS NEGROES LIFT WHITE AREA VALUE

A nation-wide survey shows that prices of owner-occupied housing rise when Negroes move into white, inner-city neighborhoods.

"This should finally destroy—once and for all—the myth" that Negroes cause private housing prices to fall, Sherwood Ross, information and research director of the Washington Urban League, said yesterday in issuing the results of his survey. Ross made the study on his own initiative and not for the Urban League.

The survey was based on comparative market value and population statistics for 1950 and 1960 in U.S. Census tracts in 47 large cities.

Ross said that it is the first Nation-wide survey of privately owned and occupied houses in center cities. He added that his results were confirmed by three prior studies of individual cities and by a spotcheck system employed by the U.S. Census Bureau to verify its own census studies.

The survey was based on every "measurable" census tract, a total of 1,810, in 47 cities with populations of 100,000 or more.

It counted 1.3 million private inner-city homes of which 100,000 were nonwhite, mostly Negro. Ross excluded from his survey about 1,200 tracts which were mainly commercial, industrial or had their boundaries so changed in 10 years that they could not be compared accurately.

The survey showed that while housing prices for predominantly white neighborhoods (85 per cent white or more) increased about 35 per cent in the 10 years, prices in predominantly Negro neighborhoods increased 61 per cent.

But Ross pointed out that the average Negro inner-city homes still remains much lower-priced than the white inner-city home.

Changing neighborhoods—areas which lost about 10 per cent of their white populations and gained Negro residents—showed a market-value increase of 42 per cent.

Integrated neighborhoods—areas which remained racially stable over the 10-year census period—showed an increase of 45 per cent in market value.

Ross pointed out that prices are sky-rocketing in predominantly Negro neighborhoods because there is not enough good housing available and because the increasingly affluent Negro middle class is spending much of its income to improve existing housing.

Study of 47 U.S. cities

City	Total homes	Non-white homes	Tracts	Increase	Same	Decrease	Percentage gain			
							White	Changing	Negro	Integrated
Akron	26,116	1,220	27	27		0	46	42		
Atlanta	26,418	5,233	49	48		1	52	61	77	91
Austin	18,385	2,165	15	15		0	30	73		25
Birmingham	21,184	6,870	31	31		0	25	65	93	55
Bridgeport	15,451	331	18	18		0	37	62		
Chattanooga	14,900	1,771	26	26		0	38	79	81	38
Cincinnati	36,781	1,574	60	60		0	27	33	59	
Cleveland	103,156	6,855	145	145		0	38	45	50	38
Columbus	22,355	3,449	29	29		0	39	41	57	
Dayton	21,747	895	35	35		0	29	34		
Denver	11,542	127	10	10		0	44	34		
Duluth	14,525	41	29	29		0	42			
Durham	958	544	3	3		0	11	33	78	
Flint	23,779	383	31	31		0	48	59		
Fort Worth	26,439	3,943	31	31		0	25	43	31	
Greensboro	2,969	384	6	6		0	44	33		
Hartford	3,707	19	8	8		0	34			
Houston	46,081	5,394	37	33		4	16	6	59	36
Indianapolis	36,934	5,596	56	55		1	33	37	65	7
Kalamazoo	6,924	247	9	9		0	33	40		
Kansas City	54,767	4,796	65	65		0	45	35	62	5
Louisville	26,528	3,824	41	41		0	35	43	52	
Memphis	51,323	12,280	74	68	1	5	21	38	72	39
Milwaukee	60,244	685	109	108	1	0	NA	NA	NA	NA
Minneapolis	70,630	517	91	91		0	38	36	37	
Nashville	6,253	1,572	13	13		0	60	41	72	
New Haven	11,620	90	18	18		0	37	57		
New Orleans	24,679	3,946	62	62		0	42	86		67
Omaha	27,427	2,165	35	35		0	35	24	53	51
Paterson, N.J	10,396	69	16	16		0	52	51		
Portland, Ohio	10,751	65	11	11		0	28	41		
Providence	17,424	273	24	24		0	20	19		
Richmond	28,857	6,684	51	51		0	22	31	48	
Rochester	41,610	277	66	66		0	35	30		24
Sacramento	23,316	784	26	26		0	33	31		
St. Louis	84,402	5,658	103	101		2	34	21	22	−4
San Jose	1,920	27	6	6		0	44			
Spokane	26,759	237	30	30		0	32	33		
San Diego	33,250	1,633	52	52		0	56	90		
Seattle	74,284	2,498	74	74		0	44	45	45	
Springfield, Mass	14,840	332	16	16		0	27	16		
Syracuse	23,470	21	39	39		0	38	35		
Tacoma, Wash	30,133	296	31	31		0	36	31		
Toledo	40,661	2,423	43	43		0	34	33	50	
Trenton	17,545	1,058	20	20		0	28	49		
Utica	6,853	7	12	12		0	39			
Wichita	23,469	1,289	29	29		0	21	18	98	
Total	1,323,762	100,547	1,810	1,795	2	13	35	42	61	45

NA—Not available.

The percentage gains summarize findings for white cities (46); changing (42 cities); Negro (20 cities); and integrated (14 cities).

KATZENBACH—EXHIBIT NO. 7

[From the Evening Star, Jan. 13, 1965]

NEIGHBORS, INC.—THE STORY OF AN EFFORT TO BUILD AN INTEGRATED COMMUNITY

(By Haynes Johnson, Star Staff Writer)

In a quiet residential section of Northwest Washington, a group of citizens were discussing a mutual problem. It was a time, a woman said, when "insane, destructive rumors were doing more to destroy us than anything else."

They talked about those rumors, about friends who asked, "Oh, are you still living in Washington?" and about the man next door who said despairingly,

"The neighborhood is gone." They mentioned the schools, and they quoted percentages and ratios.

Then someone said: "Each one of you is a missionary. Each one of you is a real estate agent."

Now, in retrospect, the words sound melodramatic; at the time they were not.

That meeting six years ago was part of the early effort of a group called "Neighbors, Inc." to stem a tide of fear and panic on the part of homeowners who saw Negroes moving into their all-white neighborhoods.

Today the fear and panic have been largely quieted. But Neighbors, Inc., still faces discouraging problems in its effort to maintain a stable—and integrated—community. The outcome is very much in doubt.

Long before there were slogans about building the Great Society, those residents of a 250-block area of Northwest Washington were working to achieve one of the goals set by President Lyndon B. Johnson in his State of the Union address.

The goal, as the President expressed it, is "to make the American city a better and more stimulating place to live."

President Johnson also spoke of the problems of those who live "isolated from neighbors and nature, confined by blighted cities and bleak suburbs." And he posed what he called the central problem today in our urban areas, the problem of protecting and restoring "man's satisfaction in belonging to a community where he can find security and significance."

Left unsaid is the real problem, one shared by all metropolitan areas—the emotional problem of race. As everyone knows, in Washington as in other big cities, whites have moved out as Negroes have moved in. Isolation and blight have resulted in some sections.

While this story is limited to one experiment in one section of one city, the successes and failures of that experiment hold obvious lessons for Washington and for other communities in their efforts to achieve the goal set by the President.

FOUNDED IN 1958

"Neighbors, Inc.," an inter-racial organization, was founded in the spring of 1958. It was not created solely to accomplish lofty goals. In the beginning many in the organization were frankly motivated, in part at least, by self-interest. They were concerned with protecting the value of their property.

The members began Neighbors, Inc., with three general assumptions.

First, they believed that an integrated community is a desirable community. Second, they recognized that the pressures created by urban renewal, real estate speculators and the inbred fears of racial prejudice made it extremely difficult to create and maintain such a community without special effort. And third, individually they liked their homes and they did not want to move.

They lived in one of the most attractive areas of Washington, encompassing about 4½ square miles of the Brightwood, Manor Park, Shepherd Park and Takoma Park areas. Their section bounded roughly by Kennedy Street on the south, Rock Creek Park on the west, Blair road on the east and the Maryland line on the north, had excellent schools, community facilities, shopping and transportation. They wanted to stay. But despite their support of integration, few were willing to stay if they would be the last white family on their block.

From the beginning, Neighbors, Inc., has approached its task realistically. The goal was a stable, integrated community. If this meant attracting whites back into the area in competition with Negroes who were looking for homes there, the members were neither sentimental nor apologetic about it.

"To keep the area integrated, to keep it interesting, this was—and is—the toughest job. It demands dedication and labor," one member said.

The members of Neighbors have displayed both those qualities. They have proven many points; they have shown the way to other communities; they have become, whether they wanted to or not, a model.

"LIVELY COMMUNITY"

Looking back on what has been accomplished, Marvin Caplan, a former journalist, who was the founder and first president of Neighbors, put it this way:

"We have attracted young white families with children back into the area, and this group and the Negro families together have formed a community—one

of the liveliest, most stimulating communities I've ever been associated with. I don't suggest this has been accomplished without problems, or that we have achieved genuine integration. But we have genuinely created a healthy relationship."

Caplan, who is white and now works for the AFL–CIO in Washington, said that in the early days Neighbors primarily was on the defensive.

"We were always holding block meetings, running back and forth, trying to stem panic," he said. "This is still needed, but to a much lesser degree. Now there's more of a sense of community. Now we're more concerned about street lights and garbage collections and picking up the leaves.

"In other words, we are fulfilling more of the functions of a citizens' organization. And, in fact, as you know, Neighbors really grew out of the inadequacy of the citizens' organizations to meet the situation.

"The citizens' groups achieved good things for the community—a swimming pool, libraries, playgrounds—but they were mainly physical things."

Neighbors has concentrated on the intangibles, on combatting the attitudes which produce panic. Through open houses, teas, block meetings, book and art fairs, community music projects, and printed literature Neighbors has been able to allay fears and create a new social climate.

But it has taken some tangible steps, too. It maintains a central housing list, for example. Compiled by checking newspaper real estate ads and by word-of-mouth information on prospective buyers and sellers, the list enables the organization to keep an accurate check on changes in the community. And it also enables Neighbors to attract new residents and combat panic selling.

While statistics are not necessarily an accurate measure of Neighbors' progress, at least one figure is significant. At the end of its first year Neighbors proudly claimed 175 members; today there are more than 1,400, including high government officials, educators and professional men and women.

But there is another side to the statistical figure. Those 1,400 people are part of an area of 40,000 persons. And the area itself continues to change from white to colored.

Since the 1960 census, which showed the Neighbors' area to be about 23 percent Negro and 77 percent white, the Negro population has increased steadily. Until the next census is completed, however, there is no way to determine the exact extent of the racial change. It has been estimated, for example, that Shepherd Park has increased from 2 to 20 percent Negro since 1960, with other areas of Neighbors' showing an even higher percentage increase.

Mrs. Margery T. Ware, the paid executive director of Neighbors, with an office at 5802 Georgia Ave. NW, concedes that the number of whites brought into the area in the last six years is a relative handful, and that there has been a net loss of whites.

"All we've done is a prelude to show that one of the best residential neighborhoods in Washington objectively does have something to sell," she said. "We have to show that in fact whites will live in an integrated neighborhood."

TWO KEY PROBLEMS

From the beginning, Neighbors has faced two great problems: real estate agents and the public schools.

Officials of Neighbors maintain that real estate agents won't show houses in their area to whites. ("That's our roughest area," Mrs. Ware said.) While that is true in many cases, it is only a part of the story.

Real estate agents are pragmatic. They show a customer what they think he wants. And they think that most customers—white, of course—do not want to live in an integrated situation. One real estate man, who handles property in the Shepherd Park area, explained his position this way.

His firm will show homes to whites, but only after the agents try to determine if the whites "have the proper philosophical attitude."

"We tell people, 'Look, we have places in the county and we have places in the city. How would you feel about living in an integrated neighborhood?' If they are interested we show them. But we always make it clear."

Asked if he took this approach to all prospective white buyers, he replied:

"We'll, I probably wouldn't, for instance, mention it to a man from Dallas, Tex. If you generalize about it, you probably could say that the white people who are interested in looking at Shepherd Park are young, intelligent, with a good economic and definitely a good educational background. I would say if I tried to classify them that they tend to be on the intellectual side.

"In other words, the salesman who is shifted by his company to Washington would be less inclined to want to look for an integrated situation. Those from the Northern cities are more inclined to at least look.

"There has been a change in attitudes about this. Compared to five years ago, it's a 100 percent. But it's still only a small percentage of the total people who want to look."

Another change has been in the practice of some real estate speculators in the area. Panic selling, or "blockbusting," is not as serious a problem as it was six years ago. But it still occurs. A case last summer was illustrative.

A house on one predominantly white block was sold to a Negro family by a real estate agency. Immediately after that many of the residents there were contacted by agents of that company, and a second one. They were urged to sell.

Four neighbors on the block drafted a letter and sent it to each family on the block. Portions of the letter read:

"These agents have never mentioned the race of our new neighbors. Their sales pitch, however, always includes the information that that house has just been sold, that they can get for us a specific amount for our homes if we sell now, and they may not be able to do 'as well' for us at a future date. This looks to us like a deliberate campaign on the part of the real estate agents to change our neighborhood for their own profit.

"If you were not heretofore considering selling your house, we urge you not to do so now just because of the advice of any real estate agent, for several reasons. First, the average selling price of houses in the Shepherd Park area has risen 22 percent in the last 10 years, while the increase for Washington as a whole during the same period was only 6 percent. This large increase in property values in our neighborhood has taken place during the same period that integration has been under way, contrary to what many real estate agents would have us believe. Our homes will probably continue to increase in value in the coming years."

Public Schools

But when it comes to attracting white people into the area, invariably the prospective buyer asks about the public schools.

"That is brought up very quickly," a real estate agent said. "What they say is, 'What's the ratio?' And if the school is one of those that's 75 percent colored, they often will politely say they're not interested."

The question of the schools is probably the most difficult of all. A truly enormous effort has been made by Neighbors to stress the excellence of the schools in the area: The point is made repeatedly that the quality of education does not change; if anything, new programs have been introduced to raise the level of education.

Test scores are cited, showing that public school students in the Neighbors' area consistently place well above national averages on both intelligence and achievement tests. A "Democracy in Action" program at Paul Junior High School, organized in 1962, gives students an unusual opportunity to study at first hand the working of the federal and District governments.

Still, for many parents, the ultimate question is the percentage of Negroes in the schools.

There are six elementary schools, and a junior and senior high school in the Neighbors' area. A comparison between enrollment figures in October 1964 and October 1963 shows:

Brightwood Elementary in 1963 had 135 white and 580 Negro students: now it has 105 white, 630 Negro. Keene Elementary in 1963 listed 73 white, 819 Negro; now it has 46 white, 874 Negro. Rudolph Elementary in 1963 had 25 white, 838 Negro; now, 9 white, 892 Negro. Shepherd Elementary in 1963 had 315 white, 153 Negro; now, 281 white, 228 Negro. Takoma Elementary in 1963 had 224 white, 277 Negro; now, 200 white, 339 Negro.

Paul Junior High School in 1963 had 262 white, 922 Negro; now, 208 white, 1,000 Negro. Coolidge Senior High in 1963 had 359 white, 920 Negro; now, 279 white, 1,261 Negro.

Two facts are immediately apparent. The Negro ratio is rising, and so is the total number of students in the schools. The resulting overcrowding led one principal to remark, rather bitterly, "There's not a dime of all that foundation money coming in that gives us smaller classes."

EMOTIONAL FACTORS

Behind the school statistics lie emotional factors.

One white housewife, who lives on a pleasant tree-lined street in Shepherd Park near the Carter Barron Amphitheater, expressed a common view. She and her husband, a doctor, moved into their home a year and a half ago. They are members of Neighbors. They have two children of pre-school age.

"Our kids will always go to public schools," she said. But later, she commented, "There are many people in this area who want their children to go to integrated schools. But when the school gets to be all Negro it's a problem. There's no denying it."

The problem works both ways. One Negro remembers a feeling of extreme sensitivity when he was one of the few Negroes in his public school. Once, when he was late for class, he recalls the teacher saying loudly, "Well, Jackson, slam the door softly so we won't notice you're late."

He has never gotten over that feeling of being singled out, and yet he says:

"Maybe I could adjust better personally than a white child if the position was reversed. I don't think white children—say they're only two or three in a class of all Negroes—could adjust as easily as a Negro. White children would feel more out of place, that they were downgraded. A sort of superiority complex, you know."

Another white housewife, living in the Takoma Park section, told of the experiences of her two sons who are in elementary school. She referred to the "myth" that children are not conscious of race. Once, she said, her son asked:

"Mommy, who are those people who are dark and it's not from the sun?"

A MOTHER'S STORY

She and her family are happy in the area. There have been no problems in school and she says the experience of integration has been beneficial. She described the friendship between her older son and a Negro boy, and said:

"In years to come there are going to be some good things to remember. When someone asks Gary then 'What is a Negro?' he'll say, 'A Negro is Neal, and he's one smart guy.'"

But even she said that if her boys were among the 17 white students in a school with 1,400 Negroes it "would be time to think of some changes."

A school official, who praised the work of Neighbors, gave this assessment of the prospects for integration in that area:

"Personally, I'm not under the impression that this thing will hold. It has been a heroic effort, but I wouldn't take bets on the future. Even the Shepherd Park School. In five years it may be all Negro, too. Maybe Neighbors will find the key, but the chances are against it. As long as urban renewal forces people up here you're going to have a corresponding pressure to leave.

"If we lose this battle, it's going to be sad. The only solution is really opening the suburbs. But there have been subsidiary values in Neighbors. At least they're making an effort at making the area into a community.

"I honestly think that Neighbors is doing one of the most important things in the country today. They are showing that urban living doesn't have to be faceless."

In addition to schools and real estate, Neighbors faces another complex problem in the attitude of some Negroes in the area toward what Neighbors is trying to do. Privately, one hears the complaint from whites that "indifference in the Negro community is one of the greatest factors working against us."

Such a remark infuriates Negroes who are, understandably, often doubtful about the motives of whites who want to bring people of their own race back into a section. To some Negroes, this implies that whites think whites make better neighbors—or, conversely, that Negroes are undesirable.

It is for that reason that one person remarked, "You have to have a very tough skin to be a Negro in Neighbors."

That kind of subdued racial friction underscores something of a dilemma for such an organization as Neighbors. In order to maintain a racial balance, initially the emphasis of Neighbors was on attracting white residents. It was important then to stress that whites were staying in the area; that the neighborhood was not deteriorating; that there were in effect, "status" people there.

At the same time there were those—both whites and Negroes—who believed that the approach was wrong, the more emphasis should have been placed on the character of the neighborhood—a neighborhood that was and is, a desirable place to live no matter what the racial composition.

Today, the quality and uniqueness of the neighborhood is stressed more than in the past. But almost inexorably the racial composition of the area continues to change.

Now, one hears expressions of the problems of a white minority.

One person who expressed such a view is a white minister in the area whose congregation has changed from entirely white to about 60 percent Negro. He said that at first he was opposed to Neighbors.

At that time it seemed to him as if Neighbors dropped all interest in a section if it "tipped" and became more than 50 percent colored. That no longer is true, if it ever was.

"Neighbors, Inc., when it was started frankly had very little status among white people," he said. "But it has come to have stature now. They've proven their worth. I would say they have accomplished a great deal. They have shown that you can have an inter-racial community where people can live together and they have helped to avert some of the problems that follow in the wake of a community turning all Negro.

"I would assess their work as very worthy. Their motives are creative. They are endeavoring to work for a stable community.

"They've had a lot of courage and done a lot of things. It has been a noble experiment. But maybe they started too late."

His pessimistic conclusion is not unusual.

"It's something like what Mrs. Kennedy said," another resident remarked. "It's like Camelot. It may not last for long, but while it does it's marvelous."

HOPE IN FUTURE

The officers of Neighbors view the outlook differently.

"No one dreamed six years ago that Neighbors, Inc., would do as well as it has," said Mrs. Ware, the executive director. "Its resources have been meager when compared with the quarter million dollars the Adams-Morgan project got in two years from the federal government."

(Neighbors' approximately $25,000-a-year-income is raised from contributions, foundation grants, and its own community projects.)

She pointed to a number of "encouraging" developments. Among these were the issuance of an executive order on equal opportunity in housing by President Kennedy and the creation of five fair housing groups in the last two years in the Washington metropolitan area. The housing groups, patterning themselves after Neighbors, have been instrumental in moving more than 100 Negro families into the suburbs.

Probably the most important factor has been a change in attitudes toward integration.

At this point few venture a firm prediction about the future. Robert C. Good, a State Department official who is the current president of Neighbors, said in a statement summarizing the situation:

"If we succeed, similar efforts in other parts of this area will be nourished by our experience. If we fail, old fears will be confirmed and the cause of residential integration will be seriously set back."

There is another way of looking at Neighbors, Inc., Mrs. Ware expressed it best.

"You might say we're like Columbus setting out to do something. Everybody said he was crazy, but he did do something. Or, it's like the Pilgrims. You persevere and you achieve something.

"Anyway, whether we fail tomorrow or not, whether we remain integrated or not, Neighbors has been a success."

[From the Washington Post, Jan. 7, 1965]

KATZENBACH—EXHIBIT No. 8

100 NEGRO FAMILIES FIND HOUSING IN WHITE AREAS

(By Robert L. Asher, Washington Post Staff Writer)

More than 100 Negro families have found housing in previously all-white neighborhoods of Washington and its suburbs during a recent 18-month period, officials of fair housing groups report.

The families not only moved into apartment buildings but purchased homes in all price ranges over a widespread area of heretofore white suburban neighborhoods.

A map prepared by the Metropolitan Washington Housing Program of the American Friends Service Committee, Inc., shows where Negroes had become suburban homeowners as of Oct. 1.

Program officials reported that "in a very few cases there was minor community tension and a small number of disgruntled residents" but added that "these problems disappeared as community leaders—religious and civic—took a positive stand, and as the new residents became known as individuals and as neighbors."

VALUES UNCHANGED

They stressed that "in no community involved has there been any drop in property values."

Merlin A. Myers, director of the Program, also noted that no major turnover took place in any of the neighborhoods.

"In most cases, both letters and calls to owners and managers, commending them on the change in policy, were received," he said.

And since October, at least 25 more Negro families have made similar moves, officials added.

Significant gains recorded by the five fair housing groups working with the Program staff were in Montgomery County, they pointed out.

Daniel Safran, associate director of the Program, said the progress in Montgomery can be attributed in large part to the work of Suburban Maryland Fair Housing, Inc., which began seeking homes for Negroes in the County in 1962.

Other notable progress has been made in some areas of Prince Georges County, he said, where more and more homes are opening up to Negro occupancy.

The map does not indicate a number of changes that have taken place in the District's racial housing pattern since the city's fair housing regulation went into effect a year ago.

James C. Slaughter, who handles housing complaints for the District's Council on Human Relations, reported that 58 apartment cases have been conciliated by the Council to date, with others still being processed.

Program officials noted that District neighborhoods west of the Rock Creek area have not opened up much, largely because there is less turnover and less space than in other areas.

ACCEPTED IN VIRGINIA

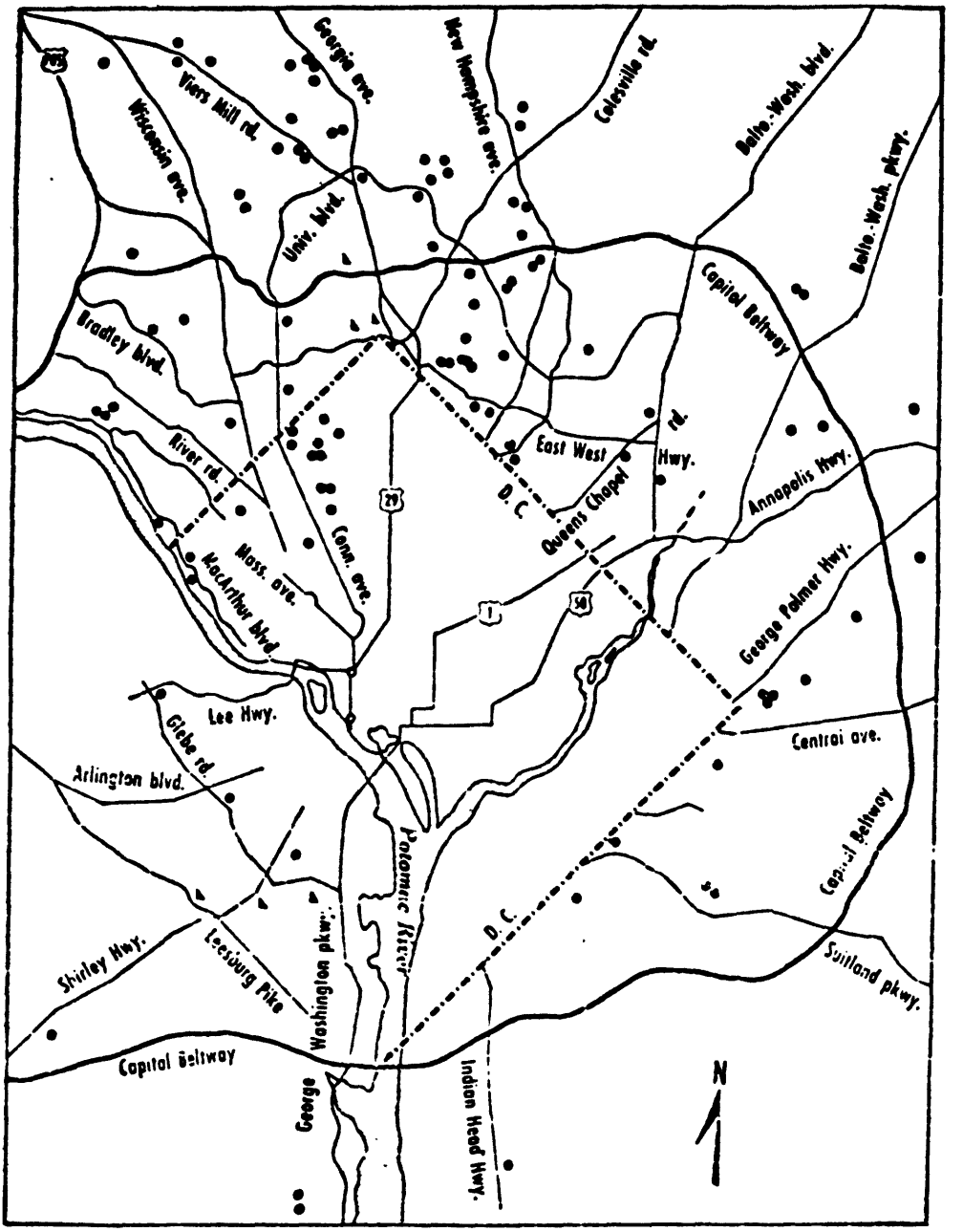
In Virginia, previously all-white neighborhoods in areas such as Woodbridge and Manassas have accepted Negro families in the last few months. But officials say there is more reluctance in the Old Dominion than in Maryland.

"It should be remembered that the dots on the map in no way represent 'targets,' since we do not work this way," Associate Director James Harvey said. "These are homes that the groups found were available and which met the needs of the families."

He pointed out that about four times as many homes as are shown are available to Negroes, "including some in the now dotless areas." He said the groups' lists show homes ranging in price from $14,500 to $40,000.

The Program staff, which may be reached by calling 547–1690, refers inquiries to the appropriate groups for current listings.

"There may be many more Negroes who have moved into new areas on their own," Safran said. "Yet all of us feel much work remains to be done."



Each dot on the map represents a Negro family known to have moved into a previously all-white neighborhood. Each triangle represents a formerly all-white apartment development that has accepted one or more Negro tenants.

The CHAIRMAN. In the criminal contempt provision, section 410, the bill follows the procedures adopted by Congress in the Acts of 1957 and 1965, rather than those of the 1964 Act. Can you give us a reason for this preference?

Attorney General KATZENBACH. Well, I believe that it is at least with respect to modest forms of summary punishment for contempt, that it is important to the dignity of the court to be able to vindicate

its own orders in a summary fashion. This was the view taken by Congress on a number of occasions in the past, so that I prefer the provisions that we introduced, which allow for at least a modest punishment in that respect on a summary basis.

I believe it to be constitutional, and I believe it to be important to the Court to be able to vindicate, at least in this way, its own orders. I think Congress came to a quite wise balance between the need of the Court to have respect and to vindicate its own decisions, and for the right of the individual not to have any major encroachments on his freedom and liberty without the benefit of trial by jury. So I have a preference for the provisions that we suggested, and that were enacted in the 1965 act, to those that exist in the 1964 act.

The CHAIRMAN. Would you say that the language "force or threat of force," in title V, reached damage to property?

Attorney General KATZENBACH. Yes, it was so intended, and I believe that it would.

The CHAIRMAN. Give your reasons on that.

Attorney General KATZENBACH. Well, I think that the language itself, as it exists there, "force or a threat of force," would not have to be applied to the person. Now you could arrive at that interpretation that that was intended, because when you get over to the penalties, you find that if there is physical damage to the person, the penalty increases, and I suppose you could read back from the penalties to the force and the threat of force, and interpret it as meaning only intended to affect only personal injury. We intended to draft it somewhat broader than that, and I think the language, except for that possibility that I have indicated, would so be read. It ought to be read, so that if I threaten to burn down your house, you know, that is a pretty forceful act, and a pretty threatening one, and I think that ought to be covered.

The CHAIRMAN. In a prosecution under 501(b), involving, for example, a reprisal against a Negro for voting, would it be sufficient to send a case to the jury if the Government showed that the defendant was opposed to equal rights for Negroes, and that he had reason to believe that his victim recently voted, and that's all you had?

Attorney General KATZENBACH. Yes, I would think that would be sufficient. We are trying to avoid the problem of showing there was a specific intent and that the reason in the mind of the attacker was that this person had voted, and that he was attempting to deprive him of the right to vote, in trying to permit that to be shown from the surrounding circumstances. That a person just had recently voted, and that this person does not believe in Negroes voting, and that he attacked this person, would have the inference drawn from that.

The CHAIRMAN. In other words, he had a background in the first instance of expressing opposition to equal rights, and that he believed that his victim had voted; therefore, if he exercised reprisals, that would be sufficient, shall we say, intent?

Attorney General KATZENBACH. Yes.

The CHAIRMAN. And that could go to a jury?

Attorney General KATZENBACH. I would think so.

The CHAIRMAN. Now, suppose you have a case, in which a Negro is shot, to discourage Negroes generally, from participating in the

activities described in 501(a), would that be a violation of title V, even if the victim had had nothing to do with civil rights, had no idea of ever trying to participate in any of these activities?

Attorney General KATZENBACH. Yes, that would be, I think, similar to the shooting of Colonel Penn, and that would be covered, because it says here on page 33, lines 23 and 24, if it is to discourage such person, if the injury is to discourage such person, or any other person or any class of persons from participating or seeking, and this kind of indiscriminate Klan activity is certainly intended to discourage a class of persons from exercising their rights, so that we believe that it is covered and rightly so.

The CHAIRMAN. Title I, which concerns Federal juries, requires a person whose name is drawn from the master wheel to come personally to the office of the jury commission to fill out the form. You haven't provided that this could possibly be done by mail. Is there any reason why not?

Attorney General KATZENBACH. The reason why this was not done, it has been found the basis of some of the cases we have actually brought, where the notification is by mail, and they are to mail back a form, a great many people don't do so, and in fact, one of the reasons that you have gotten as much distortion in some of our Federal juries as we have gotten is because people selected to mail the form have not returned it, so we thought this was a method of insuring that they were impressed with their duties to serve in this way. There is, perhaps—I can envision some circumstance where there is some inequity in making a person travel some distance simply to go down there and do that, when he could do it by mail, but that is the reason that we have had. I would not have too much objection to putting a dual provision in, that is, saying that they can do this by mail in the first instance, and if they don't do it by mail, then they receive a summons, and have to come down and do it. I think both steps ought to be prescribed, and if the committee would feel that was the more equitable way of doing it, that could be done, or alternatively, rather than having them come down to the courthouse, I would have no objection to a provision that allows them to fill out the form in front of a notary public and mail it in, and let the notary public certify that he had filled out the form himself.

The CHAIRMAN. Mr. MacGregor, you haven't asked any questions. Do you wish to?

Mr. MACGREGOR. I do, Mr. Chairman.

Mr. Attorney General, in your initial appearance on this legislation before this subcommittee last Wednesday, which was the day following the Alabama primary, you expressed pleasure and happiness about the accomplishments of the Voting Rights Act of 1965 insofar as they were reflected in the participation by Negros and others who heretofore had not voted in Alabama. I presume your happiness and pleasure did not necessarily extend to the outcome of the Democratic primary for Governor in Alabama.

Attorney General KATZENBACH. I don't think it is the business of the Federal Government to be concerned about the outcome of an election. I think it is the business of the Federal Government to be concerned that people exercise their Federal rights freely and comfortably.

Mr. MACGREGOR. In that connection, Mr. Attorney General, may I refer you to page 1 of your prepared text which you read on Wednesday last. You indicated at the bottom of the page that in the five States primarily affected by the Voting Rights Act of 1965, the number of Negroes registered has increased by 50 percent. You indicated that 350,000 were newly registered in those five States. In your opinion, sir, what proportion of this 350,000 were registered as a direct or indirect result of the Voting Rights Act of 1965?

Attorney General KATZENBACH. Oh, I would say virtually all of them.

Mr. MACGREGOR. You indicated further on the bottom of page 1 of your prepared text that in these States, 43 percent of the total number of eligible Negroes are registered. I wonder, Mr. Attorney General, if you have any figures to indicate what percentage of the total number of eligible whites are registered in those five States.

Attorney General KATZENBACH. It would run something better than 70 percent, I would think, Congressman. I am not trying to hedge the answer. We found that the States with permanent registration, the rolls are often not purged as they should be purged, so that the number of whites that are shown registered may be a somewhat higher percentage than actually are, but I would think even taking an allowance for that, it would run at least 70 percent or more.

Mr. MACGREGOR. Turning to a slightly different point, then, on the same subject, Mr. Attorney General, you indicated some 350,000 newly registered Negro voters since the enactment of the Voting Rights Act of 1965. I wonder how many newly registered non-Negro voters there may have been in the same period.

Attorney General KATZENBACH. I would think something in excess of 100,000.

Mr. MACGREGOR. The reason I asked the question is because newspaper accounts would have it that in Alabama, a greater number of non-Negroes were registered following the enactment of the Voting Rights Act than Negroes.

Attorney General KATZENBACH. I don't think that is quite right. A larger number of whites were registered in Alabama, and I would think that it was, oh, something close to the number of new Negro voters that were registered in Alabama. I think it is a little over—just depending on memory—I think it was about 115,000 whites were registered there, and I think about 130,000 or 135,000 Negroes were registered there. The Negro registration went from 11 percent of the total population—to measure the weight, if you want to, of the Negro vote—to a little better than 16 percent, but if all the Negroes register in Alabama, they cannot have more than 25 percent. The fact is that in the State of Alabama, one-quarter of the adult population is Negro, three-quarters of the adult population is white.

Mr. MACGREGOR. What I had reference to, of course, were newspaper articles indicating that the Voting Rights Act, in addition to the accomplishing the desired goal of registering more disfranchised Negroes, had triggered an effort to register whites who were previously not registered.

Attorney General KATZENBACH. I think that is true, and I must say, I am a hundred percent for it. I think everyone, whatever their race or color, should register and should vote.

Mr. MACGREGOR. Very well. I am pleased to hear you say that, because it does seem to me as though the work of the Congress last year produced results even greater than those that we anticipated in terms of moving a greater percentage of eligible people to the registration tables and to the ballot boxes in elections.

Mr. MCCULLOCH. Would the gentleman yield for a moment?

Mr. MACGREGOR. I will be pleased to yield, Mr. McCulloch.

Mr. MCCULLOCH. I know that I am prone to boast about the great State of Ohio. I would like to inspire people everywhere to exercise their privilege of voting. I don't want to make a speech here, but this country has long been touted as a representative republic, and it isn't a representative republic unless the people do vote.

Mr. MACGREGOR. I can see that we in Minnesota, along with Utah, have traditionally had the highest percentage of voters turn out, and we will have to look to our laurels for the increasing percentage from Ohio, and from Alabama.

Mr. Attorney General, I would like to turn to title IV of H.R. 14765, and turn first tc your comments with respect to the fact that some 17 States and the District of Columbia, Puerto Rico, Virgin Islands, and perhaps 40 of our municipalities, have in fact enacted fair housing or open occupancy laws.

In my State of Minnesota, we like to think of ourselves as progressive in this area. The statewide law contains certain exemptions to the coverage of the open occupancy law. Specifically, the Minnesota law provides exemption for first, the rental of a unit in a two-family owner-occupied dwelling. Second, the rental of a room or rooms in an owner-occupied one-family dwelling, and, three, there is an exemption provided for the sale or rentals of an owner-occupied one-family private dwelling.

I have not, Mr. Attorney General, examined carefully the ordinances in the some 40 municipalities or the laws in the 16 other States, the District of Columbia, Puerto Rico, and the Virgin Islands, but would you comment, sir, generally, as to whether or not the exemptions provided in the Minnesota fair housing law are typical of the exemptions provided in other laws and ordinances?

Attorney General KATZENBACH. That is an awfully difficult question to answer. They all vary to some extent. The rental in an owner-occupied home is quite widely accepted. With respect to the others, simply less so, I would say. The rental of a unit in an owner-occupied two-family dwelling also has been fairly wide in those States. I would think that the sale or rental of an owner-occupied one-family house has much less so, and it seems to me that that may be pretty self-defeating in this area. Most people do own their own houses eventually, and I don't want to be critical of the efforts of your State to solve this problem—I think you should be proud that it has—but I would think that was a pretty broad exemption.

Mr. MACGREGOR. Is that exemption which you referred to as exemption No. 3, namely, the exemption for the sale of rental or owner-occupied one-family private dwelling, is that unique to Minnesota?

Attorney General KATZENBACH. No, it is not. It is not unique to Minnesota. It is shared by some other States. There really isn't a very uniform pattern on these laws. Some cover rental only; some cover sales and rental. There are others which exempt the individual homeowner, as Minnesota does. They don't follow a particularly consistent pattern, either in terms of their prohibitions or in terms of their administration of them.

Mr. MACGREGOR. Mr. Attorney General, what, in your opinion, has been the reason for the exemptions that have been written into the law in the 17 States, the District of Columbia, Puerto Rico, the Virgin Islands, and the municipal ordinances?

Attorney General KATZENBACH. Well, I think some of it has been felt to be the difficulties of administering when you reach down to the individual homeowner, and I suspect that this kind of legislation—it has been controversial in State legislatures—that is, it may be here in Congress, and whenever you get into controversial legislation, there is always a tendency to try to develop a consensus at some point within it, and I suspect that these exemptions have been the results of efforts to get the number of votes necessary to pass the legislation. I can see, we have a precedent here in the 1964 act, for the so-called Mrs. Murphy exemption, rental of rooms, that came as a result of a feeling, I think, on the part of some people that Mrs. Murphy should not in the middle of the night have to rent a room in answer to anybody who rang the doorbell. And I agree with what the chairman said at the outset.

I don't approve of that exemption, but it is one Congress adopted, and I think there is a good deal of perfectly sincere feeling on the part of Members of Congress that that exemption was proper and necessary, and so it was put into the 1964 act. I suspect these exemptions all come from that kind of reason. I think it is unfortunate when they go so far as to, I think, remove large parts of the housing market from the act.

Mr. MACGREGOR. I wanted to get, Mr. Attorney General, right to this specific point of these exemptions or exemptions in existing law at the State and local level, which do not exist in the bill as proposed, H.R. 14765, because I do anticipate that this will be the area of greatest controversy, and I think that the members of this subcommittee and the members of the full Committee on the Judiciary should be amply prepared to deal with this subject.

Attorney General KATZENBACH. There are no exemptions in the State of Michigan.

Mr. MACGREGOR. Are there other jurisdictions, either at the State or local level, like Michigan, that have absolutely no exemptions, and, therefore, would be a precedent for or a proposal similar to H.R. 14765?

Attorney General KATZENBACH. Alaska, Puerto Rico, Virgin Islands. There may be others in terms of the ordinances. I don't know about that. If you exempt the individual homeowner, in the sale of his property, then you build right into the system this then has to per-

mit the real estate person to comply with that in his listing, and the banker to comply with that in his mortgaging, and you are taking a great deal of housing off the market. If you went at it the other way, and said the exemption was to the individual who didn't use a real estate agent, who didn't go into the banking business, and so forth, the exemption would be less serious, but if you allow the individual's exemption in this to then be the tail that wags the whole dog, you have eliminated a great deal of your housing.

Similarly, in your suburban housing or near-in city housing, there are a great many duplexes, and I think if you eliminate them, you are eliminating an important part of the housing market. I feel less strongly, as I indicated, about the rental of a few rooms in an owner-occupied house such as the Mrs. Murphy exemption. I don't think that there is a major part of housing affected by that. While I don't approve of it, it at least does not have the gutting effect of some of the other exemptions.

Mr. MACGREGOR. Mr. Attorney General, again referring to the Minnesota law, with which I am most familiar, although there are the exemptions that I cited, including the exemption of the sale or rental of an owner-occupied one-family private dwelling, Minnesota law specifically does cover financial institutions and rental agents, I gather.

Attorney General KATZENBACH. But it would not cover a real estate broker. If I listed my house for whites only with a real estate broker, he would sell to whites only.

Mr. MACGREGOR. Apparently, as the law is administered, according to my understanding, by the State Commission Against Discrimination, if a real estate broker concurs in and works with a homeowner who insists on that requirement, he is liable to the sanctions provided by the law. He is specifically covered, as I understand the desires and wishes of a homeowner, if he concurs in it. Do you think that is an unworkable provision?

Attorney General KATZENBACH. What does it mean? The real estate agency has to bring a Negro family to look at the house, and have it turned down by the owner, and then he brings a white family, and the owner says, "That is fine with me." I think there is an awful lot of connivery possible under that.

Mr. MACGREGOR. Most agents that I know under the law go up and ask the homeowner to indicate that he will abide by the law as it imposes itself on the real estate agent or broker, and may I say, in my State, we don't have much difficulty to compliance with the law, at least in the suburban area of Minneapolis that I represent.

Mr. Attorney General, on the same point, I have gone over several times the text of your original statement here, and particularly, on page 17, in which you indicate that the main components of the housing industry are builders, landlords, real estate brokers, and those who provide mortgage money. Continuing the quote from your prepared text—"These are the groups which maintain housing patterns based on race."

You indicated that it was difficult to determine to what extent individual homeowners might contribute to these patterns, but I took it from your original statement that it was these groups that were responsible primarily for such discrimination in housing as exists. Is that a fair statement?

Attorney General KATZENBACH. Yes. I think that is a fair statement, because I think there are very few people who sell their houses without advertising, without listing with a real estate broker, without using any of these facilities whatsoever, and very few people just sell their home to a friend.

Mr. MACGREGOR. In other words, Mr. Attorney General, if we could effectively reach in the draftsmanship of title IV the main components, who in your opinion are responsible for maintaining housing patterns based on race, we would accomplish substantially the objective in that part of H.R. 14765 relating to housing?

Attorney General KATZENBACH. Yes, if that could be done effectively——

Mr. MACGREGOR. That is why I put "effectively" in my question.

Attorney General KATZENBACH. Yes. I think that is true. We felt that this was the way to do it effectively, and if you can reach those components effectively under a system that isn't a sham, then you would be dealing with a major part of the problem, I would concede.

Mr. MACGREGOR. And we might, Mr. Attorney General, increase the likelihood of acceptance of Federal form, and facilitate the passage of this legislation.

Attorney General KATZENBACH. I would accept your judgment on that.

Mr. MACGREGOR. Mr. Attorney General, what are the principal underlying factors that give rise to the problem commonly known as de facto segregation insofar as it applies to our school system?

Attorney General KATZENBACH. Well, the principal factor is the existence of all-Negro neighborhoods, and most school assignments are made on a geographical basis, and if you have all-Negro neighborhoods, then you get de facto segregation of the schools.

Now, the reasons for the all-Negro neighborhoods are varied. One of the reasons for it is the extent to which discrimination has and does operate in terms of limiting access of Negroes to housing outside the central city area, the slum area. Another reason for it is the economic status of the people involved.

Mr. MACGREGOR. What, in your opinion, would be the result of the enactment of title IV, nationwide, on the continuing complaint of de facto segregation?

Attorney General KATZENBACH. I think it would help considerably, Congressman, but I would not be candid if I was to say that I thought that the enactment of this law was going to solve all of those problems. I don't think it is. I think much more needs to be done to break up the ghetto, and to deal with the problem of de facto segregation than this. But I think this is one indispensable element of doing it. You have to free up the housing for the Negroes who are trying to get out of the ghetto, and who are financially able to get out of the ghetto. In addition to that, we have got to make many more of them able to do it. You have got to pay more attention to local communities as to the location of schools, where they build schools, and many other factors. This is not going to accomplish a miracle overnight, but I think it is indispensable to any solution of that problem.

Mr. MACGREGOR. Well, if you would answer my question which confined itself to the enactment—if you would add to the question the

full implementation of and enforcement of title IV, not only its enactment but its implementation and enforcement over a period of 3 or 4 years, would it not be your opinion that this would eliminate the main underlying factor of the complaint of de facto school segregation?

Attorney General KATZENBACH. This could be awfully helpful in doing it. We still have the problem of economic status to deal with, many people who simply cannot afford to buy very good housing, and so it takes a coordinated effort of enforcement and compliance, not only with this law, but also what can be done under housing programs, what can be done in the location of schools, what can be done in terms of getting people additional education and job training, all of these things are going to be central elements. We can make progress in 3 or 4 or 5 years with respect to breaking up the ghettos, I have no doubt. I think that is one indispensable part.

Mr. MACGREGOR. It has seemed to me, although, it is not a factor in my part of the country, but what I read about elections for school boards in Boston, and elections in certain other parts of the country, that the action on the housing complaints would to a large measure undercut the highly explosive issue of the forcing of busing of youngsters to nonneighborhood schools, and to thereby attempt in that way to do something about the problem of concentrated housing by minority groups.

Attorney General KATZENBACH. I agree with that, Congressman. I have often said in respect to the busing question, in many ways, the Negro parents and the white parents are concerned about exactly the same thing, and rightly concerned. Each is concerned about the best education possible for their children. The white parents are objecting to the busing of their children to schools that they believe are inferior schools, and Negro parents are urging busing of their children from what they regard as inferior schools to better ones. So I think that if, to some extent, the housing problem and housing patterns could be solved, so that you had a better integrated housing pattern, you would have a better integrated schooling pattern, as well. I agree with you. I think it is also important to raise the quality of all schools in this country.

Mr. MACGREGOR. Mr. Attorney General, would you turn your attention for a moment to section 407 on page 29 of H.R. 14765; specifically, to 407(a), the section entitled "Enforcement by the Attorney General"?

Attorney General KATZENBACH. Yes.

Mr. MACGREGOR. The language there as presented in the bill reads—"whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this title, he may"—and so forth. Against whom would you anticipate that you might have to proceed were we to enact 407(a) as drafted?

Attorney General KATZENBACH. I think it could vary. Obviously, it would be such people as those rental agents, for example, who control a number of apartments, or a number of accommodations. It could be against the developer, or a group of developers, it could be against a real estate board. I suppose it could be against a single

property owner, if he owned enough property in a particular community, although I would think that would be rare, except in the development sense. It could be against a bank, a single bank, who controlled enough of the financing involved, or it could be against a group of banks.

Mr. MACGREGOR. I appreciate the candor of your answer in saying that it could be against even a private owner, but would it be fair to say that in all likelihood, he would move against those main components maintaining housing patterns based on race, as you presented and identified those components in your original statement?

Attorney General KATZENBACH. Yes, that is correct, Congressman, but I think in terms of those main components, and I stick by what I said in my statement and what I have said here, but we have to find a way to make this effective of dealing with the single-family dwelling, whether we find it by dealing with that homeowner or dealing with others. We have to find a way of including that, or you have just knocked out most of the suburbs, so you have to deal with that effectively, and if you have a system which says that the homeowner is not under this, and he not being under it can control what the real estate agent does with respect to his home, and so forth, then I think you have got to act. I think you have got to bring those homes within the bill and effectively within it.

Mr. MACGREGOR. If we reduce, then, a lot of our conversation to the bare essentials, you would take a very dim view of writing any exemptions at all into title IV. Is that correct, Mr. Attorney General?

Attorney General KATZENBACH. Yes; I would, if your ideas on this, Congressman, are some other method of getting at the single-family dwelling, then I think that should be explored. If it is a question of exempting single-family dwellings, I think it would have a very major impact in terms of destroying the effectiveness of the bill.

Mr. MACGREGOR. I have no ideas as an individual as to what should or should not be written into title IV. I do have a great concern as a member of the subcommittee in writing legislation that will deal with the problem, that will have a good likelihood of being accepted, first by the full committee, and then by the House of Representatives, and passing the Senate, and being enacted into law this year.

Attorney General KATZENBACH. You and I have the same objectives there, I can assure you, Congressman.

Mr. MACGREGOR. And I know that the many exemptions and exceptions written into State laws may well provide for us a pattern which perhaps we may not deem it so very wise to follow, but which other practical legislators at a different level have deemed it necessary to write into the law, in order to get it accepted. I think we have to deal with some of those practical considerations of acceptance, not only by the Congress, but since you and I are both interested in compliance with the law, by the American people.

The CHAIRMAN. Will the gentleman yield?

Mr. MACGREGOR. Yes, Mr. Chairman.

The CHAIRMAN. Your experience, I am sure, has indicated to you that oftentimes provisions in a bill may seem initially to be most salutary and, after hearings, indicate that they are not so worth while.

Mr. MACGREGOR. Such as the 4-year term for Members of the House?

The CHAIRMAN. And they are in fact the reverse, and these hearings are most salutary for bringing out points upon which to draw a conclusion, so when offhand opinions are made, as, for example, on Mrs. Murphy's boarding house, I want to be sure to know more about them before I give my decision, and I feel that this bill is a good bill, and I want to keep it as intact as possible.

Mr. MACGREGOR. The chairman, of course, expresses the views which I also hold. I approach this problem, Mr. Attorney General, with not a closed mind, but an open mind, and with a deep commitment, as the Attorney General also knows, on the part of this Member of Congress, to the cause of equal opportunities in every facet of American life for each and every American citizen. It is in this spirit that I approach this problem, and ask you to answer the questions that I have this morning.

Attorney General KATZENBACH. I appreciate that, Congressman. Perhaps I could illustrate what I mean on the single-family dwelling. If you have an exemption which then has your real estate broker and your others that I have described in here, it puts them in the position of being able to comply with the wishes of the person exempt, that is, the person says: "I want to sell my house, but I am not going to sell it to Negroes, and you sell it for me, but I am not going to sell it to Negroes, and nobody can make me sell it to a Negro," then I think you have destroyed a good part of the system.

If, on the other hand, your law was written in such a way that said, if your home is sold through a real estate broker, if it is financed by a bank, for the purchaser, and if you take advantage of that, then you have to agree that you would be perfectly willing to sell to Negroes, it might not be so ineffective, if you follow what I mean.

In other words, if you get it to the point where the individual homeowners can control the sale, even though he is using all of the other facilities within the community to make that sale, then I would think that was a very major exemption, which I would be most reluctant to accept, because I think it would seriously affect the act. If you are saying anybody who sells without going through any of these other channels is not here, then I think the exemption, and I would support it, it would be proportionately less. While I agree with what you have to say about compromises and efforts of consensus to get the legislation, I think you would agree with me you don't want the Congress to go through the tortures to have an ineffective piece of legislation at the end.

Mr. MACGREGOR. I would agree, Mr. Attorney General. Just to go back to the hypothetical that you raised, Mr. Individual Homeowner saying to Mr. Real Estate Broker, "I want you to sell my house for me, but I won't sell it to a Negro, and nothing is going to make me sell it to a Negro." If such law, as we enact it, reached the real estate broker who had so colluded with or participated with the homeowner in that act of discrimination, we could pretty effectively discourage, could we not, any individual homeowner from getting aid and comfort from a real estate broker who had discriminated in the violation of the law?

Attorney General KATZENBACH. If you could reach that effectively, maybe it is more effective to say if you are going to list it with a real estate broker, you cannot put those conditions.

In other words, you lose your control over whom you are selling to, if you sell it through a real estate broker, if those are the kind of factors that you want to take into consideration.

Mr. MACGREGOR. You think such a provision would be effective in reaching the objectives that you have in mind?

Attorney General KATZENBACH. I think it might be. I would want to think on it, but if you said, any person, any individual, who lists with a real estate broker, or uses the services of a real estate broker, or uses the services of another in the sale of his house, is subject to this, but not other people, I don't suppose you would be exempting each, but I would want to look very carefully at the language, because we have to cover the sale of individual homes. That is the basic——

Mr. MACGREGOR. Mr. Attorney General, you have emphasized several times your feeling that in order to be effective here, we must cover the sale of individual homes. Do you make any distinction between the sale of individual homes and the short-term lease or rental of an individual home? Distinction based upon your desire to make this effective? In other words, do you see it equally important to reach the situation where, let us say, a Member of Congress has a residence here and a residence in his home district, and he leases one or the other for a period of 3 months? Do you think it is equally important to reach that relatively short-term rental or lease of a private abode as you do the sale of a private home?

Attorney General KATZENBACH. No, I don't think it is equally important. I think that is a fairly small ingredient in the housing market. I think in principle, there should be no exemptions, but I think in terms of how important that is, in the housing market, I think you could put 3-month rentals of private homes, I doubt that they are a major ingredient in the housing market. I think, also, I am inclined to think that in that kind of situation, the rental is almost always to a friend.

Mr. MACGREGOR. On an individual basis.

Attorney General KATZENBACH. On an individual basis. I think you have some difficulty getting much interest on the part of your real estate people in that kind of a rental. Their commission isn't very big in that kind of a rental.

Mr. MACGREGOR. Again, I agree with you as far as the principle is concerned, but I am thinking also about the practical aspects of our gaining acceptance of this bill without any exceptions or exemptions of any kind.

Attorney General KATZENBACH. I appreciate that.

Mr. MACGREGOR. Am I correct, though, Mr. Attorney General, in thinking that the passage of title IV of H.R. 14765 would, in effect, invalidate any of the exclusions that exist at the present time in the 17 States and the District of Columbia, Puerto Rico, Virgin Islands, and in the 40 municipalities that you referred to?

Attorney General KATZENBACH. Yes. In effect, the loose use of the word "invalidate," that is, they would not continue to—they would not affect the Federal law or its enforcement. They would continue to exist as far as State procedures are concerned.

Mr. MACGREGOR. It may be a loose use, but I chose the word because it appears on page 31, section 409, "Nothing in this title shall be

construed to invalidate any law of the State or political subdivision of the State."

Attorney General KATZENBACH. Yes, that is why I said you were using it loosely, because it does not actually invalidate them; they continue to remain, only as far as the State law is concerned, and enforcement of the State law is concerned, they are perfectly valid, but insofar as the Federal law is concerned, they are not, and you have your remedies of Federal law, so they are not invalidated, and that is why I said it was a loose use of the word.

Mr. MACGREGOR. Maybe I ought to say render inoperative or preempt.

Attorney General KATZENBACH. No, it does not. That is my point.

Mr. MACGREGOR. Well, I missed your point, then, Mr. Attorney General.

Attorney General KATZENBACH. My point is this: You have a State system that has certain exemptions to it, also has certain enforcement techniques, and so forth. That continues to operate. Nothing makes any of those exemptions inoperative, nothing invalidates them as far as that State law and State system is concerned. As far as sanctions are concerned, as far as administration is concerned, nothing invalidates them.

On the other hand, the Federal law also operates, within that area, and people are not permitted by the Federal law to take advantage of those State exemptions.

The CHAIRMAN. Would the gentleman yield?

Mr. MACGREGOR. In other words—just to clarify this point, and then I will be delighted to yield, Mr. Chairman—you might have the situation where in these 17 States the State law covers perhaps 50 percent of the transactions, and the Federal law would cover an additional 40 percent, so that you might get 90 percent of the field covered.

Attorney General KATZENBACH. Yes, and the 50 percent covered by the State law would continue to be covered, administered, and so forth, by the State law, as well as by the Federal law; the other 40 percent would be by the Federal law only.

Mr. MACGREGOR. Thank you.

I will yield to the chairman.

The CHAIRMAN. I am a little concerned about the questions and answers here. And to the effect of section 411 which states:

> Nothing in this title shall be construed to deny, impair, or otherwise affect any right or authority of the United States or any agency or officer thereof under existing law to institute or intervene in any civil action or to bring any criminal prosecution.

I understand that means that nothing here shall impair the authority of the United States. What about impairing the authority of the State? As I said before in my questioning, if there is an inconsistency between this law and the State law, would not this Federal statute preempt the State law, and cancel out the inconsistency and make the Federal law prevail?

Mr. MACGREGOR. I think it determines—clearly, the language on lines 6 through 9, makes an affirmative answer to the chairman's question clear. The language on pages 6 through 9 reads "but any law that purports to require or permit any action that would be a dis-

criminatory housing practice under this title shall to that extent be invalid," so we are invalidating to a certain extent.

Attorney General KATZENBACH. No, sir; no, sir. We are only doing it to this extent. Take your exemption under your Minnesota law. Minnesota law does not apply to that, Federal law does. You cannot plead the fact that that is exempted under Minnesota law as a defense to the Federal law. That is all that means.

Mr. MACGREGOR. If it does not mean invalidate, then I don't understand the meaning of the word.

Attorney General KATZENBACH. Well, Congressman, I don't think it means invalidate. Perhaps you and I have a different understanding as to the meaning of the word.

Mr. MACGREGOR. Then would you define the use of the word "invalidate" on line 9, page 31?

Attorney General KATZENBACH. By "invalid," they are talking, if you talk about what it says in any law that purports to require——

Mr. MACGREGOR. Or permit.

Attorney General KATZENBACH. Or permit. Any action. Now, I don't take it that your Minnesota law, when it simply fails to cover, exempts out of its provisions, is a law that permits that kind of action. To the extent that it is construed as a law that permits it, it is invalid, as far as the Federal law is concerned, and cannot be raised as a defense to a Federal action.

Mr. MACGREGOR. In other words, I am a Minnesota resident. I own a two-family dwelling. My family and I occupy one of the units in the two-family dwelling. The Minnesota law permits me to discriminate.

Attorney General KATZENBACH. Does not prevent you.

Mr. MACGREGOR. In the rental of the other unit. The Federal law, if this provision is enacted, would not permit me to discriminate, and the Federal law would render the Minnesota exemption invalid.

Attorney General KATZENBACH. As far as the Federal law was concerned. That is correct.

Mr. MACGREGOR. So, too, would the other exemptions that I have enumerated under Minnesota law be rendered invalid.

Attorney General KATZENBACH. Yes.

Mr. MACGREGOR. And so, too, would the exemptions in existing law in other States be rendered invalid.

Attorney General KATZENBACH. Under our understanding of what "invalid" means, you are correct.

Mr. MACGREGOR. And I am not so much concerned about your understanding or mine, but I am concerned about the understanding of all who would be dealing with section 409, if we enact it as drafted.

Attorney General KATZENBACH. Yes, I am, too, Congressman, and I think it is most clear that the important way in which I put it that that is no defense. It does not excuse anything under the Federal law. Now it does not mean that as far as the State law is concerned, the authorities of the State agencies are thus increased to include these. This is the distinction I was trying to make. I would suppose those exemptions still apply as far as State enforcement procedures are con-

cerned under State law. It is just that they would not have any impact on Federal enforcement or enforcement under this law. That is the clearest way I can state it.

Mr. MACGREGOR. I think you and I really have no difference of opinion in interpretation, but your example of using it as defense being knocked out, if you will, or rendered invalid by the enactment of 409, I think, is a good one.

I yield to the gentleman from Florida.

Mr. CRAMER. On that same point, line 7, to permit any action that would be discriminatory housing practice under this title shall to that extent be invalid.

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Isn't the action that would be involved in the Minnesota case the actual refusal for obvious discriminatory purposes to rent in a two-family housing unit the other unit to a Negro, for instance, or someone because of religion? That is the action that is referred to that would be outlawed and become invalid, is it not?

Attorney General KATZENBACH. Yes. Yes, as far as Federal law is concerned. I had rather thought the Minnesota law prohibited certain forms of discrimination, and then exempted from those and from its administration certain situations.

Mr. MACGREGOR. The gentleman is correct. It is broad law, but it does have these specifics.

Attorney General KATZENBACH. It does have these specific exemptions. I didn't think there was anything in the Minnesota law that expressly said, you are permitted to do this, that, or the other thing; it just didn't prohibit them. Maybe that is one side of the coin as against the other. I think here, if you did have a law that required discrimination, then that would be clearly invalid, anyhow.

Mr. CRAMER. One additional question. What happened to Mrs. Murphy over the weekend? [Laughter.]

Thursday, I made this statement on page 14:

"I do not ask you if Mrs. Murphy should be exempted as though she was a public accommodation," and you said, "I do not think it would greatly affect or impede what is attempted to be accomplished in this act if Mrs. Murphy's type of exemption is incorporated into this act, and since I think the basic problem we are trying to strike out here would be accomplished with or without that exemption, I would have no problems with such exemptions of that kind as the committee and this Congress might wish to direct."

What happened over the weekend to cause you to change your mind, Mr. Attorney General?

Attorney General KATZENBACH. I haven't changed my mind. I have said exactly the same thing here today that I said then. I think if you read in there, I have not seen the transcript, Congressman, but I think you will read that I said that I personally didn't approve of it.

But that I do not think it would have a drastic effect upon the bill. I think you will find that there; that's my recollection.

The CHAIRMAN. Yes, you did say that.

Mr. CRAMER. Well, the record speaks for itself.

Attorney General KATZENBACH. I am happy for that, Congressman. I have the same view today that I had then.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. I will be delighted-to. Mr. Chairman, I have one more question. Then do I understand that this social security widow in my district, who is below the poverty level—social security doesn't give her $3,000—would not be able to lease the rooms in her home to a person of her choice? Desiring to have the type of companionship she wants?

Your position now is that those people should not be excluded?

Attorney General KATZENBACH. Perhaps—I don't think I can state my position much better than I stated it before, but I will make an effort to restate it, Congressman. The law as it is presently drafted does not exempt those people.

Mr. CRAMER. Right.

Attorney General KATZENBACH. I don't personally think they should be exempted. I think if a committee or Congress was to put in such an exemption, it would not greatly affect what we are really aiming at in this law.

I do not think that it affects a large part of the housing market. And for that reason, I would not have any great difficulty with a narrowly defined exemption of the "Mrs. Murphy" type. I think if we should go on and create other exemptions, it increases difficulty, but if you were to say owner-occupied, five-room houses on a rental basis, which I think is what your hypothetical is, I do not have great difficulty with that. It is not a large part of the housing measure. If I could write and enact this bill all by myself, it would not be in there.

Mr. CRAMER. What if Mrs. Murphy has the same piece of property and wants to sell it, not through a real estate agent, to a neighbor, maybe?

Attorney General KATZENBACH. Oh, there is no problem with that; as the bill is drafted, absolutely nothing in this bill that prohibits you from going and selling your home to a friend. Just nothing.

Mr. CRAMER. Well, that is, unless a Negro learns it is available and comes in with an offer of a higher price.

Attorney General KATZENBACH. I don't even think——

Mr. CRAMER. Then the owner is subject to a suit by the Negro who offers the higher price.

Attorney General KATZENBACH. No, I doubt it. I think if you are selling this to a friend or to your sister-in-law, or to your brother, that is a good reason to sell it, and you don't have to sell it to anybody else.

I think that is a good reason to do it. I don't think most people sell their houses in that way. I think most people sell their houses, I know I do, to get what I can get for that house. It is an important part of what I own in this world.

Mr. CRAMER. Do you still think clubs should be excluded, as I thought you indicated in my interrogation, as they were in the accommodations situation?

Attorney General KATZENBACH. I think that I indicated in that, and again, the record will speak for itself, that I have no strong feelings about clubs, if that could be drafted in such a way as to prevent it from being a device which evaded the requirements of this.

Mr. CRAMER. Well, I take it you are pretty much tredding on quicksand if you take the position of the Congressmen leasing your home on a seasonal basis to be restricted, to be exempted, and yet if Mrs. Murphy is included, and I want to make sure the record is clear——

Attorney General KATZENBACH. I don't think, Congressman, and again the record will speak for itself, that I said that I thought that the Congressman should be exempted in renting his home.

I think I made the same answer to that that I made with respect to Mrs. Murphy, that I did not think a 3-month rental of this kind and hypothetical, that the Congressman gave to me, was a major part of the market. I don't think I jumped up and down and said, "I think that's a great idea. Let's exempt the Congressmen in the rental of their homes."

Mr. CRAMER. Mr. Attorney General, where I come from most rentals are seasonal. I trust that you, in answering the question, took that into consideration.

Three and four months seasonal rentals is a common practice.

Attorney General KATZENBACH. Yes, it is, and I think that is a good argument against putting it in, and I had not taken that into full consideration, and that was the reason I said I would think about it.

Mr. CRAMER. Congressmen, yes; otherwise, no.

The CHAIRMAN. Would the gentleman from Minnesota yield?

Mr. MACGREGOR. Yes.

The CHAIRMAN. I just want to reiterate that, as far as I am concerned, a boardinghouse is a multiple dwelling, and multiple dwellings should no longer house discrimination on the basis of race or color. And a five-apartment house, in my opinion, is no different in principle than a five-boarder roominghouse. A boarder and a tenant are the same, they are both dwellers, and if we are going to attack this problem of ghettos, and slums, we want to raze the slums and do away with ghettos, we have to deal with wholesale measures, not retail measures, as it were, and we can't deal with this halfheartedly.

The time has come when we have to push in as far as we can.

As I said before, you have got a problem here. You can't dig a well with a needle. You have to have something that is very strong, durable, and able to dig that well. The needle won't do it, and if we are going to attack this terrible blight, I think we have to have a bill of this sort, we have to keep it intact, and as to whether it is a boardinghouse or a tenement house, I think they have to be subject to the same kind of restrictions, one with the other.

Mr. CORMAN. Would the gentleman yield?

I just want to comment to the gentlemen from Florida, there are vast regions of this country where homes are habitable for the 12 months of the year, and I think it is in those places where people raise their families, and we do get a problem in rentals and we want to break down the situation.

Mr. MACGREGOR. I think, like a number of cities in California and notwithstanding the temperatures in Minnesota, that I happen to come from a State where homes are habitable 12 months of the year, as well.

Attorney General KATZENBACH. With central heating. [Laughter.].

The CHAIRMAN. Would the gentleman yield?

Mr. MACGREGOR. I yield to the chairman.

The CHAIRMAN. Would the gentleman yield?

Mr. CRAMER. Yes, I yield to the chairman.

The CHAIRMAN. Suppose you have under a State statute a conciliatory process, and the parties on the question of discrimination agreed, and you disagreed with that conclusion, despite the fact that the State law permits it. What would you do under those circumstances?

Would you nullify the State process, and bring an action?

Attorney General KATZENBACH. I would think when the State law has the conciliatory process, that this bill as it is presently drafted would still permit the person to sue without going through the State.

The CHAIRMAN. You could, nonetheless, sue under those conditions?

Attorney General KATZENBACH. Yes; you could, as it is written, sue under that.

The CHAIRMAN. Thank you very much.

Mr. MACGREGOR. Mr. Attorney General, I have completed my questions, and I thank you for your attendance here, your testimony last week, and your willingness to come in any time that the chairman has called a meeting this week, including the early hour of 9 o'clock. Some of us on the subcommittee hope to be as diligent in our attendance as you have been.

I thank you, sir.

Attorney General KATZENBACH. Thank you, Congressman.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask some questions before we get away from them on the answers to the Attorney General to the questions of our colleague from Minnesota.

Did I correctly understand the Attorney General to say that if a State has a conciliation commission authorized to settle and adjust alleged discrimination, pursuant to rules and regulations, that an action taken under this bill would preempt the authority in that field?

Attorney General KATZENBACH. I was addressing my answer not to what the Justice Department could do here. I was simply addressing it to what the rights of the individual discriminated against are. He is given a right in this to bring a court action himself. There is nothing in this bill which would require him to wait through a conciliatory period, if such were prescribed by State law.

Mr. MCCULLOCH. I am very glad that the distinction has been made. But the fact remains that the State court will lose jurisdiction if the person aggrieved decides that he wishes to use the Federal legislation.

Attorney General KATZENBACH. Yes, that would be true, unless the Federal judge were, which he doesn't have to do, unless he were decided that he would stay the action, pending the conciliation efforts that were going on by the State agencies, which I think he might

quite properly do, but there would be nothing in the bill that would require him to do so. That would certainly be within his discretion.

Mr. McCULLOCH. I might say for the record that out in Ohio, the conciliation commission proceedings which we provided have worked reasonably well and I was interested for that reason.

Attorney General KATZENBACH. I think it is a good point, Congressman, and it could be considered as to whether where a State law covers it, and where a conciliation process is in being, whether this could stay the action. We have similar provisions in the 1964 act, as you will recall.

Mr. McCULLOCH. Yes, and I thought they were founded on sound logic, which leaves authority at the State level, so long as it is being properly used.

I would like to refer to another question that arose by reason of the examination of the chairman. Do you correctly understand that this legislation would not prevent a State from creating by law or rule of court, however they act in their respective States, a provision for an unlimited number of peremptory challenges of a juror?

Does this law not reach that question?

Attorney General KATZENBACH. It doesn't reach the peremptory challenge question; no.

Mr. McCULLOCH. I think that that matter needs a very great deal of study. I would judge that a person wouldn't need to be too shrewd to determine how some of these things would be seriously affected. At least for the time being.

Attorney General KATZENBACH. I think that is correct, Congressman. I can envision that we made a study of the State laws and the existing peremptory challenges, and it is just terribly difficult to deal with the problem of peremptory challenge.

Now I would modify that conclusion to this extent, and say that if following enactment of this, the State were to authorize an almost unlimited number of peremptory challenges, I think that one could question that law, really on the constitutional basis, if its operation was intended to simply permit discrimination on juries.

Mr. McCULLOCH. There was a recent case that would necessarily lead to the conclusion, a case in which there was a divided opinion, four-four-one? Wasn't this one of the very questions that was raised?

Attorney General KATZENBACH. On a strike jury system, yes.

Mr. McCULLOCH. So there was no unanimity in the Court on whether or not there might be a constitutional violation in such a matter, was there?

Attorney General KATZENBACH. No; that is correct, but, no, you are absolutely correct about that. I don't know whether—that was a closely divided court, and just frankly, it is just terribly difficult; if you are going to preserve a peremptory system—and I think most lawyers would support having some peremptory challenges, feeling that they should—it is just extremely difficult to, can obviously be used to strike on race or religion, and is used for that purpose, from time to time.

But I would think that the court might well be moved, if the State legislature would immediately after the enactment of this bill were

to suddenly increase the number of peremptory challenges very significantly, I think that might show some questionable motivation in this regard, and it might strike down a law that did that.

Mr. McCULLOCH. Does the Attorney General know whether there are limitations in all of the States on peremptory challenges?

Attorney General KATZENBACH. I have a rundown of the State laws here, but I can't answer that without going through all 50 States and looking at the provision.

Mr. McCULLOCH. Well, that was a difficult question.

Attorney General KATZENBACH. I think there is a ——

Mr. McCULLOCH. Mr. Hoffmann says in effect that there is at least one State where there is a nearly unlimited challenge. There, you exercise peremptory challenges until you reach a panel of 12 men. That's the Alabama law.

Attorney General KATZENBACH. That's the strike jury system, I think, where you just keep on going through the jurors until you find 12 you agree with.

The CHAIRMAN. Well, now, suppose other States in addition to Alabama take the lid off the number of peremptory challenges. What are you going to do then? Particularly in view of this dissenting opinion in the case of *Swain* v. *Alabama*? The dissent reads in part as follows:

> Finally, it is clear that Negroes were removed from the venire and excluded from service by the prosecutor's use of the peremptory challenge system in this case and that they have never served on the jury in any case in the history of the county. On these facts, and the inferences reasonably drawn from them, it seems clear that petitioner has affirmatively proved a pattern of racial discrimination in which the State is significantly involved.

Now, if that unlimited number of challenges rule is followed by other States, then you are in difficulty, aren't you?

Attorney General KATZENBACH. Yes; that is correct, Mr. Chairman. That under an ordinary peremptory challenging system, if you increase, and the original panels are selected fairly, as we require them, it is going to be much harder to use the formal limitations on this peremptory challenge to accomplish the kind of purpose that you are talking about, but if there is unlimited peremptory challenges, of course, that could be, that could be on a strike jury system, and perhaps that should be forbidden.

There is a reluctance—the effort of this provision was to try to get fair juries in the States, with as little interference in their system as we could devise, and still make it effective, but perhaps we should insist on some limitation on peremptory challenges.

Perhaps we should outlaw the strike system.

The CHAIRMAN. Do you recommend that we should outlaw the strike jury system?

Attorney General KATZENBACH. I think the committee should go into that, and be satisfied that it may require some amendment.

The CHAIRMAN. If we do not, then in Alabama, this provision as to juries is useless, because they could still use unlimited peremptory challenges, if that is the law in Alabama.

And they could use challenges on the basis of race or religion or color.

Attorney General KATZENBACH. Well, I think that system should be outlawed. As I say, I think it is going to be much more difficult to use peremptories in this respect, if, for example, as a result of a recent case which I mentioned in my testimony, a Lowndes County case, the box in Lowndes County has since been refilled, and that is a county which has about 80 percent Negro population; well, the new box has got, I think, 54 to 60 percent Negroes in the box.

Now it is going to be much more difficult to exercise peremptory challenges to deal with that, but I do think perhaps the situation of unlimited peremptory challenges should be dealt with.

Mr. MCCULLOCH. Well, Mr. Chairman, I raised the question not because necessarily that I think we should do anything. I think we should interfere with the jury system only when the case is clear and convincing. It may be that we would want to go farther with the civil rights bill of 1968. If the experience is bad here, we could correct it in 1968.

Attorney General KATZENBACH. I would, again, in candor, Mr. Chairman, when you are dealing with a system of peremptory challenges, there can be some result in terms of challenges on a racial, religious, or some other ground.

I don't think if a challenge is peremptory, it can be used in that way. I will not concede the bill—whether it is Federal or the State jury system, it is not guaranteeing that if a Negro is on trial there will be Negroes on that particular petit jury.

I don't think there is any way in the world, nor do I think it is right that you should guarantee that. I think that what you should guarantee is that there is a fair jury selection system, and that it will come out with a fair cross section, subject to the challenges for cause, and subject to at least reasonable peremptory challenge.

The CHAIRMAN. You said, I think, that you could possibly challenge the use of peremptory challenges, where it was used deliberately to exclude Negroes on the basis of race or color on constitutional grounds.

How could you, in view of these recent decisions of the Supreme Court?

Attorney General KATZENBACH. I think in my reading of the decision in the *Swain* case is not that you can never challenge peremptory challenges, I think in my reading of it, it said in that case, there wasn't enough evidence that the peremptory challenges had in fact been used in violation of the 14th amendment.

I don't think it was prohibiting a challenge on that basis, where the effect of the peremptory challenge system is to constantly exclude people on the basis of race.

The CHAIRMAN. Of course, the dissenting opinion said there was never a Negro on a jury in that county.

Attorney General KATZENBACH. That is right.

The CHAIRMAN. Doesn't that clearly indicate, or could not one reasonably assume at least that Negroes were challenged peremptorily, if they had never served on a jury?

Attorney General KATZENBACH. It did not to the majority, I know, Mr. Chairman.

The CHAIRMAN. No; the majority didn't decide that. They felt that the proof was inadequate with respect to this, and the dissent felt that from that effect alone, you could draw the inference.

Attorney General KATZENBACH. And, Mr. Chairman, the peremptory challenge is exercised by defense counsel as well as by prosecution, and there was some feeling, I think, on the majority of the court that there was an evidence that this result might not have been from challenges made on the other side.

Mr. CRAMER. Will the gentleman from Ohio yield on that?

As I read the *Swain* case on page 223 of the United States Reports, volume 330, the court specifically said, we have decided that it is permissible to insulate from inquiry the removal of Negroes from a particular jury on the assumption that the prosecutor is acting on acceptable considerations related to the case he is trying, a particular development involved, and a particular crime charged.

And cites other Supreme Court cases, *Saltonstall* v. *Saltonstall*, *Charleston Federal Savings and Loan*, which an Alabama court relied on when it upheld the Alabama strike procedure. There the court said—

as to the contention that Negroes are systematically excluded from trial juries, the evidence discloses Negroes are commonly on trial venires, but are always struck by attorneys in selecting the trial jury.

It has long been held that, where allowed by statute, peremptory challenges may be used without any assigned or stated cause. Both the Federal and Alabama jurisdictions have statutes providing for peremptory challenges. The fact that the prosecution peremptorily strikes every Negro from the jury panel in a case where the defendant is a Negro does not constitute a violation of the defendent's Constitutional rights.

Now, what does that case law mean? It is on a constitutional ground. How could we write into this statute, basing it on the Constitution, a greater limitation on what the State can do relating to peremptory challenges? How would we nullify the specific Alabama strike system which the court has held constitutional, and which no case, as I read it, has found that there has actually been adequate proof to indicate it has been used to eliminate Negroes for discriminatory purposes?

Attorney General KATZENBACH. Congressman, the theory of this statute, as I have tried to express it, is not simply whether or not this particular defendant got a fair trial in a particular case, which is what the *Swain* case was talking about.

That was what they were dealing with there. We are also dealing with the rights of people to serve on juries. I think we can proscribe by Federal law in that regard.

So that I think what is said there, he is talking in a particular case, and saying the fact, if he has got an authorization to strike people

peremptorily, he strikes all Negroes on this particular petit jury, that in and of itself is not a denial of the rights of this particular defendant to a fair trial, and that's all that the court is saying in that case.

So I don't think you can transfer that into where do you get your constitutional authority from, because we get our constitutional authority from just exactly where I said we got it, the 14th amendment, section 5, and you can provide therein for whom, for the right of people to serve on juries, in this court.

You could also provide for limitations of with respect to peremptory challenges, at least in circumstances where you felt that the peremptory challenges were so broad that they constituted a grave danger of invalidating the rights of people to serve on juries, whether because of sex or religion or race.

Mr. CRAMER. Let me ask a further question.

Attorney General KATZENBACH. I have no question you could accomplish this.

Mr. CRAMER. As you drafted the legislation and presented it to Congress, the administration legislation, would it be your intention under section 202, suits by the Attorney General, to bring an action in Alabama to invalidate the strike jury system?

You are asking Congress to enact section 202. Would you bring a suit to do that under this authority?

Attorney General KATZENBACH. Yes, sir; I have no doubt at all that you could do it, if you could establish that time after time after time after time the prosecutor with an unlimited right struck every jury or every woman, or every Catholic, or every Jew, from the jury, and I would have no hesitation to bring a suit under section 202 if that were the case.

The CHAIRMAN. And in this case, I think you are right, because as to the 14th amendment, the court stated: "we think it is readily apparent that the record in this case is not sufficient to demonstrate that the rule has been violated by peremptory system as it operates in Talladega County."

If you had sufficient evidence, you could—and I think you are right—establish that there was discrimination in violation of the 14th amendment.

Attorney General KATZENBACH. I believe so, Mr. Chairman; yes.

The CHAIRMAN. I want to conclude the Attorney General's testimony soon.

Mr. CRAMER. I have some other questions. I think also Mr. McCulloch does.

Mr. MCCULLOCH. I would like to refer to the Attorney General's statement.

The CHAIRMAN. Excuse me. I think we ought to place the *Alabama* case in the record at this point. This is the case of *Swain* v. *Alabama*.

(Case follows:)

SUPREME COURT OF THE UNITED STATES

No. 64.—October Term, 1964.

Robert Swain, Petitioner, *v.* State of Alabama.	On Writ of Certiorari to the Supreme Court of Alabama.

[March 8, 1965.]

Mr. Justice White delivered the opinion of the Court.

The petitioner, Robert Swain, a Negro, was indicted and convicted of rape in the Circuit Court of Talladega County, Alabama, and sentenced to death. His motions to quash the indictment, to strike the trial jury venire and to declare void the petit jury chosen in the case, all based on alleged invidious discrimination in the selection of jurors, were denied. The Alabama Supreme Court affirmed the conviction, 275 Ala. 508, 156 So. 2d 368, and we granted certiorari, 377 U. S. 915.

In support of his claims, petitioner invokes the constitutional principle announced in 1879 in *Strauder* v. *West Virginia,* 100 U. S. 303, where the Court struck down a state statute qualifying only white people for jury duty. Such a statute was held to contravene the central purposes of the Fourteenth Amendment. "exemption from unfriendly legislation against [Negroes] distinctively as colored—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy. . . ." 100 U. S., at 308. Although a Negro defendant is not entitled to a jury containing members of his race, a State's purposeful or deliberate denial to Negroes on account of race of participation as jurors in the administration of justice violates the Equal Protection Clause. *Ex parte Virginia,* 100 U. S. 339; *Gibson* v. *Mississippi,* 162 U. S. 565. This

principle was further elaborated in *Carter* v. *Texas*, 177 U. S. 442, 447, where, in respect to exclusion from grand juries, the Court said:

> "Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied . . . ."

And it has been consistently and repeatedly applied in many cases coming before this Court.[1] The principle of these cases is broadly based.

> "For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government." *Smith* v. *Texas*, 311 U. S. 128, 130.

Further, "[j]urymen should be selected as individuals, on the basis of individual qualifications, and not as members of a race." *Cassell* v. *Texas*, 339 U. S. 282, 286 (opinion of Mr. Justice Reed, announcing judgment). Nor is the constitutional command forbidding intentional exclusion limited to Negroes. It applies to any identifiable group in the community which may be the subject of prejudice. *Hernandez* v. *Texas*, 347 U. S. 475.

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[1] *Neal* v. *Delaware*, 103 U. S. 370; *Norris* v. *Alabama*, 294 U. S. 587; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 311 U. S. 400; *Akins* v. *Texas*, 325 U. S. 398; *Patton* v. *Mississippi*, 332 U. S. 463; *Cassell* v. *Texas*, 339 U. S. 282; *Avery* v. *Georgia*, 345 U. S. 559; *Hernandez* v. *Texas*, 347 U. S. 475; *Reece* v. *Georgia*, 350 U. S. 85; *Eubanks* v. *Louisiana*, 356 U. S. 585; *Arnold* v. *North Carolina*, 376 U. S. 773.

But purposeful discrimination may not be assumed or merely asserted. *Brownfield* v. *South Carolina,* 189 U. S. 426; *Tarrance* v. *Florida,* 188 U. S. 519; *Smith* v. *Mississippi,* 162 U. S. 592; *Bush* v. *Kentucky,* 107 U. S. 110. It must be proven, *Tarrance* v. *Florida, supra; Martin* v. *Texas,* 200 U. S. 316, the quantum of proof necessary being a matter of federal law. *Norris* v. *Alabama,* 294 U. S. 587; *Smith* v. *Texas,* 311 U. S. 128. It is not the soundness of these principles, which is unquestioned, but their scope and application to the issues in this case that concern us here.

I.

We consider first petitioner's claims concerning the selection of grand jurors and the petit jury venire. The evidence was that while Negro males over 21 constitute 26% of all males in the county in this age group, only 10 to 15% of the grand and petit jury panels drawn from the jury box since 1953 have been Negroes, there having been only one case in which the percentage was as high as 23%. In this period of time, Negroes served on 80% of the grand juries selected, the number ranging from one to three. There were four or five Negroes on the grand jury panel of about 33 in this case, out of which two served on the grand jury which indicted petitioner. Although there have been an average of six to seven Negroes on petit jury venires in criminal cases, no Negro has actually served on a petit jury from about 1950. In this case there were eight Negroes on the petit jury venire but none actually served, two being exempt and six being struck by the prosecutor in the process of selecting the jury.

It is wholly obvious that Alabama has not totally excluded a racial group from either grand or petit jury panels, as was the case in *Norris* v. *Alabama,* 294 U. S. 587; *Hill* v. *Texas,* 316 U. S. 400; *Patton* v. *Mississippi,* 332 U. S. 463; *Hernandez* v. *Texas,* 347 U. S. 475; and

Reece v. *Georgia*, 350 U. S. 85. Moreover, we do not consider an average of six to eight Negroes on these panels as constituting forbidden token inclusion within the meaning of the cases in this Court. *Thomas* v. *Texas*, 212 U. S. 278; *Akins* v. *Texas*, 325 U. S. 398; *Avery* v. *Georgia*, 345 U. S. 559. Nor do we consider the evidence in this case to make out a prima facie case of invidious discrimination under the Fourteenth Amendment.

Alabama law requires that the three jury commissioners in Talladega County place on the jury roll all male citizens in the community over 21 who are reputed to be honest, intelligent men and are esteemed for their integrity, good character and sound judgment. Ala. Code, Tit. 30, §§ 20, 21 (1958).[2] In practice, however, the commissioners do not place on the roll all such citizens, either white or colored.[3] A typical jury roll at best con-

[2] There is a special statute governing jury selection in Talladega County. Ala. Acts, 1955 Sess., Act No. 475, vol. 2, at 1081. The provisions pertinent to this case follow the general state statute and thus all references will be to the latter.

Ala. Code, Tit. 30, § 21 (1958) provides:

"Qualifications of persons on jury roll.—The jury commission shall place on the jury roll and in the jury box the names of all male citizens of the county who are generally reputed to be honest and intelligent men and are esteemed in the community for their integrity, good character and sound judgment; but no person must be selected who is under twenty-one or who is an habitual drunkard, or who, being afflicted with a permanent disease or physical weakness is unfit to discharge the duties of a juror; or cannot read English or who has ever been convicted of any offense involving moral turpitude. If a person cannot read English and has all the other qualifications prescribed herein and is a freeholder or householder his name may be placed on the jury roll and in the jury box. No person over the age of sixty-five years shall be required to serve on a jury or to remain on the panel of jurors unless he is willing to do so."

[3] Although the statute aims at an exhaustive jury list, failure to include the name of every qualified person on the jury roll is not a ground to quash an indictment or venire, absent fraud or purposeful discrimination. *Fikes* v. *Alabama*, 263 Ala. 89, 81 So. 2d 303 (1955), rev'd on other grounds, 352 U. S. 191.

tains about 2,500 names, out of a total male population over 21, according to the latest census, of 16,406 persons. Each commissioner, with the clerk's assistance, produces for the jury list names of persons who in his judgment are qualified. The sources are city directories, registration lists, club and church lists, conversations with other persons in the community, both white and colored, and personal and business acquaintances.[4]

[4] The commissioners testified that since 1959 they have met once or twice yearly, for about an hour each meeting, at which time each commissioner presented a list of persons he deemed qualified for jury service. Their names were obtained from disparate sources, each commissioner going about his task in his area of the county in his own way. The chief commissioner testified that with the assistance of city directories, and registration lists, he went out into the beats to which he was assigned and asked persons he knew for suggestions and information. He also secured names from customers of his paint store. He averred that he was familiar with Negro and white members of the community, talked with both, and used the same method for determining the qualifications of both Negro and white citizens. Another commissioner, working a predominantly rural area, testified that membership lists of Farm Bureau Cooperatives in the area and the Rural Electric Cooperative were his main sources of names, both organizations having a substantial number of Negro and white persons. He also relied on the city directory for Talladega City and on the people he knew through his 40 years of residence and farming in the area. He noted that he did not rely on predominantly white social clubs or on Negro churches, adding that he was not familiar with the relative percentage of Negroes or whites in his beats and could not identify the persons on the jury list by race. He also stated that the jury list did not contain the names of all qualified citizens, a task he deemed impossible. The third commissioner testified that he used the telephone directory and went out into the various beats to gather names through local merchants and citizens, both Negro and white. He also relied on the customers of his business. He too was unable to identify the persons on the jury list by race. The clerk stated that she assisted by supplying some additional names to the commissioners; she compiled these names from various directories, church rolls, club rolls and from lists sent by the managers of local plants and industries. She testified that she was acquainted with more white persons than Negroes but that she did not visit

Venires drawn from the jury box made up in this manner unquestionably contained a smaller proportion of the Negro community than of the white community. But a defendant in a criminal case is not constitutionally entitled to demand a proportionate number of his race on the jury which tries him nor on the venire or jury roll from which petit jurors are drawn. *Virginia* v. *Rives*, 100 U. S. 313, 322–323; *Gibson* v. *Mississippi*, 162 U. S. 565; *Thomas* v. *Texas*, 212 U. S. 278, 282; *Cassell* v. *Texas*, 339 U. S. 282. Neither the jury roll nor the venire need be a perfect mirror of the community or accurately reflect the proportionate strength of every identifiable group. "Obviously the number of races and nationalities appearing in the ancestry of our citizens would make it impossible to meet a requirement of proportional representation. Similarly, since there can be no exclusion of Negroes as a race and no discrimination because of color, proportional limitation is not permissible." *Cassell* v. *Texas*, 339 U. S. 282, 286–287 (opinion of Mr. Justice Reed, announcing judgment). We cannot say that purposeful discrimination based on race alone is satisfactorily proved by showing that an identifiable group in a community is under-represented by as much as 10%. See *Thomas* v. *Texas*, 212 U. S. 278, 283; *Akins* v. *Texas*, 325 U. S. 398; *Cassell* v. *Texas*, 339 U. S. 282. Here the commissioners denied that racial considerations entered into their selections of either their contacts in the community or the names of prospective jurors. There is no evidence that the commissioners applied different standards of

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the beats or talk with persons in the beats to gather names for the commission's approval. All the commissioners averred that they did not watch the color line in obtaining names, did not know the number of Negroes in their beats, and, accordingly, did not count the number of whites and colored people in preparing the lists. The record contains no admission by the commissioners that they had relatively few Negro acquaintances or that they tended primarily to use white church lists or white club lists.

qualifications to the Negro community than they did to the white community. Nor was there any meaningful attempt to demonstrate that the same proportion of Negroes qualified under the standards being administered by the commissioners. It is not clear from the record that the commissioners even knew how many Negroes were in their respective areas, or on the jury roll or on the venires drawn from the jury box. The over-all percentage disparity has been small, and reflects no studied attempt to include or exclude a specified number of Negroes. Undoubtedly the selection of prospective jurors was somewhat haphazard and little effort was made to ensure that all groups in the community were fully represented. But an imperfect system is not equivalent to purposeful discrimination based on race.[5] We do not think that the burden of proof was carried by petitioner in this case.

II.

Petitioner makes a further claim relating to the exercise of peremptory challenges to exclude Negroes from serving on petit juries.

In Talladega County the petit jury venire drawn in a criminal case numbers about 35 unless a capital offense is involved in which case it numbers about 100. Ala. Code, Tit. 30, §§ 60, 62, 63 (1958). After excuses and removals for cause, the venire in a capital case is reduced to about 75. The jury is then "struck"—the defense striking two veniremen and the prosecution one in alternating turns, until only 12 jurors remain. Ala. Code, Tit.

[5] "It may be that the jury commissioners did not give the negro race a full *pro rata* with the white race in the selection of the grand and petit jurors in this case, still this would not be evidence of discrimination. If they fairly and honestly endeavored to discharge their duty, and did not in fact discriminate against the negro race in the selection of the jury lists, then the Constitution of the United States has not been violated." *Thomas* v. *Texas*, 212 U. S. 278, 283.

30, § 64 (1958). This essentially is the Alabama struck jury system, applicable in all criminal cases and available in civil cases. Ala. Code, Tit. 30, §§ 54, 60 (1958). In this case, the six Negroes available for jury service were struck by the prosecutor in the process of selecting the jury which was to try petitioner.

In the trial court after the jury was selected, petitioner moved to have the jury declared void on Fourteenth Amendment grounds. Among other things the motion alleged:

> "(4) That because of the systematic and arbitrary method of selecting the names of qualified male citizens, negro male citizens, by the Jury Commission of Talladega County, Alabama, the State can, and did in this case, readily strike members of the negro race and that there were only six negroes remaining on the final venire in this cause, in violation of the Fourteenth Amendment of the Constitution of the United States and also the Constitution of the State of Alabama . . . ."

The main thrust of the motion according to its terms was the striking of the six Negroes from the petit jury venire.[6] No evidence was taken, petitioner apparently

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[6] The issue in regard to striking Negroes was raised in a different form in the motion to quash the venire. It read in pertinent part:

"4. Defendant avers the existence of a system or practice in the drawing or organization of juries to serve in Talladega County, Alabama, deliberately designed to discriminate against members of the Negro race in order to prevent them from serving on juries by either excluding them from the venire altogether or by keeping the number included so small that they can be systematically and uniformly struck from the venire and prevented from serving in the trial of any case."

This claim was repeated in the motion to declare void the petit jury selected.

"(3) That because of the systematic and arbitrary method of selecting the names of qualified male citizens by the jury commission

being content to rely on the record which had been made in connection with the motion to quash the indictment. We think the motion, seeking as it did to invalidate the alleged purposeful striking of Negroes from the jury which was to try petitioner, was properly denied.

In providing for jury trial in criminal cases, Alabama adheres to the common-law system of trial by an impartial jury of 12 men who must unanimously agree on a verdict,[7] the system followed in the federal courts by virtue of the Sixth Amendment. As part of this system it provides for challenges for cause and substitutes a system of strikes for the common-law method of peremptory challenge.[8] Alabama contends that its system of pe-

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of Talladega County, Alabama, it is impossible for qualified members of the negro race to serve as jurors in this cause or any cause . . . ."

The above claim as well as the objection to the prosecutor's exercise of his strikes against the six Negroes in this case were repeated in the motion for a new trial. No further claims were made and no further evidence was taken on any of these motions.

[7] In all prosecutions by indictment the accused has a right to a speedy public trial by an impartial jury in the county in which the offense was committed. Ala. Const. of 1901, § 6. See also Ala. Const. of 1901, §§ 11, 12; *Collins* v. *State*, 88 Ala. 212, 7 So. 260 (1890).

[8] Alabama has long provided both the defendant and prosecutor with a substantial number of peremptory challenges. Under the 1867 Code, the defendant was entitled to 21 peremptories in capital cases and 15 in noncapital felony cases; correspondingly the State had 14 peremptories in capital trials and 10 in other felony trials. 1867 Rev. Code §§ 4178, 4179. These numbers were altered in the 1907 Act, the defendant having eight peremptories in a noncapital felony case and the State four. The numbers in capital cases remained the same. 1907 Ala. Code § 7275. The struck jury system was introduced in 1909 as a part of a comprehensive amendment of the statutes governing the selection and impaneling of juries in the State. 1909 Leg. Acts, Spec. Sess., p. 319. The history and purposes of this legislation, as set out by the sponsor of the Act, may be found in John, The Jury Law, 1910–1911 Alabama Bar Assn. Rep. 198:

"The provision for struck juries in criminal cases is found to be much fairer to the Solicitor and the Attorneys for defendants, and under

remptory strikes—challenges without cause, without explanation and without judicial scrutiny—affords a suitable and necessary method of securing juries which in fact and in the opinion of the parties are fair and impartial. This system, it is said, in and of itself, provides justification for striking any group of otherwise qualified jurors in any given case, whether they be Negroes, Catholics, accountants or those with blue eyes. Based on the history of this system and its actual use and operation in this country, we think there is merit in this position.

The peremptory challenge has very old credentials. In all trials for felonies at common law, the defendant was allowed to challenge peremptorily 35 jurors,[9] and the prosecutor originally had a right to challenge any number of jurors without cause, a right which was said to tend to "infinite delays and danger." Coke on Littleton 1566 (14th ed. 1791).[10] Thus The Ordinance for In-

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it a jury can be more easily and quickly obtained, and it would be a decided step backward to restore the challenge system, with its delay and chances for errors." *Id.*, at 205.

[9] It was thought that peremptory challenges were allowed at common law in capital felonies only. Thus Blackstone states: "In criminal cases, or at least in capital ones, there is, in favorem vitae, allowed to the prisoner an arbitrary and capricious species of challenge to a certain number of jurors, without showing any cause at all; which is called a peremptory challenge; a provision full of the tenderness and humanity to prisoners, for which our English laws are justly famous." 4 Blackstone Commentaries 352–353 (13th ed. 1800) (hereafter Bl. Comm.).

This statement was not far amiss, since most felonies were generally punishable by death. 4 Bl. Comm. 98. But peremptories were allowable in trials of felonies that were not capital. *Gray* v. *Reg.* 11 Cl. and Fin. 427 (M. L. 1843). See 1 Thompson, Trials § 42 (2d ed. 1912) (hereafter Thompson); Stephen, History of Criminal Law of England 302 (1883) (hereafter Stephen).

[10] The defendant's right remained unaltered until 22 Hen. VIII, c. 14, § 6 (1530); 25 Hen. VIII, c. 3 (1533), when the number was limited to 20 in all cases except high treason. See generally Profatt, Trial By Jury § 156 (1877) (hereafter Profatt).

quests, 33 Edw. 1, c. 2 st. 4 (1305), provided that if "they that sue for the king will challenge any . . . jurors, they shall assign a cause certain." So persistent was the view that a proper jury trial required peremptories on both sides, however, that the statute was construed to allow the prosecution to direct any juror after examination to "stand aside" until the entire panel was gone over and the defendant had exercised his challenges; only if there was a deficiency of jurors in the box at that point did the Crown have to show cause in respect to jurors recalled to make up the required number.[11] Peremptories on both sides became the settled law of England, continuing in the above form until after the separation of the Colonies.[12]

This common law provided the starting point for peremptories in this country. In the federal system, Congress early took a part of the subject in hand in establishing that the defendant was entitled to 35 peremptories in trials for treason and 20 in trials for other felonies specified in the 1789 Act as punishable by death, 1 Stat. 119 (1789). In regard to trials for other offenses without the

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[11] Lord Grey's Case, 9 How. St. Tr. 128 (1682); *Reg.* v. *Frost*, 9 Car. and Payne 129 (1839); *Mansell* v. *Reg.*, 8 El. and Bl. 54 (1857); 4 Bl. Comm. 353. The number of jurors called was in the discretion of the court and it is reported that the right to stand aside was exercised liberally. Profatt § 160. All attempts to limit or abolish the Crown's right were rejected. *Reg.* v. *Frost, supra; O'Coigly's Case*, 26 How. St. Tr. 1191, 1231; Thompson § 51; Busch, Law And Tactics In Jury Trials, § 69 (1949) (hereafter Busch).

[12] It remains the law of England today, except the number the defendant may now exercise is seven. See 6 Geo. IV, c. 50, § 29 (1825); 11 and 12 Geo. VI, c. 58, § 35 (Criminal Justice Act of 1948). The actual use of challenges by either side has been rare, for at least a century, but the continued availability of the right is considered important. 1 Stephen 303; Devlin, Trial By Jury, 29–37 (1956) (hereafter Devlin); Howard, Criminal Justice In England, 362–364 (1931).

1789 statute, both the defendant and the Government were thought to have a right of peremptory challenge, although the source of this right was not wholly clear.[13] In 1865, the Government was given by statute five peremptory challenges in capital and treason cases, the defendant being entitled to 20, and two in other cases where the right of the defendant to challenge then existed, he being entitled to 10. 13 Stat. 500 (1865).[14] Subsequent enactments increased the number of challenges the Government could exercise, the Government now having an equal number with the defendant, 20 in capital cases

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[13] *United States* v. *Richard Jones*, 4 Dall. 412, 414 (Cir. Ct. Pa. 1806). Mr. Justice Washington, sitting on circuit, stated:

"The right of challenge was a privilege highly esteemed, and anxiously guarded, at the common law; and it cannot be doubted, but that at the common law, a prisoner is entitled, on a capital charge, to challenge peremptorily, thirty five jurors. If, therefore, the act of Congress has substituted no other rule . . . the common law rule must be pursued." *United States* v. *Wilson & Porter*, 1 Bald. 78, 82 (Cir. Ct. Pa. 1830); *United States* v. *Douglass*, Fed. Cas. No. 14998, 2 Blatch C. C. 207 (Cir. Ct. S. D. N. Y. 1851). But see *United States* v. *Cottingham*, 2 Blatch C. C. 470 (Cir. Ct. N. D. N. Y. 1852).

In *United States* v. *Marchant*, 12 Wheat. 480, this Court indicated that the Crown's power to stand aside was a part of the common law inherited from the English. Federal courts allowed the Government to stand aside on the basis of this decision. *United States* v. *Wilson & Porter, supra*; *United States* v. *Douglass, supra*. In 1855, the Court held in *United States* v. *Shackleford*, 11 How. 588, that federal statutes affording the defendant a right of challenge did not incorporate the Government's right to stand aside. The Government could do this only by virtue of the 1840 Act, 5 Stat. 394, empowering the federal courts to adopt the state practice in regard to selection and impaneling of juries.

[14] A few years later Congress extended the defendant's right to 10 challenges in all noncapital felony cases and the Government was entitled to three in such cases; it also extended the right to misdemeanors and civil cases, each party being entitled to three. 17 Stat. 282 (1872).

and six in cases where the crime is punishable by more than one year imprisonment.[15]

The course in the States apparently paralleled that in the federal system. The defendant's right of challenge was early conferred by statute, the number often corresponding to the English practice,[16] the prosecution was thought to have retained the Crown's common-law right to stand aside,[17] and by 1870, most, if not all, States had

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[15] See 36 Stat. 1167 (1911) providing that where the offense is capital or treason, the defendant is entitled to 20 peremptory challenges and the United States to six; in all other felony trials, the defendant has 10, the United States six. Federal Rule 24 (b) gave the Government an equal number of challenges with the defendant, except in the case of joint defendants.

"(b) Peremptory Challenges. If the offense charged is punishable by death, each side is entitled to 20 peremptory challenges. If the offense charged is punishable by imprisonment for more than one year, the government is entitled to 6 peremptory challenges and the defendant or defendants jointly to 10 peremptory challenges. If the offense charged is punishable by imprisonment for not more than one year or by fine or both, each side is entitled to 3 peremptory challenges. If there is more than one defendant, the court may allow the defendants additional peremptory challenges and permit them to be exercised separately or jointly." Fed. Rules Crim. Proc. 24 (b).

The Government's right to stand aside was deemed to survive early statutes giving the Government peremptory challenges. *United States* v. *Sawyer*, 202 U. S. 150.

[16] See *Waterford & Whitehall Turnpike Co.* v. *People*, 9 Barb. 161 (Sup. Ct. N. Y. 1850); *People* v. *McQuade*, 110 N. Y. 284, 293 (1888); *State* v. *Humphreys*, 1 Tenn. 306 (1808); *Brown* v. *State*, 62 N. J. L. 666, 678–688 (1898), aff'd, 175 U. S. 172; *Hendrick* v. *Commonwealth*, 5 Leigh 707, 715 (Va. Gen. Ct. 1834); *Robinson* v. *State*, 1 Geo. 563, 571 (1846); *State* v. *Arthur*, 13 N. C. 217 (1829); *State* v. *Benton*, 19 N. C. 196 (1836). But cf. *State* v. *George*, 1 Del. Cas. 161 (Ct. Q. Sess. 1797). See also Bishop, Criminal Procedure § 941 (1913) (hereafter Bishop); Thompson § 42.

[17] *Waterford & Whitehall Turnpike Co., supra; Commonwealth* v. *Eisenhower*, 181 Pa. 470 (1897); *Jewell* v. *Commonwealth*, 22 Pa. 94 (1853); *State* v. *Arthur*, 13 N. C. 217 (1829); Profatt § 162; Thompson § 49; Bishop §§ 938, 939.

enacted statutes conferring on the prosecution a substantial number of peremptory challenges, the number generally being at least half, but often equal to, the number had by the defendant.[18] Although there has been some criticism in the twentieth century leveled at peremptory challenges, on the basis of the delays, expense and elimination of qualified jurors incident to their use,[19] the system has survived these attacks. In every State, except where peremptory strikes are a substitute, peremptory

[18] *E. g.*, 1873 N. Y. Laws § 427; 187- Ill. Rev. Stat., p. 411; Maton v. *People*, 15 Ill. 536 (1854); *Brown* v. *State*, 62 N. J. L. 666, 684–685 (1898), aff'd, 175 U. S. 172; 1869 Mass. Acts, c. 151; 1860 Pa. Laws 427, §§ 36, 37; *Warren* v. *Commonwealth*, 37 Pa. 45 (1860); *State* v. *Briggs*, 27 S. C. 80, 2 S. E. 854 (1887); *Boon* v. *State*, 1 Geo. 618 (1846); 1851 Calif. Stats., c. 29, p. 248, § 343; 1863–1864 Calif. Stats., c. 348, p. 394, § 1; Profatt § 161.

The State's right to stand aside was deemed to survive these statutes, *Warren* v. *Commonwealth*, 37 Pa. 45 (1860); *Haines* v. *Commonwealth*, 100 Pa. 317, 322 (1882); *State* v. *McNinch*, 12 S. C. 89 (1879); *State* v. *Benton*, 19 N. C. 196, 203 (1836); Thompson § 151, although opinion was divided, *Sealy* v. *State*, 1 Geo. 213 (1846); *Mathis* v. *State*, 31 Fla. 291, 315 (1893). In many States this right has been expressly barred by statute. *E. g.*, N. C. Gen. Stat. §§ 15–163, 164 (1953); 19 Pa. Stat. Ann. § 811 (1964); S. C. Code § 38–211 (1962).

[19] The charges leveled at peremptory challenges were that they required summoning a large number of veniremen, that they were used by defendants to eliminate intelligent and highly qualified jurors, that the imbalance in number in favor of defendants was unfair, that the *voir dire* as a predicate for their exercise was too extensive and that they generally protracted the selection process. See Proposed Legislation For Jury Reform in New York, 30 Col. L. Rev. 721, 726 (1930); Missouri Crime Survey 356–357 (1926); Evans, Recommendation For Reform In Criminal Procedure, 24 Ill. L. Rev. 112, 113–114 (1929); Challenges and the Powers of Judges, 23 Green Bag. 84 (1911); 3 Proc. Am. Law Inst. 501 (1925); Report of Illinois Judicial Advisory Council 17–18 (1931); Extracts of Rep. to Third Ann. Meeting of A. L. I., Defects in Criminal Justice, 11 A. B. A. J. 297, 298 (1925); Smith, Criminal Justice in America: A Reply, 11 A. B. A. J. 797–798 (1925).

challenges are given by statute to both sides in both criminal and civil cases, the number in criminal cases still being considerably greater. Under these statutes the prosecution generally possesses a substantial number of challenges.[20]

The system of struck juries also has its roots in ancient common-law heritage.[21] Since striking a jury allowed both sides a greater number of challenges and an opportunity to become familiar with the entire venire list, it was deemed an effective means of obtaining more impartial and better qualified jurors. Accordingly, it was used in causes of "great nicety" or "when the sheriff [responsible for the jury list] was suspected of partiality." 3 Bl.

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[20] Classification of offenses and punishment on which the number exercisable depends vary among the States, as does the number of challenges within these categories, and hence meaningful generalization in regard to current statutes is not feasible. For an example of these variations, see Ariz. Rev. Stat., Rules Crim. Proc. 225 (1956); Conn. Gen. Stat. § 51–242 (1958); Del. Code Ann., Tit. 10, Super. Ct. Rules Crim. Proc. 24 (b) (1953); Calif. Penal Code § 1070 (1956); Fla. Stat. 913.08 (1963); Ga. Code Ann. 59–805 (1937); Ill. Ann. Stat., c. 38, § 115–4 (e) (1964); Mass. Gen. Laws Ann., c. 234, § 29 (1959); Md. Ann. Code, Rules Proc. 746 (1963); 39 Mo. Ann. Stat. §§ 546, 180 (1953); N. J. Stat. Ann. 2A:78–7 (c) and (d) (1952); N. Y. Crim. Code and Penal Law §§ 370, 373 (1964); N. C. Gen. Stat. §§ 15–163, 164 (1953); Ohio Rev. Code Ann., Tit. 29, §§ 2945.21, 2945.22 (1954); 19 Pa. Stat. Ann. § 811 (1964); S. C. Code § 38–211 (1962); Tenn. Code Ann. § 40–2510 (1955); Tex. Code Crim. Proc., Tit. 8, Arts. 615, 634 (1941); Utah Code Ann. 77–30–15 (1953).

For a listing of the state statutes in effect in 1930 and the variations in number and classifications among the States, see A. L. I. Code of Criminal Procedure, Commentary to § 282, at 855–862 (1930).

[21] Historically 48 names would be selected from a special jury list and each side would alternately strike 12 names, the remaining 24 being summoned for the case. *Brown* v. *State*, 62 N. J. L. 666, 688–690 (1898), aff'd, 175 U. S. 172; 3 Bl. Comm. 357; Forsyth, History of Trial by Jury 173. Use of the struck jury system was not confined to criminal cases at common law, as the peremptory challenge was. Busch § 62; Profatt § 72.

Comm. 357. It is available in many States for both civil and criminal cases.[22] The Alabama system adheres to the common-law form, except that the veniremen are drawn from the regular jury list, are summoned to court before striking begins and the striking continues until 12 rather than 24 remain. It was adopted as a fairer system to the defendant and prosecutor and a more efficacious, quicker way to obtain an impartial jury satisfactory to the parties.[23]

In contrast to the course in England, where both peremptory challenge and challenge for cause have fallen into disuse, peremptories were and are freely used and relied upon in this country, perhaps because juries here are drawn from a greater cross-section of a heterogeneous society.[24] The *voir dire* in American trials tends to be extensive and probing, operating as a predicate for the exercise of peremptories, and the process of selecting a jury protracted.[25] The persistence of peremptories and their extensive use demonstrate the long and widely held belief that peremptory challenge is a necessary part of trial by jury. See *Lewis* v. *United States*, 146 U. S. 370, 376. Although "[t]here is nothing in the Constitution of the United States which requires the Congress [or the States] to to grant peremptory challenges," *Stilson* v.

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[22] See N. J. Stat. Ann. 2A:75–1, 2A:75–2, 2A:75–3; Md. Ann. Code, Rules Proc. 543 (1963); Busch § 62; 31 Am. Jur. § 90. Cf. 28 U. S. C. § 1866 (1958 ed.).

[23] John, The Jury Law, 1910–1911 Alabama Bar Assn. Rep. 198, 205.

[24] Devlin, *supra*, at 20–36. Another reason suggested for the difference lies in the greater control in England over pretrial publicity. "[O]ne of the salient reasons why both court and counsel have confidence in the impartiality and integrity of trial jurors is the authority the courts exercise in preventing the newspapers from prejudging a pending case." Howard, Criminal Justice in England 363 (1931).

[25] See Devlin, *supra*, at 32–34; Busch §§ 145–154; Bodin, Selecting a Jury 44–72 (PLI 1954) (hereafter Bodin).

United States, 250 U. S. 583, 586, nonetheless the challenge is "one of the most important of the rights secured to the accused," *Pointer* v. *United States,* 151 U. S. 396, 408. The denial or impairment of the right is reversible error without a showing of prejudice, *Lewis* v. *United States,* 146 U. S. 370; *Harrison* v. *United States,* 163 U. S. 140; cf. *Gulf, Colorado & Santa Fe R. Co.* v. *Shane,* 157 U. S. 348. "For it is, as Blackstone says, an arbitrary and capricious right; and it must be exercised with full freedom, or it fails of its full purpose." *Lewis* v. *United States,* 146 U. S. 370, 378.

The function of the challenge is not only to eliminate extremes of partiality on both sides, but to assure the parties that the jurors before whom they try the case will decide on the basis of the evidence placed before them, and not otherwise. In this way the peremptory satisfies the rule that "to perform its high function in the best way 'justice must satisfy the appearance of justice.'" *In re Murchison,* 349 U. S. 133, 136. Indeed the very availability of peremptories allows counsel to ascertain the possibility of bias through probing questions on the *voir dire* and facilitates the exercise of challenges for cause by removing the fear of incurring a juror's hostility through examination and challenge for cause. Although historically the incidents of the prosecutor's challenge has differed from that of the accused, the view in this country has been that the system should guarantee "not only freedom from any bias against the accused, but also from any prejudice against his prosecution. Between him and the state the scales are to be evenly held." *Hayes* v. *Missouri,* 120 U. S. 68, 70.

The essential nature of the peremptory challenge is that it is one exercised without a reason stated, without inquiry and without being subject to the court's control. *State* v. *Thompson,* 68 Ariz. 386, 206 P. 2d 1037 (1949); *Lewis* v. *United States,* 146 U. S. 370, 378. While chal-

lenges for cause permit rejection of jurors on narrowly specified, provable and legally cognizable basis of partiality, the peremptory permits rejection for a real or imagined partiality that is less easily designated or demonstrable. *Hayes* v. *Missouri*, 120 U. S. 68, 70. It is often exercised upon the "sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another," *Lewis, supra*, at 376, upon a juror's "habits and association," *Hayes* v. *Missouri*, 120 U. S. 68, 70, or upon the feeling that "the bare questioning [a juror's] indifference may sometimes provoke a resentment," *Lewis, supra*, at 376. It is no less frequently exercised on grounds normally thought irrelevant to legal proceedings or official action, namely, the race, religion, nationality, occupation or affiliations of people summoned for jury duty.[26] For the question a prosecutor or defense counsel must decide is not whether a juror of a particular race or nationality is in fact partial, but whether one from a different group is less likely to be.[27] It is well known that these factors are widely explored during the *voir dire*, by both prosecutor and accused, *Miles* v. *United States*, 103 U. S. 304; *Aldridge* v. *United States*, 283 U. S. 308.[28] This Court has held that the fairness of trial by jury

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[26] See, *e. g.*, *Aldridge* v. *United States*, 283 U. S. 308; *Hall* v. *United States*, 168 F. 2d 161 (D. C. Cir.), cert. denied, 334 U. S. 853; *State* v. *Higgs*, 143 Conn. 138, 120 A. 2d 152 (1956); *Gurley* v. *State*, 164 Ark. 397, 262 S. W. 636 (1924); *People* v. *Car Soy*, 57 Cal. 102 (1880); *People* v. *Reyes*, 5 Cal. 347 (1855); *Fendwick* v. *State*, 39 Tex. Crim. 380 (1919); *State* v. *Carson*, 131 S. C. 42, 26 S. E. 757 (1924); *Wasy* v. *State*, 234 Ind. 52, 123 N. E. 2d 462 (1955); *People* v. *Roxborough*, 307 Mich. 575, 12 N. W. 2d 466 (1944), cert. denied, 323 U. S. 749. See generally Busch § 146; 54 A. L. R. 2d 1204; Bodin 61–67.

[27] This is especially so under the Alabama strike system, where all the veniremen are known to the parties before striking begins.

[28] See cases cited in n. 26, *supra*.

requires no less. *Aldridge, supra.*[29] Hence veniremen are not always judged solely as individuals for the purpose of exercising peremptory challenges. Rather they are challenged in light of the limited knowledge counsel has of them, which may include their group affiliations, in the context of the case to be tried.

With these considerations in mind, we cannot hold that the striking of Negroes in a particular case is a denial of equal protection of the laws. In the quest for an impartial and qualified jury, Negro and white, Protestant and Catholic, are alike subject to being challenged without cause. To subject the prosecutor's challenge in any particular case to the demands and traditional standards of the Equal Protection Clause would entail a radical change in the nature and operation of the challenge. The challenge, pro tanto, would no longer be peremptory, each and every challenge being open to examination, either at the time of the challenge or at a hearing afterwards. The prosecutor's judgment underlying each challenge would be subject to scrutiny for reasonableness and sincerity. And a great many uses of the challenge would be banned.

In the light of the purpose of the peremptory system and the function it serves in a pluralistic society in connection with the institution of jury trial, we cannot hold that the Constitution requires an examination of the prosecutor's reasons for the exercise of his challenges in any given case. The presumption in any particular case must be that the prosecutor is using the State's chal-

[29] Race or religion and beliefs stemming therefrom have at times constituted grounds of challenge for cause. *State* v. *Sanders,* 103 S. C. 216, 88 S. E. 10 (1916); *Potter* v. *State,* 86 Tex. Crim. 380, 216 S. W. 886 (1919); *McFadden* v. *Commonwealth,* 23 Pa. 12 (1853). But cf. *Johnson* v. *State,* 88 Neb. 565, 130 N. W. 282 (1911); *State* v. *Giudice,* 170 Iowa 731, 153 N. W. 336 (1915); *Commonwealth* v. *DePalma* 268 Pa. 434, 110 A. 756 (1920); *Romero* v. *State,* 107 Tex. Crim. 70, 294 S. W. 857 (1927). See generally 54 A. L. R. 2d 1204.

lenges to obtain a fair and impartial jury to try the case before the court. The presumption is not overcome and the prosecutor therefore subjected to examination by allegations that in the case at hand all Negroes were removed from the jury or that they were removed because they were Negroes. Any other result, we think, would establish a rule wholly at odds with the peremptory challenge system as we know it. Hence the motion to strike the trial jury was properly denied in this case.

III.

Petitioner, however, presses a broader claim in this Court.[30] His argument is that not only were the Negroes removed by the prosecutor in this case but that there never has been a Negro on a petit jury in either a civil or criminal case in Talladega County and that in criminal cases prosecutors have consistently and systematically exercised their strikes to prevent any and all Negroes on petit jury venires from serving on the petit jury itself. This systematic practice, it is claimed, is invidious dis-

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[30] This claim was not set forth in the motion to quash the venire or the motion to declare void the petit jury selected, the only motions in which the Alabama strike system was challenged in the trial court. However, the decision of the Alabama Supreme Court may be read to have ruled on the challenge to the exercise of strikes against Negroes in its broadest form.

"As to the contention that Negroes are systematically excluded from trial juries, the evidence discloses that Negroes are commonly on trial venires but are always struck by attorneys in selecting the jury. It has long been held that, where allowed by statute, peremptory challenges may be used without any assigned or stated cause. Both the federal and Alabama jurisdictions have statutes providing for peremptory challenges. The fact that the prosecution peremptorily strikes every Negro from the jury panel in a case where the defendant is a Negro does not constitute a violation of the defendant's constitutional rights. . . ." 275 Ala. 508, 515, 156 So. 2d 368, 375 (citations omitted). Cf. *Saltonstall* v. *Saltonstall*, 276 U. S. 260, 267–268; *Charleston Federal Savings & Loan Assn.* v. *Alderson*, 324 U. S. 182, 185–186.

crimination for which the peremptory system is insufficient justification.

We agree that this claim raises a different issue and it may well require a different answer. We have decided that it is permissible to insulate from inquiry the removal of Negroes from a particular jury on the assumption that the prosecutor is acting on acceptable considerations related to the case he is trying, the particular defendant involved and the particular crime charged. But when the prosecutor in a county, in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes who have been selected as qualified jurors by the jury commissioners and who have survived challenges for cause, with the result that no Negroes ever serve on petit juries, the Fourteenth Amendment claim takes on added significance. Cf. *Yick Wo* v. *Hopkins*, 118 U. S. 356. In these circumstances, giving even the widest leeway to the operation of irrational but trial-related suspicions and antagonisms, it would appear that the purposes of the peremptory challenge are being perverted. If the State has not seen fit to leave a single Negro on any jury in a criminal case, the presumption protecting the prosecutor may well be overcome. Such proof might support a reasonable inference that Negroes are excluded from juries for reasons wholly unrelated to the outcome of the particular case on trial and that the peremptory system is being used to deny the Negro the same right and opportunity to participate in the administration of justice enjoyed by the white population. These ends the peremptory challenge is not designed to facilitate or justify.

We need pursue this matter no further, however, for even if a State's systematic striking of Negroes in the selection of petit juries raises a prima facie case under the Fourteenth Amendment, we think it is readily apparent that the record in this case is not sufficient to demonstrate

that the rule has been violated by the peremptory system as it operates in Talladega County. Cf. *Glasser* v. *United States*, 315 U. S. 60, 87.

The difficulty with the record before us, perhaps flowing from the fact that it was made in connection with the motion to quash the indictment, is that it does not with any acceptable degree of clarity, show when, how often, and under what circumstances the prosecutor alone has been responsible for striking those Negroes who have appeared on petit jury panels in Talladega County. The record is absolutely silent as to those instances in which the prosecution participated in striking Negroes, except for the indication that the prosecutor struck the Negroes in this case and except for those occasions when the defendant himself indicated that he did not want Negroes on the jury. Apparently in some cases, the prosecution agreed with the defense to remove Negroes. There is no evidence, however, of what the prosecution did or did not do on its own account in any cases other than the one at bar.[31] In one instance the prosecution offered the

[31] The prosecutor testified that on occasion he would ask defense counsel if he wanted Negroes on the jury; if the defense did not, and the prosecutor agreed, "what we do then is just to take them off. Strike them first." The record makes clear that this was not a general practice and the matter was not explored further:

"Q. Let me ask you this. You stated that the defendants generally do not want a negro to serve on a jury that is sworn to try him?

"A. I didn't say that. I didn't—they generally didn't want it. I said in the past there has been occasion here where that has happened.

"Q. Have there been any cases where they did want negroes to serve on juries in their behalf?

"A. I wouldn't know if there has been. Not to my knowledge, because I am not representing defendants. I am representing the State. Do you see what I mean?

"Q. Yes.

"A. In other words, that would be between attorney and client, privileged, and I wouldn't know what they wanted. You would have to ask these defense attorneys about that."

defendant an all-Negro jury but the defendant in that case did not want a jury with any Negro members. There was other testimony that in many cases the Negro defendant preferred an all-white to a mixed jury. One lawyer, who had represented both white and Negro defendants in criminal cases, could recall no Negro client who wanted Negroes on the jury which was to try him. The prosecutor himself, who had served since 1953, said that if the Negro defendant wanted Negroes on the jury it would depend "upon the circumstances and the conditions and the case and what I thought justice demanded and what [it] was in that particular case," and that striking is done differently depending on the race of the defendant and the victim of the crime. These statements do not support an inference that the prosecutor was bent on striking Negroes, regardless of trial related considerations. The fact remains, of course, that there has not been a Negro on a jury in Talladega County since about 1950. But the responsibility of the prosecutor is not illuminated in this record. There is no allegation or explanation, and hence no opportunity for the State to rebut, as to when, why and under what circumstances in cases previous to this one the prosecutor used his strikes, to remove Negroes. In short, petitioner has not laid the proper predicate for attacking the peremptory strikes as they were used in this case. Petitioner has the burden of proof and he has failed to carry it.

A dissent asserts that a showing that there are qualified Negroes and that none have served makes out a prima facie case of purposeful discrimination on the part of the State and that the continued vitality of *Strauder* v. *West Virginia*, 100 U. S. 303, as well as "a practical accommodation" between the constitutional right of equal protection and the statutory right of peremptory challenge, requires application of such a rule here. Where discrimination is said to occur in the selection of veniremen by state jury

commissioners, "proof that Negroes constituted a substantial segment of the population, that some Negroes were qualified to serve as jurors, and that none *had been called* for jury service over an extended period of time . . . constitute[s] prima facie proof of the systematic exclusion of Negroes from jury service," *Hernandez* v. *Texas*, 347 U. S. 475, 480, as does "proof that no Negro had served on a criminal court *grand or petit jury* for a period of thirty years," *Patton* v. *Mississippi*, 332 U. S. 463, 466. (Emphasis added.) See also *Norris* v. *Alabama*, 294 U. S. 587; *Harper* v. *Mississippi*, — Miss. —, — So. 2d — (1965). Total exclusion of Negroes by the state officers responsible for selecting names of jurors gives rise to a fair inference of discrimination on their part, an inference which is determinative absent sufficient rebuttal evidence. But this rule of proof cannot be woodenly applied to cases where the discrimination is said to occur during the process of peremptory challenge of persons called for jury service. Unlike the selection process, which is wholly in the hands of state officers, defense counsel participate in the peremptory challenge system, and indeed generally have a far greater role than any officer of the State. It is for this reason that a showing that Negroes have not served during a specified period of time does not, absent a sufficient showing of the prosecutor's participation, give rise to the inference of systematic discrimination on the part of the State. The ordinary exercise of challenges by defense counsel does not, of course, imply purposeful discrimination by state officials. This is not to say that a defendant attacking the prosecutor's use of peremptory challenges over a period of time need elicit an admission from the prosecutor that discrimination accounted for his rejection of Negroes, any more than a defendant attacking jury selection need obtain such an admission from the jury commissioners. But the defendant must, to pose the issue, show the prosecutor's systematic use of peremptory

challenges against Negroes over a period of time. This is the teaching of *Hernandez* v. *Texas*, 347 U. S. 475; *Norris* v. *Alabama*, 294 U. S. 587; *Patton* v. *Mississippi*, 332 U. S. 463. We see no reason, except for blind application of a proof standard developed in a context where there is no question of state responsibility for the alleged exclusion, why the defendant attacking the prosecutor's systematic use of challenges against Negroes should not be required to establish on the record the prosecutor's conduct in this regard, especially where the same prosecutor for many years is said to be responsible for this practice and is quite available for questioning on this matter.[32] Accordingly the judgment is

Affirmed.

MR. JUSTICE HARLAN, concurring.

In joining the opinion of the Court, I deem it appropriate to emphasize my understanding that the Court reserves, and does not decide, the question which in Part III of its opinion it finds not presented by the record in this case.

MR. JUSTICE BLACK concurs in the result.

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[32] We also reject the assertion that the method of selecting veniremen in Talladega County, with its lower proportion of Negroes on the venirelist, when considered with the system of peremptory strikes establishes a prima facie case of discrimination. Absent a showing of purposeful exclusion of Negroes in the selection of veniremen, which has not been made, the lower proportion of Negroes on the venirelist sheds no light whatsoever on the validity of the peremptory strike system or on whether the prosecutor systematically strikes Negroes in the county. Moreover, the constitutional issue in regard to the prosecutor's systematic use of strikes against Negroes remains much the same whatever the number of Negroes on the venirelist.

SUPREME COURT OF THE UNITED STATES

No. 64.—OCTOBER TERM, 1964.

Robert Swain, Petitioner, v. State of Alabama. } On Writ of Certiorari to the Supreme Court of Alabama.

[March 8, 1965.]

MR. JUSTICE GOLDBERG, with whom THE CHIEF JUSTICE and MR. JUSTICE DOUGLAS join, dissenting.

In 1880 this Court, in *Strauder* v. *West Virginia*, 100 U. S. 303, one of the first cases applying the Fourteenth Amendment to racial discrimination, held that under the Equal Protection Clause, a State cannot systematically exclude persons from juries solely because of their race or color. Since *Strauder* and until today this Court has consistently applied this constitutional principle. See *Ex parte Virginia*, 100 U. S. 339; *Neal* v. *Delaware*, 103 U. S. 370; *Gibson* v. *Mississippi*, 162 U. S. 565; *Carter* v. *Texas*, 177 U. S. 442; *Rogers* v. *Alabama*, 192 U. S. 226; *Martin* v. *Texas*, 200 U. S. 316; *Norris* v. *Alabama*, 294 U. S. 587; *Hale* v. *Kentucky*, 303 U. S. 613; *Pierre* v. *Louisiana*, 306 U. S. 354; *Smith* v. *Texas*, 311 U. S. 128; *Hill* v. *Texas*, 316 U. S. 400; *Akins* v. *Texas*, 325 U. S. 398; *Patton* v. *Mississippi*, 332 U. S. 463; *Cassell* v. *Texas*, 339 U. S. 282; *Hernandez* v. *Texas*, 347 U. S. 475; *Reece* v. *Georgia*, 350 U. S. 85; *Eubanks* v. *Louisiana*, 356 U. S. 585; *Arnold* v. *North Carolina*, 376 U. S. 773.

The rationale upon which these decisions rest was clearly stated in *Norris* v. *Alabama*, *supra*, at 589:

> "There is no controversy as to the constitutional principle involved. . . . Summing up precisely the effect of earlier decisions, this Court thus stated the

> principle in *Carter* v. *Texas*, 177 U. S. 442, 447, in relation to exclusion from service on grand juries: 'Whenever by any action of a State, whether through its legislature, through its courts, or through its executive or administrative officers, all persons of the African race are excluded, solely because of their race or color, from serving as grand jurors in the criminal prosecution of a person of the African race, the equal protection of the laws is denied to him, contrary to the Fourteenth Amendment of the Constitution of the United States. *Strauder* v. *West Virginia*, 100 U. S. 303; *Neal* v. *Delaware*, 103 U. S. 370, 397; *Gibson* v. *Mississippi*, 162 U. S. 565.' This statement was repeated in the same terms in *Rogers* v. *Alabama*, 192 U. S. 226, 231, and again in *Martin* v. *Texas*, 200 U. S. 316, 319. The principle is equally applicable to a similar exclusion of Negroes from service on petit juries. *Strauder* v. *West Virginia*, *supra*, *Martin* v. *Texas*, *supra*. And although the state statute defining the qualifications of jurors may be fair on its face the constitutional provision affords protection against action of the State through its administrative officers in effecting the prohibited discrimination. *Neal* v. *Delaware*, *supra*; *Carter* v. *Texas*, *supra*. Compare *Virginia* v. *Rives*, 100 U. S. 313, 322, 323; *In re Wood*, 140 U. S. 278, 285; *Thomas* v. *Texas*, 212 U. S. 278, 282, 283."

This set of principles was recently and explicitly reaffirmed by this Court in *Eubanks* v. *Louisiana*, *supra*, and *Arnold* v. *North Carolina*, *supra*.

The reasons underlying the Court's decisions in these cases were well expressed in *Strauder*:

> "The very idea of a jury is a body of men composed of the peers or equals of the person whose rights it is selected or summoned to determine; that is, of his

> neighbors, fellows, associates, persons having the same legal status in society as that which he holds. Blackstone, in his Commentaries, says, 'The right of trial by jury, or the country, is a trial by the peers of every Englishman, and is the grand bulwark of his liberties, and is secured to him by the Great Charter.' It is also guarded by statutory enactments intended to make impossible what Mr. Bentham called 'packing juries.' It is well known that prejudices often exist against particular classes in the community, which sway the judgment of jurors, and which, therefore, operate in some cases to deny to persons of those classes the full enjoyment of that protection which others enjoy." 100 U. S., at 308–309.

Moreover,

> "[t]he very fact that colored people are singled out and expressly denied by a statute all right to participate in the administration of the law, as jurors, because of their color, though they are citizens, and may be in other respects fully qualified, is practically a brand upon them, affixed by the law, an assertion of their inferiority, and a stimulant to that race prejudice which is an impediment to securing to individuals of the race that equal justice which the law aims to secure to all others." 100 U. S., at 308.

The principles and reasoning upon which this long line of decisions rests are sound. The need for their reaffirmation is present. The United States Commission on Civil Rights in its 1961 Report, Justice, 103, after exhaustive study of the practice of discrimination in jury selection, concluded that "[t]he practice of racial exclusion from juries persists today even though it has long stood indicted as a serious violation of the Fourteenth Amendment." It is unthinkable, therefore, that the principles

of *Strauder* and the cases following should be in any way weakened or undermined at this late date particularly when this Court has made it clear in other areas, where the course of decision has not been so uniform, that the States may not discriminate on the basis of race. Compare *Plessy* v. *Ferguson,* 163 U. S. 537, with *Brown* v. *Board of Education,* 347 U. S. 483; compare *Pace* v. *Alabama,* 106 U. S. 583, with *McLaughlin* v. *Florida,* 379 U. S. —.

Regrettably, however, the Court today while referring with approval to *Strauder* and the cases which have followed, seriously impairs their authority and creates additional barriers to the elimination of jury discrimination practices which have operated in many communities to nullify the command of the Equal Protection Clause. This is evident from an analysis of the Court's holding as applied to the facts which are virtually undisputed.

Petitioner, a 19-year-old Negro, was indicted in Talladega County for the rape of a 17-year-old white girl, found guilty, and sentenced to death by an all-white jury. The petitioner established by competent evidence and without contradiction that not only was there no Negro on the jury that convicted and sentenced him, but also that no Negro within the memory of persons now living has ever served on any petit jury in any civil or criminal case tried in Talladega County, Alabama. Yet, of the group designated by Alabama as generally eligible for jury service in that county, 74% (12,125) were white and 26% (4,281) were Negro.

Under well-established principles this evidence clearly makes out "a *prima facie* case of the denial of the equal protection which the Constitution guarantees." *Norris* v. *Alabama, supra,* at 591. The case here is at least as strong as that in *Norris* where

> "proof that Negroes constituted a substantial segment of the population of the jurisdiction, that some

> Negroes were qualified to serve as jurors, and that none had been called for jury service over an extended period of time, was held to constitute prima facie proof of the systematic exclusion of Negroes from jury service. This holding, sometimes called the 'rule of exclusion,' has been applied in other cases, and is available in supplying proof of discrimination against any delineated class." *Hernandez* v. *Texas, supra,* at 480.

It is also at least as strong as the case in *Patton* v. *Mississippi, supra,* where the Court stated:

> "It is to be noted at once that the indisputable fact that no Negro had served on a criminal court grand or petit jury for a period of thirty years created a very strong showing that during that period Negroes were systematically excluded from jury service because of race. When such a showing was made, it became a duty of the State to try to justify such an exclusion as having been brought about for some reason other than racial discrimination." 332 U. S., at 466.

It is clear that, unless the State here can "justify such an exclusion as having been brought about for some reason other than racial discrimination," *Patton* v. *Mississippi, supra,* at 466, this conviction "cannot stand." *Id.,* at 469. *Norris* v. *Alabama, supra,* at 596–598; *Arnold* v. *North Carolina, supra,* at 378. "Long continued omission of Negroes from jury service establishes a prima facie case of systematic discrimination. The burden of proof is then upon the State to refute it." *Harper* v. *Mississippi,* — Miss. —, —, — So. 2d —, —.[1]

Alabama here does not deny that Negroes as a race are excluded from serving on juries in Talladega County. The State seeks to justify this admitted exclusion of

[1] See also *State* v. *Lowry,* — N. C. —, — S. E. 2d —.

Negroes from jury service by contending that the fact that no Negro has ever served on a petit jury in Talladega County has resulted from use of the jury-striking system, which is a form of peremptory challenge. While recognizing that no Negro has ever served on any petit jury in Talladega County, that the method of venire selection was inadequate, that the prosecutor in this case used the peremptory challenge system to exclude all Negroes as a class, and that the systematic misuse by the State of a peremptory challenge system to exclude all Negroes from all juries is prohibited by the Fourteenth Amendment, the Court affirms petitioner's conviction on the ground that petitioner has "failed to carry" his burden of proof. The Court holds this because it believes the record is silent as to whether the State participated in this total exclusion of all Negroes in previous cases; it would require petitioner specifically to negative the possibility that total exclusion of Negroes from jury service in all other cases was produced solely by the action of defense attorneys.

I cannot agree that the record is silent as to the State's involvement in the total exclusion of Negroes from jury service in Talladega County. The Alabama Supreme Court found that "Negroes are commonly on trial venires but are always struck by attorneys in selecting the trial jury." 275 Ala. 508, 515, 156 So. 2d 368, 375. In response to a question concerning the operation of the jury striking system, the Circuit Solicitor, the state prosecuting attorney, stated:

> "Sometimes, it depends on who is involved in a case. We have been very fortunate in this county, we have not had any white against black or black against white. If we have—where we have a situation arising in a case such as that, in the cases that we have had—we have had no capital felonies, but we strike a jury different from what if it was two white men involved or two colored men."

This statement, is seems to me, plainly indicates that, at the very least, the State—"we"—participates, in Talladega County, in employing the striking or peremptory challenge system to exclude Negroes from jury service in cases where white men are involved.

Also, the state prosecuting attorney testified as follows:

> "Many times I have asked, Mr. Love for instance, I would say there are so many colored men on this jury venire, do you want to use any of them, and he would say, my client doesn't want them, or we don't see fit to use them. And then if I didn't see fit to use them, then we would take them off. We would strike them first, or take them off.
>
> . . . . .
>
> "If I am trying a case for the State, I will ask them what is their wish, do they want them [Negro jurors], and they will as a rule discuss it with their client, and then they will say, we don't want them. If we are not going to want them, if he doesn't want them, and if I don't want them, what we do then is just take them off. Strike them first."

These quotations show either that the State "many times" abandons even the facade of the jury striking system and agrees with the defense to remove all Negroes as a class from the jury lists even before the striking begins, or that pursuant to an agreement the State directly participates in the striking system to remove Negroes from the venire. Indeed the Court recognizes that "[a]pparently in some cases, the prosecution agreed with the defense to remove Negroes," *ante*, at 22. The Court, however, goes on to state that "[t]he record makes it clear that this was not a general practice . . . ," *ante*, at 22, n. 31. With all deference, it seems clear to me that the record statement quoted by the Court to support this conclusion, cuts against rather than in favor of the Court's statement and

inference that the general practice was not to exclude Negroes by agreement between the prosecution and defense or by the State acting alone. The prosecutor, in the statement quoted by the court, denied that he had stated that Negro defendants "generally didn't want" Negroes to serve on juries and stated that there had only "been occasions when that has happened." *Ante*, at 22, n. 31. Since it is undisputed that no Negro has ever served on a jury in the history of the county, and a great number of cases have involved Negroes, the only logical conclusion from the record statement that only on occasion have Negro defendants desired to exclude Negroes from jury service, is that in a good many cases Negroes have been excluded by the state prosecutor, either acting alone or as a participant in arranging agreements with the defense.[2]

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[2] I believe that the record shows that agreement between the State and the defense to exclude Negroes has occurred "many times." The Court itself admits that at least "in some cases the prosecution agreed with the defense to remove Negroes," *ante*, at 22. It concludes, however, that this is not sufficient on the ground that "there is no evidence of what the prosecution did or did not do *on its own account* in any cases other than the one at bar." *Ibid.* (Emphasis added.) This Court, however, has never held in any case involving racial discrimination under the Fourteenth Amendment that such discrimination is unconstitutional only if it is brought about by the State acting *alone*. The test which has been applied is whether the State "to some significant extent . . . has been . . . involved." *Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 722. See *Peterson* v. *Greenville*, 373 U. S. 244; *Lombard* v. *Louisiana*, 373 U. S. 267. "The vital requirement is State responsibility—that somewhere, somehow, to some extent, there be an infusion of conduct by officials, panoplied with State power, into any scheme by which colored citizens are denied . . . rights merely because they are colored." *Terry* v. *Adams*, 345 U. S. 461, 473 (separate opinion of Mr. Justice Frankfurter). The State's agreement with the defense, which the record establishes, to remove Negroes from jury venires, under the Court's settled decisions meets the "state action" requirement of the Fourteenth Amendment. Under the principles of *Strauder* and the cases following, it

Moreover, the record shows that in one case, the only one apparently in the history of the county where the State offered Negroes an opportunity to sit on a petit jury, the state prosecutor offered a Negro accused an all Negro jury where the case involved an alleged crime against another Negro. The offer was refused but it tends to confirm the conclusion that the State joins in systematically excluding Negroes from jury service because it objects to any mixing of Negro and white jurors and to a Negro sitting in a case in which a white man is in any way involved.

Furthermore, the State concededly is responsible for the selection of the jury venire. As the Court recognizes, *ante,* at 3, the evidence showed that while Negroes represent 26% of the population generally available to be called for jury service in Talladega County, Negroes constituted a lesser proportion, generally estimated from 10% to 15%, of the average venire. The Albama Supreme Court noted that under state law "the jury commission is required to keep a roll containing the names of all male citizens living in the county who possess the qualifications prescribed by law and who are not exempted by law from serving on juries," *supra,* at 514, 156 So. 2d, at 374, and, in fact, this had not been done in Talladega County. The Alabama Supreme Court concluded that the method of jury selection in Talladega County was "not exhaustive enough to insure the inclusion of all qualified persons," *ibid.*, and this Court admits it is "imperfect," *ante,* at 7, and that "[v]enires drawn from the jury box made up in this manner unquestionably contained a smaller proportion of the Negro community than of the white community," *ante,* at 6. It may be, for the rea-

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constitutes "action of a State . . . through its . . . administrative officers" excluding persons "solely because of their race or color" from serving on juries. *Carter* v. *Texas, supra,* at 447.

sons stated by the Court, that this "haphazard" method of jury selection standing alone as an alleged constitutional violation does not show unlawful jury discrimination. However, this method of venire selection cannot be viewed in isolation and must be considered in connection with the peremptory challenge system with which it is inextricably bound. When this is done it is evident that the maintenance by the State of the disproportionately low number of Negroes on jury panels enables the prosecutor, alone or in agreement with defense attorneys, to strike all Negroes from panels without materially impairing the number of peremptory challenges available for trial strategy purposes.

Finally, it is clear that Negroes were removed from the venire and excluded from service by the prosecutor's use of the peremptory challenge system in this case and that they have never served on the jury in any case in the history of the county. On these facts, and the inferences reasonably drawn from them, it seems clear that petitioner has affirmatively proved a pattern of racial discrimination in which the State is significantly involved, cf. *Burton* v. *Wilmington Parking Authority*, 365 U. S.. 715, 722; *Lombard* v. *Louisiana*, 373 U. S. 267; *Peterson* v. *Greenville*, 373 U. S. 244, or for which the State is responsible, cf. *Terry* v. *Adams*, 345 U. S. 461, 473. As this Court held in *Strauder*, systematic exclusion of Negroes from jury service constitutes a brand of inferiority affixed upon them and state involvement in affixing such a brand is forbidden by the Fourteenth Amendment.

There is, however, a more fundamental defect in the Court's holding. Even if the Court were correct that the record is silent as to State involvement in previous cases in which Negroes have been systematically excluded from jury service, nevertheless, it is undisputed that no Negro has ever served on any petit jury in the history of Talladega County. Under *Norris*, *Patton* and the other

cases discussed above, it is clear that petitioner by proving this made out a prima facie case of unlawful jury exclusion. The burden of proof then shifted to the State to prove, if it could, that this exclusion was brought about for some reason other than racial discrimination in which the State participates.

This established principle is well illustrated by the recent decision of the Mississippi Supreme Court, *Harper* v. *Mississippi, supra,* in which that court rejected an argument of the State of Mississippi strikingly similar to the one advanced here by the State of Alabama and accepted by this Court. In the Mississippi case a Negro defendant made out a prima facie case of jury exclusion by showing that only a token number of Negroes had served on juries in the county in question. The State attempted to rebut this prima facie case by contending that the exclusion resulted from a perfectly neutral system of employing voting registration lists to select prospective jurors and the fact that the number of Negroes selected was in proportion to their number on the voting registration lists. The Mississippi Supreme Court held, however, that this did not rebut the prima facie case of jury exclusion unless the State could additionally prove that the disproportionately low number of Negroes on the voting registration list was caused by factors other than state-involved racial discrimination. Similarly, in the instant case, it seems to me indisputable that Alabama did not rebut petitioner's prima facie case, which here is based on a showing of total exclusion, by the contention that it is the result of a neutral peremptory challenge system unless the State additionally proved that the peremptory challenge system is not being used in a way constituting state-involved discrimination. That it did not do so is uncontested.

Despite the fact that the petitioner therefore has made out what is, under the settled decisions of this Court, a

prima facie case of jury exclusion which the State has not rebutted, the Court today affirms petitioner's conviction because, according to the Court, petitioner has "failed to carry" his burden of proof, *ante,* at 22. The Court concedes that if this case involved exclusion of Negroes from jury panels, under *Norris* and *Patton* a prima facie case of unconstitutional jury exclusion would be made out. However, the Court argues that because this case involves exclusion from the jury itself and not from the jury venire, the burden of proof on a defendant should be greater. This distinction is novel to say the least.

The Court's jury decisions, read together, have never distinguished between exclusion from the jury panel and exclusion from the jury itself. Indeed, no such distinction can be drawn. The very point of all these cases is to prevent that deliberate and systematic discrimination against Negroes or any other racial group that would prevent them, not merely from being placed upon the panel, but from serving on the jury. The Court quotes from *Hernandez* v. *Texas, supra,* to show that the prima facie rule applies only where no Negro *"had been called* for jury service," *ante,* at 23, but such a view is rejected by *Patton's* statement of the rule, for *Patton* held that a prima facie case was made out when it was shown that "no Negro had *served* on a criminal court grand or petit jury for a period of thirty years." 332 U. S., at 466. (Emphasis added.) And, *Patton* is confirmed by our very recent cases, *Eubanks* v. *Louisiana, supra,* and *Arnold* v. *North Carolina, supra,* which also speak only in terms of jury "service" and jury "duty." "The exclusion of otherwise eligible persons from jury *service* solely because of their ancestry or national origin is discrimination prohibited by the Fourteenth Amendment." *Hernandez* v. *Texas, supra,* at 479. (Emphasis added.)

The rule of exclusion set forth in these cases is a highly pragmatic one. It is designed to operate in jury cases so

that once the defendant has made a showing of total exclusion, the burden on going forward with the evidence is placed upon the State, the party in the better position to develop the facts as to how the exclusion came about. The defendant is a party to one proceeding only, and his access to relevant evidence is obviously limited. The State is a party to all criminal cases and has greater access to the evidence, if any, which would tend to negative the State's involvement in discriminatory jury selection. The burden of proof rule developed in *Norris, Patton,* and other cases, which until today the Court has uniformly applied, is a simple and workable one designed to effectuate the Constitution's command. This is demonstrated by our past cases, as well as state cases.[3] Because the same factors—availability of evidence, simplicity, and workability—exist whether exclusion from the jury panel or exclusion from the jury itself is involved, to apply the prima facie rule of *Norris* and *Patton* to this case is neither "blind" nor "wooden," but is realistic and sensible.

I agree with the Court that it is a reasonable inference that the State is involved in unconstitutional discrimination where total exclusion of Negroes from all venires is established. I believe that it is also a reasonable inference that the State is involved where, although some Negroes are on venires, none has ever served on a jury, cf. *Eubanks* v. *Louisiana, supra; Arnold* v. *North Carolina, supra,* and the State in the case at bar has excluded from jury service the Negroes on the venire by exercise of its peremptory challenges. The Court in *Patton* and in other cases rejected the State's argument, and held that it would be unreasonable to assume where Negroes were totally excluded from venires that this came about because all Negroes were unqualified, unwilling, or

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[3] See *Harper* v. *Mississippi, supra; State* v. *Lowry,* — N. C. —, — S. E. 2d —.

unable to serve. It would be similarly unreasonable to assume where total exclusion from service has been established and the prosecutor has used peremptory challenges to exclude all Negroes from the jury in the given case that in all previous cases Negroes were excluded solely by defense attorneys without any state involvement. If the instant case is really a unique case, as the Court implies, surely the burden of proof should be on the State to show it.

Finally, the Court's reasoning on this point completely overlooks the fact that the total exclusion of Negroes from juries in Talladega County results from the interlocking of an inadequate venire selection system, for which the State concededly is responsible, and the use of peremptory challenges. All of these factors confirm my view that no good reason exists to fashion a new rule of burden of proof, which will make it more difficult to put an end to discriminatory selection of juries on racial grounds and will thereby impair the constitutional promise of "Equal Protection of the Laws," made effective by *Strauder* and the cases which follow it. By undermining the doctrine of the prima facie case while paying lip-service to *Strauder* the Court today allies itself with those "that keep the word of promise to our ear and break it to our hope."

The Court departs from the long-established burden of proof rule in this area, and imposes substantial additional burdens upon Negro defendants such as petitioner, because of its view of the importance of retaining inviolate the right of the State to use peremptory challenges. I believe, however, that the preference granted by the Court to the State's use of the peremptory challenge is both unwarranted and unnecessary.

To begin with, the peremptory challenge has long been recognized primarily as a device to protect *defendants*.

As stated by Blackstone in a passage quoted with approval by this Court:

> "In criminal cases, or at least in capital ones, there is, in favorem vitae, allowed to the prisoner an arbitrary and capricious species of challenge to a certain number of jurors, without showing any cause at all; which is called a peremptory challenge; a provision full of that tenderness and humanity to prisoners, for which our English laws are justly famous. This is grounded on two reasons:
>
> "1. As every one must be sensible, what sudden impressions and unaccountable prejudices we are apt to conceive upon the bare looks and gestures of another; and how necessary it is that a prisoner (when put to defend his life) should have a good opinion of his jury, the want of which might totally disconcert him; the law wills not that he should be tried by any one man against whom he has conceived a prejudice even without being able to assign a reason for such his dislike.
>
> "2. Because, upon challenges for cause shown, if the reason assigned proves insufficient to set aside the juror, perhaps the bare questioning his indifference may sometimes provoke a resentment; to prevent all ill consequences from which, the prisoner is still at liberty, if he pleases, peremptorily to set him aside." 4 Bl. Com. 353. Quoted with approval in *Lewis* v. *United States*, 146 U. S. 370, 376; see also *United States* v. *Marchant*, 12 Wheat. 480, 482.

Indeed in England, as the Court points out, *ante*, at 10–11, although the Crown at early common law had an unlimited number of peremptory challenges, as early as 1305 that right was taken away, and since that time in England peremptories may be exercised only by the defendant. Orfield, Criminal Procedure From Arrest to Appeal, 355

(1947). Harris, Criminal Law, 443 (20th ed. 1960).[4] It appears that in modern times peremptories are rarely used in England, even by defendants. *Ibid.*

While peremptory challenges are commonly used in this country both by the prosecution and the defense, we have long recognized that the right to challenge peremptorily is not a fundamental right, constitutionally guaranteed, even as applied to a defendant, much less to the State. *Stilson* v. *United States*, 250 U. S. 583. This Court has sanctioned numerous incursions upon the right to challenge peremptorily. Defendants may be tried together even though the exercise by one of his right to challenge peremptorily may deprive his codefendant of a juror he desires or may require that codefendant to use his challenges in a way other than he wishes. *United States* v. *Marchant, supra.* A defendant may be required to exercise his challenges prior to the State, so that some may be wasted on jurors whom the State would have challenged. *Pointer* v. *United States*, 151 U. S. 396. Congress may regulate the number of peremptory challenges available to denfendants by statute and may require codefendants to be treated as a single defendant so that each has only a small portion of the number of peremptories he would have if tried separately. *Stilson* v. *United States*, 250 U. S. 583. In *Stilson* this Court stated,

[4] The Crown's right to challenge peremptorily was removed in that year by 33 Edw. 1, Stat. 4, because the King's right to challenge without showing cause "was mischievous to the subject, tending to infinite delayes and danger." Coke on Littleton, 156 (14th ed., 1791). Since 33 Edw. 1, Stat. 4, the Crown can only require jurors whom it wishes to challenge to stand aside from the panel until the defendant has exercised all his challenges. Then, if a jury has not been selected, the jurors, who have been "stood aside" will be used unless the Crown can challenge them for cause. Orfield, *supra*, at 356, *Harris, supra*, at 443, Bacon's Abridgment 764 (5th ed. 1798). Even this limited procedure as the Court notes, *ante*, at 11, n. 12, however, is rarely used today. Orfield, *supra*, at 355; *Harris, supra*, at 443.

"There is nothing in the Constitution of the United States which requires the Congress to grant peremptory challenges to defendants in criminal cases; trial by an impartial jury is all that is secured." 250 U. S., at 586. The Fourteenth Amendment would impose no greater obligation upon the States. Today this Court reverses *Stilson's* maxim, in effect holding that "There is nothing in the Constitution of the United States which requires the State to grant trial by an impartial jury so long as the inviolability of the peremptory challenge is secured."

Were it necessary to make an absolute choice between the right of a defendant to have a jury chosen in conformity with the requirements of the Fourteenth Amendment and the right to challenge peremptorily, the Constitution compels a choice of the former. *Marbury* v. *Madison*, 1 Cranch 137, settled beyond doubt that when a constitutional claim is opposed by a nonconstitutional one, the former must prevail. But no such choice is compelled in this situation. The holding called for by this case, is that where, as here, a Negro defendant proves that Negroes constitute a substantial segment of the population, that Negroes are qualified to serve as jurors, and that none or only a token number [5] has served on juries over an extended period of time, a prima facie case of the exclusion of Negroes from juries is then made out; that the State, under our settled decisions, is then called upon to show that such exclusion has been brought about "for some reason other than racial discrimination," *Patton* v. *Mississippi*, *supra*, at 466; and that the State wholly fails to meet the prima facie case of systematic and purposeful racial discrimination by showing that it has been accomplished by the use of a peremptory challenge system unless the State also shows that it is not involved in the misuse of such a system to prevent all Negroes from ever

[5] See *Cassell* v. *Texas*, *supra*; *Harper* v. *Mississippi*, *supra*.

sitting on any jury. Such a holding would not interfere with the rights of *defendants* to use peremptories, nor the right of the State to use peremptories as they normally and traditionally have been used.

It would not mean, as the Court's prior decisions, to which I would adhere, make clear, that Negroes are entitled to proportionate representation on a jury. *Cassell* v. *Texas, supra,* at 286–287 (opinion of Mr. Justice Reed). Nor would it mean that where systematic exclusion of Negroes from jury service has not been shown, that a prosecutor's motives are subject to question or judicial inquiry when he excludes Negroes or any other group from sitting on a jury in a particular case. Only where systematic exclusion has been shown, would the State be called upon to justify its use of peremptories or to negative the State's involvement in discriminatory jury selection.

This holding would mean, however, that a conviction cannot stand where, as here, a Negro defendant, by showing widespread systematic exclusion, makes out a prima facie case of unconstitutional discrimination which the State does not rebut. Drawing the line in this fashion, in my view, achieves a practical accommodation of the constitutional right and the operation of the peremptory challenge system without doing violence to either.

I deplore the Court's departure from its holdings in *Strauder* and *Norris*. By affirming petitioner's conviction on this clear record of jury exclusion because of race, the Court condones the highly discriminatory procedures used in Talledega County under which Negroes never have served on any petit jury in that county. By adding to the present heavy burden of proof required of defendants in these cases, the Court creates additional barriers to the elimination of practices which have operated in many communities throughout the Nation to nullify the command of the Equal Protection Clause in this important

area in the administration of justice. See 1961 United States Commission on Civil Rights Report: Justice, 81–103.

I would be faithful to the teachings of this Court in its prior jury exclusion cases and the view, repeatedly expressed by this Court, that distinctions between citizens solely because of their race, religion, or ancestry, are odious to the Fourteenth Amendment. I would reaffirm and apply here what this Court said in *Smith* v. *Texas*, *supra*, at 130:

> "It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For racial discrimination to result in the exclusion from jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it but is at war with our basic concepts of a democratic society and a representative government. . . . The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires that equal protection to all must be given—not merely promised."

Applying these principles, I would reverse. This, of course, would "not mean that a guilty defendant would go free." *Patton* v. *Mississippi*, *supra*, at 469; see *Hill* v. *Texas*, *supra*, at 406. For, as the Court pointed out in *Patton* v. *Mississippi*, *supra*, at 469, the State, if it so desired, could retry petitioner by a jury "selected as the Constitution commands."

Mr. McCULLOCH. I would like to refer to the Attorney General's statement which was read on May 4, and again say that it was a very able and understandable presentation. Referring to page 20, I would like to be the Devil's advocate for a moment.

I refer to the fifth paragraph of the statement, page 20, which is as follows:

> Are we to tell our Negro citizens that the Congress which has guaranteed them access to desegregated public schools and to swimming pools and to golf courses is powerless to guarantee them the basic right to choose a place to live?
>
> I would find this hard to explain, for I would not be able to understand it myself.

Mr. Attorney General, do you think a public school supported entirely by public money, takes on the same quality in use as does private property, in its use and disposition under the Constitution? Use whatever article or amendment you would want to use in answering the question.

Attorney General KATZENBACH. I think there are differences of degree, Congressman. The point that I attempted to make in that little piece of rhetoric there was that I believe the 14th amendment also would cover the sale or leasing of private property. There is no question, today, that the 14th amendment can reach beyond State action to the activities of private individuals.

Mr. McCULLOCH. In all fields? Where there would be discrimination by reason of race, color, religion, or national origin?

Attorney General KATZENBACH. I think it is hard to say in all fields.

Mr. McCULLOCH. Can you think of any field under your conclusion which could not be reached?

[Pause.]

Attorney General KATZENBACH. It is hard to think in a vacuum of that kind.

Mr. McCULLOCH. Yes, I realize that. We will let that question go.

Attorney General KATZENBACH. My point here is that here you are dealing to a large extent with people who are licensed by the State, who are regulated by the State. The State has, in the housing patterns, a major interest. You look at the ghettos that exist, if you look at the educational problems that exist, if you look at the law enforcement problems that exist, there are major State interests in this regard, and where the activities of private individuals—and this is the line that I would attempt to draw, in answering that question—where the activities of private individuals are frustrating the purposes of the 14th amendment, even without State action, and I think what the Supreme Court, or the majority of the Supreme Court, meant in the *Guest* case was that where that was true, where the purposes of the 14th amendment were being frustrated in some kind of major way by private actions, that that could be reached by the Congress of the United States.

Now they didn't spell out just what that was, what private actions these were which were frustrating major purposes, but I would suppose that it would be very difficult today, under the 14th amendment, to attempt to answer your question.

To say that private clubs must admit on a nondiscriminatory basis, because I don't think at least at this stage, private clubs have that

kind of importance in the life of the community which private housing does, which schools do, and which other institutions have.

Mr. McCULLOCH. Which your private housing does, individually owned, individually financed, and individually disposed of?

Attorney General KATZENBACH. Yes, sir, I feel that the cumulation of those decisions, the pressures of the community, the fact that these sales are in point of fact effectuated through the use of a lot of other people, real estate brokers, and otherwise, I think the cumulation of those is extremely important, within a community, so I do feel that.

Mr. McCULLOCH. Even when made by individual owners or lessees?

Attorney General KATZENBACH. Yes, sir; I do feel that, even when thus made, in the context of housing today, I feel that that——

Mr. McCULLOCH. You, of course, see considerable difference between the right not to be discriminated against, in the use of public schools, and in the disposal of real estate, don't you?

Attorney General KATZENBACH. Oh, I see differences. I would regard them as differences of degree.

Mr. McCULLOCH. Yes; differences of degree, which a legislator, of course, must always take into consideration in fashioning legislation in our country. Don't you think——

Attorney General KATZENBACH. But if we put it in an individual sense, Congressman, if you say "Is it really important that one student is discriminated against, in one public school?" I would, you know, say, "No, that's not a tremendously important matter."

And here we are talking not about—I don't care if you want to say one person somewhere can do this, but you are talking about a whole cumulation of decisions, the impact of which is not too unlike the——

Mr. McCULLOCH. Yes; I meant in using the phrase "an individual owner," not an isolated instance. I was using the isolated or the single owner, wherever he may be, who desires to sell or lease, or otherwise use or dispose of his property, contrary to the terms of this legislation.

This class of property is essentially different from a publicly conceived and supported public school, and is entirely different from a publicly conceived and financed golf course. People have grown to recognize in this country—at least in most parts of it—that public activities, financed by the public, authorized by them, are for the use of the entire public. Independently, we have the concept of private property, which has been described by the Supreme Court, not recently, but as an entity, the ownership and use of which may be entirely controlled by States.

Wasn't that the last general holding of the Supreme Court of the United States? That States alone had the right to define the terms and conditions under which real estate was owned and disposed of, and used in their separate jurisdictions?

Isn't there case law to that effect which is still unreversed?

Attorney General KATZENBACH. I don't believe so, Congressman. I believe that the States have got authority to do all kinds of regulation in terms of zoning, and so forth and so on, and to interfere with this, but I don't think there is any suggestion by the Supreme Court anywhere, that it would, and under no circumstances can the Federal Government have that, wherever it would be, could be done under the 14th amendment, or whether it could be done under the interstate

Commerce Clause. As I said, there is a tremendous amount of interstate commerce involved in this, and we talk a lot about this regulation of private property and in this respect.

I don't know, people don't seem to be very concerned about their disposal of private property in lots of other respects. It just seems to be their houses that are so important, even though they are going to go and move from Minnesota to California or vice versa.

It just seems to be this one piece.

Mr. McCULLOCH. Well, of course, Mr. Attorney General, that has been the general opinion concerning residential property, it is true. For centuries. We were taught that a man's home is his castle, and he has jurisdiction and the authority in that field, the like of which he has authority or jurisdiction in no other.

Even now, in enforcing that early theory and belief, we go to unbelievable ends in our jurisprudence, don't we, to protect people from searches and seizures, unlawful searches and seizures. So that, in my opinion, we have new aspects to this question in the field of public housing, the like of which we probably have had no real experience in this country.

Attorney General KATZENBACH. Congressman, if I might.

Mr. McCULLOCH. Surely.

Attorney General KATZENBACH. If you are talking about some private property rights, is that what we are talking about? Or are we talking about whether or not the Federal Government has the right to regulate this? Because if you are just saying that it shouldn't be regulated because a man's home is his castle, and so forth and so on, it is in fact regulated and regulated and regulated—in a whole variety of ways. So that the argument is the private property argument.

Mr. McCULLOCH. At some levels.

Attorney General KATZENBACH. It seems to me that is one thing. If it is Federal Government, it is another. I have no question about the Federal Government's authority to regulate this. If it is an argument that you shouldn't be regulated at all, then there are 17 States, including your own State of Ohio, that disagree with you.

Mr. McCULLOCH. Well, not necessarily. The mere fact that they have passed State law, Mr. Attorney General, doesn't mean that they wish the Federal Government to enter the field. There may be a very good reason that they entered this field, to prevent the Federal Government from entering it.

That was the reason, as I read history, that many States entered the field of enforcing civil rights as long as 70 or 80 or 90 years ago.

Attorney General KATZENBACH. Well, then, that being true, accepting that, Congressman, then it has nothing to do with private property, it has something to do with State-Federal relationships. I think it is a mistake to get confused between the private property argument and the question of who should regulate. We can make arguments about State's rights, and States regulating this.

I happen to think it is a national problem but you can't make the State's rights argument in terms of private property. Private property is being regulated, and I think the person who has the private property, if it is regulated, feels his rights of private property and disposition just as much interfered with, whether it is the municipality, the State or the Federal Government.

He feels just as strongly about his private property rights. And as far as the Federal Government is concerned, we have entered this field, the *Shelly* against *Kraemer* recently entered it, as far as the 14th amendment is concerned, and the Federal Congress, 1866, in a law that is still on the books, entered this field with respect to giving the rights to sell and own and dispose of real estate.

The CHAIRMAN. Mr. Cramer.

Mr. CRAMER. Mr. Chairman, I understand that the Chair wishes to hear some more witnesses this morning. I was, of course, interrogating the Attorney General the other day, and I interrogated him basically in the field of housing.

I have a couple of questions there, but I haven't had an opportunity to interrogate relating to the other titles. Now I understand the program is to have the Attorney General not come back again.

We are going to have a quorum call in the very near future, I am sure, because we have a bill up today, and I would like to have a reasonable opportunity to continue my interrogation.

The CHAIRMAN. Mr. Attorney General, you have been here for 3 days. It is possible at some future time there may be some questions that will arise as a result of the hearings that we are to have. Would you be willing to come back at some future time?

Attorney General KATZENBACH. I am willing to come back any time, all that the committee wishes me to come, day or night, any time.

Mr. CRAMER. Well, Mr. Chairman, I hope that it doesn't mean that I am cut off from asking questions in chief at this point. I had some other areas, and I think they should be clarified. We should know what the Attorney General intends to do, and how he expects to carry out the provisions of the bill.

At this point, I would like to proceed in relating to a couple of the principal matters, if I may.

On this question of how the exemptions in the States are to be effected by this Federal bill, if it becomes law, what happens in the case, for instance, of California?

Recently, in a referendum voted upon by a 2 to 1 majority of the people, the following language was approved:

> Neither the State or any subdivision or agency thereof shall deny them or directly or indirectly the right of any person who is willing or desires to sell, lease, or rent all or any portion of his real property, declines to rent such real property to such person or persons as he in his absolute discretion chooses.

If this becomes law, what happens to the California referendum?

Attorney General KATZENBACH. Absolutely nothing, Congressman.

Mr. CRAMER. The Federal law supersedes it, does it not?

Attorney General KATZENBACH. Well, a California law, as I understand it, applied only to States and municipalities, and assuming that to be constitutional, there is nothing in this that says a State has to enact any legislation.

Mr. CRAMER. Does this law prohibit this State from enacting legislation that would, in fact, give an individual an absolute right to dispose of his property?

Attorney General KATZENBACH. Yes; it makes such a legislation invalid. Yes, sir.

Mr. CRAMER. It does. So for all practical purposes, the California referendum is rendered invalid, so far as carrying it out through legislation is concerned.

Attorney General KATZENBACH. Yes, that is correct. I thought it was just a prohibition against such legislation, as I understood it.

Mr. CORMAN. Would the gentleman yield for a very brief comment?

Mr. CRAMER. After the gentleman's friendly comment relating to tourists in Florida, I will be delighted to.

Mr. CORMAN. I have studied 14 as best I can. I don't find that they are requiring discrimination. I think that's the point in issue.

Mr. CRAMER. Well, I think the Attorney General's answer speaks for itself. In effect, passage of this legislation would prevent California's Legislature from enacting a law permitting an individual to discriminate in the sale of his home, or his private property.

Attorney General KATZENBACH. It wouldn't prevent the California Legislature from standing on its head. I would say that had nothing to do with the Federal enforcement.

Mr. CRAMER. That is right.

Attorney General KATZENBACH. So, it doesn't prevent the legislature from enacting any law it wants to. It just means that that law isn't going to be able to be used as a defense of an action under the Federal law. That's all it means, all it means there or in any other State.

Mr. CRAMER. But in effect, it renders the State statute invalid, so far as its thrust is concerned, for all practical purposes. Isn't it true that a litigant is going to go to a court where his interests are best protected, meaning, he gets a free counsel in the Federal court if he wins so he is probably going to go to a Federal court. His rights are involved; his case relates to a private sale, so by the Federal method, he can overcome whatever the State legislature might do.

Attorney General KATZENBACH. That is correct. Federal law, under the supremacy clause, is supreme.

Mr. CRAMER. Right, Exactly. So what happens when it relates to many of these States? It is true, is it not, that many of the States provide for a commission proceeding to determine whether in fact discrimination has taken place? Isn't that correct?

Attorney General KATZENBACH. That is correct.

Mr. CRAMER. Now, there is no such commission proceeding in your proposal?

Attorney General KATZENBACH. That is correct.

Mr. CRAMER. Why was that not included, particularly in view of the numerous other Federal laws requiring submission of the problem to the State or local agencies or the persons who are or may be charged with discrimination, such as in the 1964 Civil Rights Act, to give them an opportunity to correct the situation?

Now, why does your proposal not include some procedure for giving the parties involved particularly if they are the type licensed by States such as real estate boards, and so forth, an opportunity to correct its own proceeding?

Attorney General KATZENBACH. Mr. McCulloch asked that same question. I said I thought that was something we might well con-

sider doing with respect to reference for a limited period of time, a we have done under other bills.

Mr. CRAMER. There is no provision, is there, that the exhaustion o administrative remedies under State law must take place before th can be properly placed in your proposal?

Attorney General KATZENBACH. No, there is not.

Mr. CRAMER. So even if a person is before a commission, negotiating a question, it would not preclude that party aggrieved from having a right to sue in the Federal court?

Attorney General KATZENBACH. That is absolutely correct. And the difficulty within this one—with too much in the way of delays—is that the housing goes down the drain while you are talking about it

Mr. CRAMER. Well, most of the States, however, did not take tha position in enacting State laws, did they? They provided for a commission proceeding.

Attorney General KATZENBACH. No, I think that it is basing my answering to some extent on their experience after they enacted such laws.

Mr. CRAMER. It is true that the States of Alaska, Colorado, Connecticut, Minnesota, Massachusetts, and Michigan have such provision for agency-type determinations?

Attorney General KATZENBACH. I believe so. I assume you have had some reason for thinking that.

Mr. CRAMER. In section 406(a), page 28, you provide that the rights granted by sections 403 and 404 relating to this housing proposal "may be enforced by civil actions in the appropriate United States district court without regard to the amount in controversy," and in appropriate courts or local jurisdiction.

In effect, you are giving by this proposal a right of action in a State court, as well as a right of action in the Federal court.

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Regardless of what the State exclusions might be.

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. So for all practical purposes, whatever the State law is relating to exclusions is wiped out by the right of a court action in a State court, based upon this Federal law which has no exclusion.

Attorney General KATZENBACH. That is absolutely right; yes, sir.

Mr. CRAMER. So all this talk about the State law being in effect relating to exclusions and having the right of action under the State law is academic.

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. When the party involved has a right of action in the State court, including the right of attorneys' fees.

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. Well, it appears to me it is rather academic, because I cannot imagine a plaintiff bringing an action in a State court under State law, when he has a more favorable clause and a broader cause of action with right of attorneys' fees under the Federal law in a State court.

Attorney General KATZENBACH. It is not always true that he would, and it is not always true that the State law would not be a more effective remedy.

Mr. CRAMER. Now, on the top of page 29, in providing a remedy, the bill proposes:

> The court may grant such relief as it deems appropriate, including permanent or temporary injunction.

I presume that being consistent with your previous answer to myself and Mr. McCulloch, you would not be disturbed if a conciliation-type-service court remedy were set up there or even without court action; that there would be a conciliation service brought into effect to accomplish this same end, without litigation, necessarily.

Attorney General KATZENBACH. I hadn't considered that. I believe that Mr. McCulloch raised the question of whether the State had such a conciliation practice, whether or not this action could or should be deferred while that action went on for a period of time. I said I thought that should be considered. I hadn't considered the establishment of a Federal conciliation system in this regard. I hadn't thought of that, and I am inclined to think it would be more cleanly and more easily handled in this way. There are provisions which you are aware of in there with respect to some participation in terms of analysis and statistics, and looking at it, and being helpful about it, in terms of the Housing and Urban Development Department, and in addition, there are provisions which would try to have the community service in a general way effectuate compliance with the law, and would do that.

As far as conciliation on a particular dispute is concerned, with some large Federal conciliation service, I would doubt the wisdom of that.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes.

The CHAIRMAN. Would not a Federal conciliation service in cases of this sort involve endless delays and present all manner of problems and difficulties?

Attorney General KATZENBACH. I would think that it would involve such delays. The provisions on public accommodations which permitted the court to refer to the community relations service were almost never used by the courts in these circumstances. Only in three or four cases were they used. The fact of the matter is that by the time you get to court, I mean, by the time you bring a lawsuit in this, it probably means your conciliation services have failed anyhow, and it is really redoing something you have probably done before.

Mr. CRAMER. Where you have a conciliation service already in existence, it could be used for that purpose, however, could it not?

Attorney General KATZENBACH. The Community Relations Service?

Mr. CRAMER. The Community Relations Service, which is now in the Department of Justice.

Attorney General KATZENBACH. Yes.

Mr. CRAMER. In your answer to the question of whether, relating to FHA regulations, you indicated that you thought there were some shortcomings in attempting to carry out those regulations. Isn't it true that the enforcement for those regulations is already in existence on title VI, and the nondiscrimination in federally assisted programs title enacted in 1964?

Attorney General KATZENBACH. Yes, sir. Once again, my reference—if my recollection serves me correctly—was the difficulty of en-

forcement, not with respect to Federal-supported programs, but under a question which the chairman put to me about enforcement with respect to private institutions, savings and loans, national banks, banks that had insurance, and so forth. I said that raised some problems. I don't—I think there has been, under the existing executive order, effective enforcement with respect to FHA and VA loans. I know some 11 developers have been taken off the list because of the discriminatory practices, and a number of complaints have been received in FHA in this regard. And it shows 11 builders on an ineligible list, 4 of whom have subsequently been reinstated. It shows about 118 complaints, and it shows about 29 complainants who got their housing.

Mr. CRAMER. Well, may we just shift a minute to title II, relating to State juries?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Line 12, page 15:

The Attorney General can bring an action whenever there are reasonable grounds to believe any person has engaged or is about to engage in any act or practice.

Under title IV, and under section 206(a), and under section 11(h) of the 1964 Civil Rights Act, there was a requirement of a pattern or practice, for the Attorney General to bring an action.

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Why in this instance, in that this relates largely, does it not, to State activities——

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER (continuing). Should there not be a requirement of pattern or practice rather than a single act?

Attorney General KATZENBACH. I think it is a pattern or practice. I think to make your case, you have got to show that the jury commission, and the State, appropriate State officials, are here discriminating. I cannot imagine that not being a pattern or practice of discrimination. It seems to me inherently built into what they are doing with respect to juries.

Mr. CRAMER. Why then was the language "any act or practice" instead of "pattern or practice"?

Attorney General KATZENBACH. Because it was more appropriate language, Congressman, better language. Pattern or practice would make no sense here to me. It would not follow, could not mean what it means in the other titles.

Mr. CRAMER. Well, as to the drafting of line 12, you don't have to have a pattern or practice. You just have to have an act. "Any act."

Attorney General KATZENBACH. Any act of prejudice is——

Mr. CRAMER. Any act or practice.

Attorney General KATZENBACH. Yes.

Mr. CRAMER. So any single act could be the basis of your bringing an action under section 202(a), could it not?

And further, as——

Attorney General KATZENBACH. Any act which excluded these people.

Mr. CRAMER. As it relates on line 15 to any qualification for jury service or any basis for exclusion, exemption or exclusion from jury service which is susceptible to being applied in violation of section 201,

in that it gives officials undue discretion. How do you intend to apply that, in making a case against the State? Would it be your intention to file suits in instances where there are jury requirements or exemptions that could be susceptible to being applied on a discriminatory manner and giving officials discretion? I cite, for instance, Florida law, which says that a person can be excluded, if he does not have integrity and good moral character, and sound judgment——

Now, in your opinion, would that give the local authorities too broad a discretion, and, therefore, be the basis of a suit?

Attorney General KATZENBACH. Well, in the first place, Congressman, the section you are reading from is under the section "Appropriate relief." It has to do with what a court can add as appropriate relief.

Mr. CRAMER. I understand that.

Attorney General KATZENBACH. After there has been a finding of discrimination. It has nothing to do with me bringing lawsuits. It has to do with the powers of the court.

Mr. CRAMER. Yes, but you are——

Attorney General KATZENBACH. And I would suppose that if those provisions of law that you are talking about in the case that had been proved had been used, and were the basis for the discrimination involved, and the court had found that the court would have no difficulty in suspending those provisions or in restricting their application as appropriate relief. And I would say that irrespective of what we wrote in this law——

Mr. CRAMER. The basis of your suit could easily be, could it not, that such an order should issue, because there is in existence State law that gives the local authorities undue discretion, which is susceptible to being applied in a discriminatory manner? You could have, under this draftsmanship, the power to bring a suit in that instance, if, in fact, you had reasonable grounds to believe that that State authority is about to engage in any act which would deny the rights in section 201. You don't have to have a pattern or practice at all.

Attorney General KATZENBACH. No, sir. I just have a terrible difficulty in following that argument.

Mr. CRAMER. Well, what is your answer to the argument?

Attorney General KATZENBACH. My answer to the argument, shortly, is no.

Mr. CRAMER. Then what does line 15 through 20 mean, as it relates to what is to be prevented in the future?

Attorney General KATZENBACH. It means what it says, as far as appropriate relief is concerned, but how you can prove what the court can do as appropriate relief to make the basis of a lawsuit just defies my construction of the statute. I think that I have to be able to establish in this that I have reason to believe that there is going to be an act or practice.

Mr. CRAMER. An act, in fact, any act.

Attorney General KATZENBACH. An act or practice, in violation of section 201, and I cannot establish that by any references to anything in section 203. That is the reason I answer your question flatly "No."

Mr. CRAMER. In carving out the suit and the requests for relief, you obviously include those prayers for relief that are within section

203, under "appropriate relief," and base that request for relief upon your cause of action relating to any "act which a person is about to engage in," do you not?

Attorney General KATZENBACH. You structure your relief and your prayer for relief in one of two ways. You either can ask simply for appropriate relief, and that's all you have to ask for, or you can go ahead, after you have won your case, and that would normally be the way in which you would do it. We might spell out more relief, but after you have won your case is the time when you get down to drafting what you think the appropriate decree is. I think you have here a catchall, all kinds of things that the court can order as appropriate relief. What the court would order as appropriate relief would depend very much on what you had established and proved in the case to be the basis for discrimination.

Mr. CRAMER. Well, do I understand——

Attorney General KATZENBACH. And might have nothing whatsoever to do with any provisions of broad law.

Mr. CRAMER. Do I understand you obtain a pattern or practice rather than act or practice on line 12, page 15?

Attorney General KATZENBACH. I think that the insertion of "pattern or practice" there is meaningless. We followed here the 1957 voting act. We are dealing with State officials, and we believe that it is appropriate to follow that precedent which Congress enacted in 1957, and similar circumstances, parallel circumstances, which would permit broad relief, so I don't—you see, I think the use of "pattern or practice" here could not be used as it is used elsewhere in the statute, and I think it will have the effect of casting doubt on what "pattern or practice" means when you are referring to private actions, which is what we are referring to elsewhere.

Mr. CRAMER. You are involved here largely with State actions.

Attorney General KATZENBACH. But the State actions, and in the 1965 Voting Rights Act, again Congress used "an act or practice." That language has good historical precedence.

Mr. CRAMER. Now, relating to the Federal jury system proposed on page 11, and relating to the peremptory challenges, rule 24(b), of the Federal Criminal Rules gives the right of peremptory challenge to a party without intervention of the judge. Language in the *Swain* case suggests that in exercising peremptory challenge, the court is not involved. Yet, section 1869 of the administration bill, on page 11, lines 17 and 18, reads as follows—"excluded by the court upon (1) peremptory challenge as provided by law."

Now, are you in effect by including the court giving the court some discretion in whether a peremptory challenge can be exercised, and thus diluting the absolute right of the peremptory challenge?

Attorney General KATZENBACH. No, sir; under the present practice, when a peremptory challenge is made, the juror is excluded by the court.

Mr. CRAMER. All that is meant by "excluding upon a peremptory challenge" is the administerial action of dismissing?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Now in the present law, there is this provision relating to right of trial by jury. I am now talking about the basic subject

of a man's right to be judged by his peers, which as I understand it, traditionally has meant those who live in an area in proximity to where the crime was committed. Section 1865 of title 28 presently says—

grand and petit juries shall from time to time be selected from such parts of the district—

I am dealing now on the subject of Federal juries—

from such parts of the district as the court directs, so as to be most favorable to an impartial trial, and not to incur unnecessary expense, or unduly burden the citizens of any part of the district with jury service. To this end, the court may direct the maintenance of separate jury boxes for some or all the places, for holding court in the district and may appoint a jury commissioner for each.

Now, that clearly gives broad discretion in the judge to protect the right of a person to be judged by his peers, does it not?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Now, the draftsmanship of the proposal sent to us is on page 3, line 16 through 22, and on page 4—

the jury commission shall maintain a master jury wheel and shall place in the master wheel names selected at random from the voter registration lists residing in the judicial district or division.

Now, in a case for instance of the State of Florida, you have a division or district, one division, that is about 300 miles long—in the panhandle—running all the way from Pensacola to the other side, at Tallahassee. It is true, is it not, that having voter registration lists, in that instance, your registration list would be made up of some 2,000 people, that is, the names in the panel, in the wheel, about 2,000 people from that entire area, based upon the number of registered voters in each county, for instance.

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Is that correct?

Attorney General KATZENBACH. Yes; that is correct.

Mr. CRAMER. So what happens to the fellow who lives 250 miles from Tallahassee, in a small county, that has by virtue of this reapportionment of the jury system—which is about what that amounts to—what happens to his right of being judged by his peers, who live some 250 miles away, in western Florida, and he is tried in Tallahassee? The largest percentage of the voters registered living in Tallahassee, on the one end, and Pensacola, on the other end of that district.

Attorney General KATZENBACH. I suppose nothing happens to him. He will get a fair trial under this, and I suppose these will be his peers, even if they live 250 miles from where he lives. That does not strike me as, certainly, as unconstitutional or otherwise as unfair provision that the juror might in some instances live 250 miles away from where the defendant lives, or where the crime was committed. I just don't understand why that is so unfair. I can see some burden on traveling 250 miles on the juror, but I would suppose that we have attempted to take care of that, to some extent, by additional travel allowances, and by additional jury fees and payments.

The CHAIRMAN. We have that now in the Federal juries, haven't we?

Attorney General KATZENBACH. Yes, you have got that.

The CHAIRMAN. For example, in my State, the southern district goes clear up to Albany, almost some 200-odd miles.

Attorney General KATZENBACH. And, of course, the provision, I believe, I am right in saying, Congressman, the provision that you are reading is really exactly the provision, because of that broad discretion there, we are attempting to do something about in this title; it gave the judges very little guidance as to how they should select jurors, so we are really striking at the heart of that.

Mr. CRAMER. It is true, is it not, does this proposal 1864 repeal 1865 of the present law?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. So that the judicial discretion "not to incur unnecessary expenses or unduly burden citizens of any part of the district for jury service" is repealed?

Attorney General KATZENBACH. Yes, that provision is repealed. The same principles are incorporated within the revision.

Mr. CRAMER. But how? The proviso comes into effect at line 19 through 22, and the rest of the section, only if the voter registration lists are not available.

Attorney General KATZENBACH. Well, it comes in addition to that, in this respect. We have allowed juries to be selected from divisions, juries to be selected from the area around the place where the court regularly sits for trials within that city, and in addition, as far as these long travel distances are concerned, all that this statute does is says the judge cannot exclude a juror on that basis, who wants to serve. It does not say that he may not exclude them, if he feels that that is a hardship to come that distance.

Mr. CRAMER. Well, it says each jury commission shall maintain a master jury wheel, place in the wheel names selected at random from the voter registration in the district or division.

Attorney General KATZENBACH. Right.

Mr. CRAMER. So the makeup of the jury wheel has nothing to do with the question of travel. They have to be included, no matter what the distance.

Attorney General KATZENBACH. It has something to do with the question of travel, because we already cut districts down to divisions, and you can make up your master wheel in addition from places where the court regularly sits. It would not be correct to say it has nothing to do with distance, but in those limitations, it has nothing to do with distance.

Mr. CRAMER. Is your understanding of line 19 that where there are divisions, it shall be made up on a division basis, if there are no divisions on a district basis, or under the proviso? It says in a judicial district or division.

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Which is to be used?

Attorney General KATZENBACH. That is covered up in line 3 of the same page.

Mr. CRAMER. The judge has discretion to use either?

Attorney General KATZENBACH. Right.

Mr. CRAMER. So in some instances, you would have jury wheels made up out of a district, and others out of a division? Now, don't you think we ought to say one or the other?

Attorney General KATZENBACH. No, sir.

Mr. CRAMER. Why?

Attorney General KATZENBACH. Because I think in this respect the same broad discretion that you were talking about before would be equally applicable here. If the court wants to make up the list on a districtwide basis, as he could have done under the previous law, he ought to be able to do it.

Mr. CRAMER. Don't you think that in exercising our discretion in protecting the right of the individual to be tried before his peers, we should make it a requirement that the jury wheel be filled where you have voter registration within the division, at least give him that much of a break?

Attorney General KATZENBACH. I hadn't thought of it as being a particular—"that much of a break," into this situation, and I don't really know what you mean by that. We have two divisions in New Jersey, and you can go from one end of New Jersey to the other on the turnpike in an hour and a half, and I don't think you are giving a Newark defendant a break by excluding people from Camden. I think they would be fair jurors, and be able to decide the case. If they are close friends of the defendant, they would be excluded for cause, anyway.

Mr. CRAMER. Now, the proviso that you have inserted on line 19 through 22, that comes into effect when you don't have voter registration in making up the number of people to be included in the wheel. Is that right?

Attorney General KATZENBACH. In effect, yes, sir.

Mr. CRAMER. So where you don't have voter registrations, the court has discretion, and it appears to be rather unlimited, except for the prohibition relating to race, color, religion, sex, and national origin, so in effect, and other than the discrimination aspects, the court would retain in those instances where no voter registration list exists, the same power the court has today, would it not?

Attorney General KATZENBACH. No, sir, I don't believe so. The provision here, proviso there was not where no voter registration lists exist, because as I testified before, I think you can always find voter registration lists, or at least, voting lists, which can be used. I think this was a power given to the judicial council here, where they believed that the voter registration was such as to be discriminatory in itself, and felt that it had to be supplemented, a provision which I would think would be rarely applied, and I would hope with the 1965 act, there would never be a necessity of applying it.

Mr. CRAMER. Well, if it is, in fact, applied, then you have a different test, under the proviso, than you have in voter registration areas. Is that correct?

Attorney General KATZENBACH. I don't know what you mean by the word "test." You have a different system, the voter lists——

Mr. CRAMER. Different prescription on what names shall go into the master wheel.

Attorney General KATZENBACH. Yes, sir. That is the purpose of it.

Mr. CRAMER. I just have one other question that I would like to ask, if time will permit.

Relating to the Florida law concerning the selection of juries, in which it specifically provides that a woman shall serve if she requests

to serve, you will agree, do you not, generally, that there are reasons, not related in any way to discrimination concerning sex, for a woman not serving on a jury, if she has family obligations, or what have you?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Now, the Florida law is, "provided, however,"—section 40.01—"that the name of no female person shall be taken for jury service until this person register with the clerk of the circuit court her desire to be placed in the jury list." As I gathered from your testimony, that, in effect, would be nullified by this title II.

Attorney General KATZENBACH. That is correct; yes, sir.

Mr. CRAMER. But I think you went on further to say, did you not, or suggest, that if the law were amended to say that a female shall not serve if she objects to such service, without requiring an affirmative act on her part first to qualify, it would not, in your opinion, be subject to the prescription of title II. Is that correct?

Attorney General KATZENBACH. That is right.

Mr. CRAMER. How do you come to that conclusion?

Attorney General KATZENBACH. Well, I come to that conclusion because it seems to me here an additional burden is put upon women who wish to serve, which men don't have to comply with, and I think removal of that burden is required by the way in which this statute is drafted. On the other hand, in terms of exemptions from jury service, we have attempted to leave the States here a great broad discretion to exempt groups upon their requests, if they want to be exempted, so if a woman wanted to be exempted, I think that she could be exempted, if that was what Florida in its wisdom determined to do.

Mr. CRAMER. Now in your proposal——

The CHAIRMAN. Wait just a minute. Excuse me.

Mr. CRAMER. Yes.

The CHAIRMAN. In this proposed bill, we prohibit discrimination on the grounds of sex in the selection of State juries Now, would not the Florida law have to be changed, then?

Attorney General KATZENBACH. Yes, but the question, Mr. Chairman, was whether or not Florida could provide by law that women, upon their request, could be excused from juries, and I said yes, they could, upon their request. It could so provide. I thought that it is prohibited here to make them request jury service, but that the other side of the coin, requesting an exemption, Florida could so provide, if Florida felt that there were differences between the male and female status in terms of family obligations that made this a wise thing to do, they could so exempt.

The CHAIRMAN. So you say the Florida law would be consistent with this bill as drafted?

Attorney General KATZENBACH. No, as the Florida law presently exists, it would be inconsistent.

The CHAIRMAN. Inconsistent?

Attorney General KATZENBACH. Yes.

Mr. CRAMER. Now that is your opinion, is it not, that if Florida did, made it a negative responsibility, the female having the right in the first instance to serve, and the right not to serve, that would be consistent with your proposed title II, and would be constitutional. Is that correct?

Attorney General KATZENBACH. Yes, sir.

Mr. CRAMER. Now, the Florida law also provides that selection of a jury list, such person selected, selecting officers know or have reason to believe are law-abiding citizens of a proved integrity, good character, sound judgment, and intelligence, that would be eliminated, would it not, by title II, for all practical purposes?

Attorney General KATZENBACH. No, I should not think so.

Mr. CRAMER. It would be subject, however, would it not, to the section that I read just a few minutes ago relating to the powers of the court to issue orders, on page 16, section 203, where any qualification or basis for excuse or exemption, and this is the basis for an exemption, which is susceptible to being applied in violation of section 201 of this title because it vests in jury officials undue discretion. Would not the court have power to in effect nullify this integrity, good character, sound judgment, intelligence, as a broad power giving too broad a discretion?

Attorney General KATZENBACH. Congressman, if the court found that those provisions had been used to discriminate, then it could suspend those provisions. I would suggest to you, sir, that whether or not this statute says that, the court would have that power in any event.

Mr. CRAMER. Now, the Florida law also provides that no person under prosecution, as well as Federal proposal, is that someone who has been convicted of a crime punishable by a greater period than a year of imprisonment, shall be excluded from jury service. I have two questions. What would be the effect of this title II on that exemption, and why isn't a similar exemption proposed for the Federal juries?

A person not only guilty of a crime, but one under prosecution of a crime being exempt?

Attorney General KATZENBACH. The Florida law would continue to be in effect, and such a provision is not in the Federal law, but I would assume that a judge can excuse and would excuse immediately on that, because obviously, I would think it would be subject to challenge for cause.

Mr. CRAMER. Well, you would have no objection to writing that into this title I, would you?

Attorney General KATZENBACH. No.

Mr. CRAMER. Who is now under prosecution must be excluded?

Attorney General KATZENBACH. It is not in the present law. I think that is the reason it isn't here. I think people before, people who have been charged and indicted and so forth, I have no difficulty with exempting them. We just didn't change the Federal law in that regard, is the reason it isn't there.

Mr. CRAMER. One other question on State juries. On page 19, I wonder what happens here relating to the shifting of the burden of proof on line 18 and 19k if the court determines at the beginning of the section on line 11 that there is probable cause to believe that the rights of the individual have been denied, and (2), records and papers maintained in the State are not sufficient to permit determination, it then becomes the burden of the State. It shall be, and I quote—

the responsibility of the appropriate State or local officials to produce additional evidence demonstrating that such denial or abridgement did not occur.

Does not that have the effect of shifting the burden of proof to the State, that discrimination did not occur, whereas, ordinarily, the burden is on the aggrieved, complaining party?

Attorney General KATZENBACH. It has the effect of putting the burden of coming forward with the evidence on the State. The ultimate determination is made by the court, on the basis of all of the evidence before it.

Mr. CRAMER. Well, but it is placing a burden on the State or local officials in order to prevent the plaintiff's case from prevailing, of proving that they are based upon additional evidence, whatever that might be, that there was not a denial or abridgement. Even though there are not available records and papers sufficient to prove that there was in the first instance.

Attorney General KATZENBACH. That is correct, and I think it is important that that burden be put upon the State, because it cannot be met by the plaintiff.

Mr. CRAMER. That is a very difficult burden, is it not, in that the State cannot rely upon records kept? And it is a burden that could be carried by the plaintiff properly by subpenaing whoever might have been involved, rather than the State?

Attorney General KATZENBACH. No, sir, I think that is a very, very much easier burden for the State. They know who is involved. After all, the integrity of their jury system is being questioned here. I would think they would be just delighted to come forward and prove that this was a fair and honest system, and they are in a good position to do it, a far better position than the plaintiff, who may not know what in fact has happened on this, and they are in a position to get this, after all, they have set it up, and if their records are inadequate to establish this, I would think that in the first place they would want to have records that really could establish this, and that would show that this was a fair system, they want to keep those records. I would think they would be in an excellent position to go forward and get this. After all, Congressman, this comes after the plaintiff shows probable cause.

Mr. CRAMER. Just one other question, Mr. Chairman. On page 17, lines 7 through 10, against State juries, the court has the power to appoint a master to perform duties of jury officials as may be necessary. This means, for instance, in Florida, the court could appoint a master to perform the function of the court commission that has the power to establish jury lists, but I don't see any description of any kind as to when it is contemplated the court would exercise such judgment. Do you have any thoughts relating to when you would expect such masters to be appointed?

Attorney General KATZENBACH. Yes; I would.

Mr. CRAMER. In what circumstances?

Attorney General KATZENBACH. When in the court's judgment that was necessary to assure the rights secured under section 201.

Mr. CRAMER. Well, that is——

Attorney General KATZENBACH. That is, I would assume——

Mr. CRAMER. That is somewhat—I would call it a flippant answer, but it is quite obvious that it speaks for itself that it relates to "may be necessary," as being extremely broad discretionary powers. Don't

you think that there are certain circumstances that possibly should be defined, when a master is justified and when one is not?

Attorney General KATZENBACH. I don't see any reason to limit powers that the court presently has, and this would be what they presently have as a power. I don't know why in attempting to effectuate nondiscrimination we should turn around and limit the power of an equity court as to what it may do.

Mr. CRAMER. Didn't we limit appointment of masters with the requirement of the pattern or practice in the voting rights section? The court had to find a pattern or practice of discrimination relating to voting rights in order to appoint a master. Don't you think some standards should be established in subsection (d) as to when a master can be appointed?

Attorney General KATZENBACH. No, sir; I think that a standard exists. I think that the Federal judiciary can be counted on to do that only when in the judge's opinion it is necessary to do it. For example, if the State or county officials just refuse to do it.

The CHAIRMAN. That could have been done 20 years ago, but not in the light of what we know now happened to certain cities.

Attorney General KATZENBACH. I don't know how you could express it. I really don't know how you could express it much differently than this. How could you draft language that would take into consideration all of the contingencies which the court ought to take into consideration in trying to say it is necessary on these facts to appoint a master. I think it would be a very difficult thing to do.

The CHAIRMAN. Mr. Attorney General, I think that will have to be the end of the testimony today, and I want to say that you have been very, very gracious in your attitude, and that your answers have been clear and competent, and forceful, and we are very pleased with your testimony.

There are the bells, but we have two members, and if they want to forgo a quorum call, I am willing to sit to hear them. How about you, Brother Ryan.

Mr. RYAN. Mr. Chairman, I am willing to proceed.

Mr. KUPFERMAN. Why don't I go answer and come back?

The CHAIRMAN. All right, and let's hear from Mr. Ryan now. I am willing to forgo the quorum call.

Thank you very much, Mr. Attorney General.

Attorney General KATZENBACH. Thank you, Mr. Chairman.

STATEMENT OF HON. WILLIAM F. RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RYAN. Mr. Chairman, once again, I am privileged to testify before the Committee on the Judiciary, which has written landmark legislation to eliminate the evils of segregation and discrimination from our great Nation.

Throughout my service in Congress, I have been deeply concerned with the need to enact civil rights legislation which would effectively end discrimination in this country. It is gratifying for me to realize how many of my early legislative proposals have now become law.

But the effect of segregation continues—in our courts, in law enforcement, in education, in housing, and in employment—to name a

few of the most dramatic areas. I should also point out that the ballot box is not yet free although much progress has been made since enactment of the Voting Rights Act of 1965. In this session of Congress, we have the opportunity to take important steps to eliminate segregation in each of these areas.

The administration's bill (H.R. 14765) introduced by the distinguished chairman, deals with jury selection, the desegregation of public schools and facilities, discrimination in housing, and violence designed to intimidate civil rights workers or those who are attempting to exercise their civil rights.

While I basically agree with, and am sponsoring legislation to carry out the administration's approach to the problems of public school and public facilities desegregation (H.R. 11729), discrimination in housing (H.R. 14971), and violence (H.R. 14972), I would advocate a very different method of assuring the fair selection of jurors.

My own efforts to assure fair selection of jurors goes several years back. On May 2, 1963, I introduced legislation to prevent the exclusion of minority group members from jury selection. Again I introduced that legislation on February 24, 1965. And in this session, I introduced H.R. 14111, which provides a comprehensive plan to assure nondiscriminatory selection of jurors.

In our free society, no right is more precious than the right to a fair trial. George Washington called the administration of justice "the firmest pillar of government." He was quite right.

Yet as civil rights cases have illustrated—and I am thinking of the unresolved murders of Medgar Evers, Lemuel Penn, Jimmy Lee Jackson, the Reverend James Reeb, Mrs. Viola Liusso, and Jonathan Daniels—and the three courageous civil rights workers—James Chaney, Andrew Goodman and Michael Schwerner—in some sections of the country the temple of good government has no judicial pillar at all.

In a special report published in October 1965, the Southern Regional Council analyzed the state of southern justice. Noting that widespread publicity had dramatized the lack of justice in civil rights cases, the report concluded:

> The danger today is not that the public will fail to know about the double standard of justice, but that the public will think it limited only to civil rights cases, or will fail to act.

As the report makes clear, the failure of justice in well-publicized civil rights cases is an illustration—not the embodiment—of the breakdown of justice in the South.

That is the problem which the legislation before you today is designed to remedy. The Southern Regional Council pointed out that in this dual system of justice, "much of the problem is the selection of jurors. In almost no courts are jurors picked by thoroughly objective means to insure a true cross-section of the community."

Since few counties keep records of jury venires, it is difficult to assess the exact amount of segregation on southern juries. But the available evidence indicates that integrated juries are about as rare as integrated polling places were a year ago.

In Alabama, for example, where about 30 percent of the voting age population is Negro, the council estimates that there are 5 or 6 Negroes on a typical jury panel of 110. In Arkansas, where about 20 percent

of the voting age population is Negro, the council estimates that there are no more than 4 Negroes on a typical double panel of 50.

In an area where accurate statistics are available, the council pointed out that the 28 court clerks and the 109 jury commissioners attached to the Federal courts of the 11 States of the Old Confederacy are solidly white—all appointed by the 65 white district judges.

In short, there is a clear case of segregation in southern juries, and the effect of that segregation is to produce a dual system of justice. Negroes are kept off of juries and kept in jail.

There can be no question that segregated juries are unconstitutional. The 14th amendment guarantee of "equal protection of the laws" makes this clear. Furthermore, of course, the 14th amendment goes on to say that "the Congress shall have power to enforce, by appropriate legislation," its provisions.

The question before this committee, then, is what type of legislation will most effectively solve this problem. Broadly, there are two main paths open—that of judicial enforcement and that of administrative enforcement. Judicial enforcement could mean a case-by-case determination of a pattern and practice of discrimination in jury selection in each county. Administrative enforcement would mean an objective, swift, and accurate triggering of a mechanism for remedying jury discrimination whenever certain conditions exist.

In deciding which approach to take, we need look no further than the experience with voting rights. No one knows better than the members of this committee the reasons for the failure of the early voting rights laws of 1957 and 1960, and the reasons why last year's act was passed. A case-by-case, county-by-county method of litigation simply did not work.

Chief Justice Warren summarized the experience of the earlier laws in an introduction to the Supreme Court's unanimous opinion upholding the Voting Rights Act of 1965 in *South Carolina* v. *Katzenbach*, on March 7, 1966:

> The previous legislation has proved ineffective for a number of reasons * * *

He wrote:

> Voting suits are unusually onerous to prepare, sometimes requiring as many as 6,000 man-hours spent combing through registration records in preparation for trial. Litigation has been exceedingly slow, in part because of the ample opportunities for delay affording voting officials and others involved in the proceedings. Even when favorable decisions have finally been obtained, some of the States affected have merely switched to discriminatory devices not covered by the Federal decrees or have enacted difficult new tests designed to prolong the existing disparity between white and Negro registration. Alternatively, certain local officials have defied and evaded court orders or have simply closed their registration offices to freeze the voting rolls.

The House report on the bill made the same point:

> Four years (to press a voting suit) is too long * * *.

It said:

> The burden is too heavy, the wrong to our citizens is too serious, the damage to our national conscience is too great not to adopt more effective measures than exist today. Such is the essential justification for the pending bill.

In short, the early laws did not work because they required individual suits in each of the counties charged with discrimination. The

same situation exists in proceedings dealing with jury selection. Suits are expensive to bring; they allow for endless delaying tactics; and there is no quarantee that the district judge will be more helpful than the local jury commissioner.

Yet the administration bill, H.R. 14765, is patterned after the early voting acts.

I am most concerned about the administration's proposed plan to desegregate State juries. The Attorney General would bring suits in Federal district courts for injunctive relief against discriminatory jury selection practices. These cases are likely to be slow, painful, and expensive.

Although there is a recordkeeping requirement, and the records are to be made available to the Attorney General, it is not clear what records must be kept.

Only in the course of a proceeding may a local official be required to provide a "written statement of jury selection on information." And even then it is not clear what information this statement would include.

The administration's bill, then, contains the same flaws which make the early voting rights laws unworkable. Eventually, a stronger, administrative jury selection bill will have to be formulated and passed by Congress. Why not save ourselves—and the citizens of the South—the intervening years of agony. We should pass a solid, quick, administrative bill this session.

In order to avoid the delays and difficulties inherent in a case-by-case approach, I have proposed a jury bill—H.R. 14111—which uses an automatic administrative trigger similar to that employed in the Voting Rights Act of 1965.

The bill requires that records be kept of the racial composition of all State jury venires in every State which has a nonwhite population of more than 10 percent and which either required racial segregation by law within the past 5 years or is subject to the Voting Rights Act of 1965. These records must be public and copies must be submitted to the Attorney General.

If the recordkeeping requirement is not complied with by any court, then the Attorney General must certify that court to the Civil Service Commission, which will appoint one or more special Federal jury commissioners to function on behalf of the court.

Special Federal jury commissioners will also be appointed by the Civil Service Commission upon certification of the Attorney General that a certain disparity exists between the number of Negroes in a county and the number of the county's jury list. The disparity ratio is 1½ to 1 between the percentage of Negroes in the county, and the percentage of Negroes on the county's jury list.

In addition, the Attorney General is required to certify for the assignment of special Federal jury commissioners any county which discontinued or forbade the use of voter registration lists as a basis for jury venires after the enactment of the Voting Rights Act of 1965.

Special Federal jury commissions will also be assigned to any county in which a Federal court has found within the past 5 years that jurors have been disqualified on account of race or color.

I have enumerated the four conditions under which special Federal jury commissioners will be assigned automatically.

The bill also provides that the Attorney General or any resident of a judicial district or any party to a jury proceeding may bring an action in the U.S. district court for the enforcement of the act.

Federal jury commissioners will compile venire lists with the assistance of the Census Bureau which would be empowered to use a sampling technique to insure a venire which is a representative cross-section of the jurisdiction without regard to race, color, sex, political or religious affiliation, national origin, or economic or social status.

The venire lists compiled by the special Federal jury commissioners would be the basis for the selection by lot of jurors by State courts. The special Federal jury commissioners would be entitled to supervise this process.

The bill provides a mechanism whereby a county may move in Federal court to be relieved of its requirements.

A question has been raised regarding the potential use of peremptory challenge to discriminate in the selection of State juries. As I thought about it, it occurred to me that a simple approach would be to require that in State courts the number of peremptory challenges not exceed the number permitted under the Federal rules of procedure for similar cases.

I shall now discuss the method of desegregating Federal juries under the administration's bill. Jury lists would be derived from voter rolls except where the judicial council of the circuit determines that the use of voter rolls would not end discrimination. In such districts, the council would be required to prescribe other sources of names.

Although I do not think that this approach to the problem of Federal jury discrimination would be a total failure, I am afraid that it would prove largely irrelevant to the problem of segregation in the Deep South. In rural areas of Mississippi, Georgia, and Alabama, the Voter Registration Act of 1965 has still only succeeded in registering a small percentage of the population. So in those areas the judicial council would have to produce some other source of names. But it is difficult to believe that any list of names in that area would be truly a cross-section of the population.

Under my bill, H.R. 14111, the desegregation of Federal juries would be achieved as follows. First, the bill would set up jury commissions in each Federal district court which would be appointed by the district court. With the approval of the Director of the Administrative Office of the United States Courts, the jury commission would esablish an area sampling plan to provide names for a master jury wheel drum. This would provide a representative cross-section of the population of the Federal district without exclusion on the basis of race, color, sex, religious or political affiliation, or economic or social status.

Both the Attorney General and private citizens would be given power to file noncompliance actions in the U.S. Court of Appeals. If the action were upheld, the court would be empowered to appoint jury commissioners responsible to it and direct them in the selection of juries and the keeping of records.

The need for Federal legislation to protect against violence and intimidation in the exercise of civil rights has been evident for many, many years. The old Reconstruction statutes, sections 241 and 242

of title 18 of the United States Code, simply will not carry the full load. The Supreme Court has now made very clear the need for more specific Federal legislation in this area.

On May 2, 1963, I introduced a bill which was designed to protect civil rights by providing criminal and civil remedies for unlawful official violence and for other purposes. I introduced this bill again, as H.R. 5427, on February 24, 1965.

The approach taken by the administration's new bill, I am satisfied, is warranted by both the conditions in the South and the recent Supreme Court decisions. Consequently, I have used a similar approach to title V in the administration's bill in title I of my bill, H.R. 14972.

Title I of my bill is designed to deter and punish interference by force or threat of force with activities protected by Federal law or the Constitution. This title would strengthen the Government's capability to meet the problem of civil rights violence. Each area of protected activity is specifically described. They are: voting, public accommodations, public education, public services and facilities, employment, housing, jury service, use of common carriers, and participation in federally assisted programs.

The statute would protect Negroes and members of other minority groups from violence directed at them while they are engaging in, or because they have participated in, such activities, and from violence which is intended to discourage the victims from engaging in such activities. In this regard, the title would also punish violence directed against a person who has not been involved in civil rights activity but who is selected as a victim in order to intimidate others.

Title I would also protect civil rights workers and others who urge or aid participation in these activities, as well as those who engage in any form of speech or peaceful assembly opposing denial of the opportunity to participate in such activities—such as public school officials, restaurant owners, and employers.

The title would prohibit forcible interference with any of the specified activities by private individuals acting alone as well as by public officers or other persons acting under color of law.

The prescribed penalties are graduated in accordance with the seriousness of the results of violations, ranging from misdemeanor penalties to life imprisonment.

In setting new penalties for sections 241 and 242, title 18, United States Code, title II of my bill is more rigid than the administration's bill.

In title III of my bill, however, I have offered a departure from the administration's bill. It is one which I consider quite important. Following the model of the Leadership Conference on Civil Rights, I have proposed that the Federal Government provide civil indemnification of persons whose person or property is injured while lawfully exercising, or urging others to exercise, civil rights.

A Civil Indemnification Board would be established under the U.S. Commission in Civil Rights. It would have investigatory and subpena powers similar to those of the National Labor Relations Board.

One of my other bills, H.R. 5427, which I introduced on May 2, 1963, and again on February 24, 1965, also deserves the attention of this

committee. That bill would amend section 242 of title 18 of the United States Code so as to make a crime of official violence and official neglect.

In this and past Congresses, I introduced a bill similar to those which I have described, which was designed to provide protection against lynchings. H.R. 11730 broadened the definition of "lynching" to include all instances when—

> two or more persons knowingly in concert commit or attempt to commit violence upon any person or persons on his or their property because of their race * * *.

The bill would punish lynchings by a $10,000 fine and/or up to 20 years imprisonment. It would also punish any State or local officer who neglected to make all efforts to apprehend the members of the lynch mob. And it contains an indemnification provision which would provide from $2,000 to $10,000 for injury or death.

I also endorse the concept of the administration's title III, which would amend title III of the Civil Rights Act of 1964 so as to give the Attorney General power to initiate suits to desegregate public schools and public facilities, without the requirement of a written complaint.

The administration's bill closely follows my own bill, H.R. 11729, which I introduced in this and past Congresses. My bill, however, has the advantage of being broader, and is not confined to public schools and public facilities.

Finally, I fully sympathize with the administration's view that tough Federal legislation should be passed to end discrimination in housing. Until we can put an end to the economic and racial ghettos of this country, we will never be able to end de facto segregation of our schools, or de facto segregation of jobs, aspirations, cultures, and lives.

I am proud to note that New York has an antidiscrimination-in-housing law. It is an important law, and it has had some effect. But no one would pretend that it has ended discrimination in housing in New York. One reason why much discrimination persists in New York is that it has proved very difficult to administer and enforce it with full vigor.

While I support and sponsor the administration's fair housing proposal, I should note that it does not provide for an enforcement agency. Individuals may bring suit: the Attorney General may intervene; the Secretary of Housing and Urban Development may conduct studies; and the Attorney General may find a pattern of discrimination. But there is no agency which would have power to enforce this critical new law.

My original bill, "the act against discrimination," which I drafted and introduced in each Congress until the Civil Rights Act of 1964 adopted a different approach, would have given the Civil Rights Commission jurisdiction over a wide range of discriminatory practices and the power to issue court-enforceable cease-and-desist orders. Discrimination in housing would have been included.

I sincerely hope that in its wisdom this committee will be able to provide for a suitable agency to enforce the law for desegregation in housing.

We have not reached the end of the road in our struggle to gain equal rights for all Americans. Nor is the end in sight. We must continue to struggle for freedom and liberty.

As legislators, let us strive to do the best we can. We molded and enacted the civil rights bill in 1964. We enacted the Voting Rights Act of 1965.

If we provide a strong administrative method of jury selection, a specific and forceful criminal law against violence and a tough bill to desegregate housing with the help of a vigorous Federal agency, then we will have passed another milestone on the road to freedom.

The CHAIRMAN. Mr. Ryan, you have five bills, as I understand it, haven't you?

Mr. RYAN. What, sir?

The CHAIRMAN. They are all related to different subjects on civil rights?

Mr. RYAN. I am sorry. The bells interrupted my hearing.

The CHAIRMAN. You have five bills on civil rights. Isn't that correct?

Mr. RYAN. Yes, sir. Probably more.

The CHAIRMAN. I beg your pardon?

Mr. RYAN. Probably more. There are seven.

The CHAIRMAN. Probably more. Well, are you going to speak on every one of these bills? And if so, couldn't you summarize what you are going to indicate?

Mr. RYAN. Mr. Chairman, basically my testimony this morning concerns the question of the jury selection process, violence and discrimination in housing. My other bills also treat with vital questions of civil rights. My emphasis today has been on the approach to the question of the fair selection of juries. Whether it is to be the case-by-case approach, as the administration suggests, or whether there is to be an automatic trigger involved, as my bill would suggest: with the coming into play of certain conditions, the Attorney General may certify to the Civil Service Commission for the appointment of Federal jury commissioners. I think that is really the issue.

I support the housing provisions of the administration's bill. I support the provisions which expand the authority of the Attorney General to intervene in public facilities and public school suits. I support the violence provisions with strengthening. I have introduced legislation dealing with those questions in the past, so the principal point I want to make to the committee and the distinguished chairman this morning is that I would prefer, instead of the case-by-case approach to the question of discrimination in jury selection, that we set up a procedure whereby the Attorney General, in those counties where the population is more than 10 percent Negro, may certify to the Federal Civil Service Commission for the appointment of Federal jury commissioners.

This would take place if the recordkeeping requirement of the bill was not met; it would take place, secondly, if the Attorney General certified a disparity between the number of Negroes in the county and the number of Negroes on the jury list, that the ratio was greater than 1½ to 1; it would take place if the Attorney General certified that any county forbade or discontinued the use of jury lists after the Voting Rights Act of 1965, and it would take place where the Federal court found within the past 5 years that jurors were disqualified because of race or color.

This is in connection with State courts. It provides for a sampling procedure. Also the bill would set up a sampling procedure rather than the use of the voting lists in the Federal courts, so that the sampling technique was used there.

Those are the principal points of difference, Mr. Chairman.

The CHAIRMAN. Those are the points in H.R. 14111.

Mr. RYAN. Yes, sir.

The CHAIRMAN. They emphasize an administrative procedure rather than the case-by-case approach.

Mr. RYAN. That is correct, Mr. Chairman. In other words, it is my belief that by an administrative proceeding, a triggering device, we would be able to deal with the problem much more swiftly and expeditiously, and would not run the risk of having a situation develop similar to that in the early voting laws legislation, where case-by-case procedures simply did not meet the objectives.

The CHAIRMAN. I take it you want to place your entire statement in the record.

Mr. RYAN. If I may, Mr. Chairman.

May I make one other point, which came to my attention during the testimony this morning, when the question was raised concerning the potential use of the peremptory challenge as a means to discriminate in the selection of State juries. It occurred to me as I was thinking about it, listening to the testimony, that it might be resolved by requiring by legislation that in no State court could there be a larger number, a greater number of peremptory challenges in any case than the Federal rules provide in a similar Federal case. This might solve that problem. I suggest that to the committee for its consideration.

The CHAIRMAN. You did hear the Attorney General say, however, that where the peremptory challenges were unlimited as in Alabama, they might be reached by a legal proceeding.

Mr. RYAN. Yes, by a——

The CHAIRMAN. By a proceeding which would establish a violation of the 14th amendment.

Mr. RYAN. Yes, sir. The point I make is that perhaps we could legislate here so that no State may provide a greater number of peremptory challenges in any case than is provided under the Federal rules for a Federal case of a similar nature, and this might solve it.

The CHAIRMAN. I see. That would make it simpler.

Is there anything else?

Mr. RYAN. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Ryan. Mr. Kupferman promises to be back, but I am afraid we will have to hear him in the morning.

Thank you very much, and I am sorry I kept you, Mr. Ryan.

Mr. RYAN. Thank you. I am delighted to have the opportunity to address myself to this question, and I strongly urge upon the committee the administrative approach to the problem of selecting fair and impartial juries without discrimination.

The CHAIRMAN. We will adjourn until tomorrow morning at 9 o'clock.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 9 a.m., Wednesday, May 11, 1966.)

CIVIL RIGHTS, 1966

WEDNESDAY, MAY 11, 1966

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

The subcommittee met at 9:30 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rogers, Donohue, Kastenmeier, McCulloch, Cramer, and MacGregor.

Also present: Mr. Conyers.

Also present: William R. Foley, general counsel; Benjamin L. Zelenko, counsel, and Martin R. Hoffmann, associate counsel.

The CHAIRMAN. The meeting will come to order.

We have as our first witness the distinguished gentleman from Michigan, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. I am not going to testify today. I thought my office had advised the committee. I hope this does not cause an adjournment of the meeting.

The CHAIRMAN. You say you are not ready to testify?

Mr. CONYERS. No, sir.

The CHAIRMAN. The trouble is, we have a schedule today for Members of the House and tomorrow we hear Mr. Weaver and Mr. Hannah—Mr. Weaver, Secretary of the Cabinet, and Mr. Hannah of the Civil Rights Commission, and we hoped to have something like eight Members of the House this morning.

Could you not possibly testify, Mr. Conyers?

Mr. CONYERS. No, sir. I am very sorry; I do not have my——

The CHAIRMAN. I want to help you all I can, but that makes it very difficult for us to try to fit you in some sort of a slot here. You will have to wait, because we will not be able to hear you until we hear these other witnesses.

Mr. CONYERS. I would——

The CHAIRMAN. They are all scheduled and they come from distant parts.

Mr. CONYERS. This a very rare dilemma, Mr. Chairman, because normally I would have a great deal to say, and I will. But it is not ready at this time. I regret very much that I am——

The CHAIRMAN. We will try to accommodate you, but you understand the exigencies under which we are working here now.

Mr. CONYERS. I certainly do.

Mr. CRAMER. We have a lot of witnesses who want to testify.

The CHAIRMAN. Very well.

I will start the meeting and suspend until members come.

The Chair wishes to place into the record a statement by Representative Diggs of Michigan, a statement by Representative Krebs of New Jersey.

(The statements follow:)

STATEMENT OF HONORABLE PAUL J. KREBS REPRESENTATIVE FROM THE STATE OF NEW JERSEY, MAY 10, 1966

Mr. Chairman, I am grateful for the opportunity of appearing before your subcommittee in support of civil rights legislation. I introduced H.R. 13626 last March in an effort to provide protection against the brave victims of discrimination and their supporters who risked and in some instances lost their lives.

The unjust arrests, jailings, trials and convictions experienced in recent civil rights activities are the direct sponsors of the legislation being deliberated today.

While I am not an attorney, I am nonetheless struck by the need for strengthening the procedures of protecting against State interference with activities guaranteed by the Fourteenth Amendment and by federal civil rights statutes. I am therefore in strong agreement with the message on civil rights submitted by President Johnson.

His proposal goes beyond that which I envisaged in my own bill, and I am happy to publicly support his measure. It is a proposal that would go a long way toward prohibiting racial discrimination in federal and state jury selections and in protecting those who seek to exercise their civil rights.

We in Congress have been instrumental in ensuring the right of all qualified citizens to participate in our country's political life and to use our communities' public facilities. I think it is now commendable that we proceed to ensure the ability to participate more fully in the things many of us take for granted.

We can help America's minorities to participate more fully by surrounding them with more effective protection in the buying of housing for their families and in gaining the jobs necessary to maintain a living standard equal to their fellow Americans.

I heartily agree with the President that "the time has come for the Congress to declare resoundingly that discrimination in housing and all the evils it breeds are a denial of justice and a threat to the development of our growing urban areas."

To accomplish this end I intend to support any reasonable proposal this committee recommends and I also intend to introduce legislation that would provide incentives for low-income and middle income taxpayers in improving their housing. We must ensure not only that people have a right to purchase adequate housing but also the means for their upkeep.

As the President so well said it, "no civil rights act, however historic, will be final." Injustice will undoubtedly continue even after enactment of this year's civil rights program. But the challenge is for us to tackle the problem here and now. We must accept that challenge.

STATEMENT OF HONORABLE CHARLES C. DIGGS, JR., U.S. REPRESENTATIVE FROM THE STATE OF MICHIGAN

The as yet unpunished killings of William L. Moore, Medgar Evers, the four young girls who died in a Birmingham church, the Philadelphia, Mississippi, trio, Colonel Lemuel Penn, Jimmie Lee Jackson, Reverend James Reeb, Jonathan Daniels, Vernon Dahmer and others are recent widely publicized manifestations of the violence directed against persons because of their race or their pursuit of racial justice. But their deaths are only a part of the story of the reign of terror that has been organized and intensified to deny fundamental rights since the Supreme Court spoke out against racial segregation in the *Brown* case. Thousands of persons have been the victims of this terror. Many incidents have been unpublicized; some have been unreported.

There is ample documentation of this massive invasion of personal security to show the need for national concern and national action. You have read about most of these denials of rights in the public press, so there is no need here to refer to the evidence. By way of example I cite that Birmingham has had 20

bombings since 1957, including the one that took the lives of four young children attending Sunday school and that Mississippi statistics show the burning of 35 churches and the bombing of 31 homes and other buildings in one four-month period. This tragic history of violence is on the record for all to see.

Few of these acts of violence have resulted in prosecutions; in those that have, a minimal number of convictions have been obtained, and the punishment has hardly ever been proportionate to the crime. The reasons for this state of affairs are many. State and local officials and local juries have refused to enforce State laws against violence. The election of state and local officials hostile to the rights of minorities has resulted from the disenfranchisement of Negroes. Federal statutes and Federal authority are inadequate and the use of such laws that do exist has likewise been inadequate. Put another way, the essential cause of continued unpunished violence has been a complete breakdown of law and order based on an acceptance of an unconstitutional system of "justice" administered in the spirit of white supremacy. The Negro and those who seek justice for him are confronted in general in the South with hostile white police, hostile white prosecutors, hostile white judges and hostile white juries. The institutions of law (with few exceptions) follow a policy of lily-white employment, accept the philosophy of white supremacy, and operate under a double standard of justice based on the race of parties involved. Bluntly put, these institutions of law are the fellow-travelers of anti-Negro violence and can hardly be expected to mete out justice to the violent.

All this runs directly counter to the guarantees of the 14th Amendment and other provisions of the Constitution. But it will continue nonetheless unless new tools are forged for law enforcement in the areas of violent resistance to racial equality. Although law enforcement is an extremely sensitive area of federal-state relationships and one where legislation is difficult to perfect and enact, the need for federal action is too great and immediate and the risks in the failure of law enforcement too dangerous to leave the present situation unaltered.

I cannot agree with those who maintain that unpunished murders are "the price you pay for the jury system." I believe that this is the price we are paying, not for the jury system as such, but for our failure to make it function in a constitutional manner.

The jury selection system as it now operates, both in state and Federal jurisdictions, depends on the discretion of some individual, usually a jury commissioner or commissioners. In every state and Federal district in the South these officials are white, and I frankly know of few exceptions to this rule in the North. In many instances, they are avowed white supremacists.

The most obvious effect of this is the selection of grand and trial juries from which Negroes and those sympathetic to racial justice are systematically excluded. The result, in the words of one commentator, is that juries tend to be "predominantly male, white, middle-aged, middle-minded and middle-class."

This affects civil justice as fell as criminal justice. As Charles Morgan of ACLU has noted, the loss of life or a limb of a Negro is worth only a fraction of that of a white person in a suit for damages.

The failure of the jury system is not the only difficulty in state law enforcement machinery. So far as the protection of civil rights is concerned, law officers in many areas are either on the side of the criminals or are themselves the criminals. Where prosecutors attempt to enforce the law honestly they are often frustrated by the judge hearing the case. And in those cases where both judge and prosecutor do try to administer justice with an even hand, the jury succumbs to the racist pleas of the defense rather than the facts before it.

Prosecutor, judge and jury are not the only culprits. State and local investigative authorities appear unwilling or unable to solve any major civil rights case. In the Mack Charles Parker, Liuzzo, Penn, Evers, and the Chaney, Schwerner, and Goodman lynching cases the bulk of the evidence for possible prosecutions was produced by Federal investigation.

Where all the hurdles of investigation, prosecution, jury trial and a just verdict are surmounted, inadequate punishment by state courts often frustrates justice at the last step.

It is for these reasons that I will support the legislation sent to Congress by the President. But for the same reasons I will work for broadening and strengthening of the proposed legislation along the line of the bill I have introduced, H.R. 12807.

I would like to discuss briefly the major differences in my bill and the Administration's proposals.

On the jury issue I propose a more extensive reform of the state system than the Administration suggests. Without going into full details, I would like an automatic "trigger" similar to the one in the Voting Rights Act of last year, which would authorize the Federal government to take over the selection of local juries and apply its standards when it is shown that Negroes do not serve on juries in proportion to their percentage in the population.

While I believe that the Administration's changes in existing criminal civil rights laws go a long way toward meeting the problem of violence toward Negroes and civil rights workers. I still feel the need of an extension of Federal jurisdiction. To this end H.R. 12807 would authorize the transfer of state criminal prosecutions to Federal court in cases involving Negroes or civil rights advocates as victims upon a showing of a pattern of racial discrimination in jury selection or in the administration of justice. When murder is committed, it is preferable to prosecute for murder rather than for violation of the victim's civil rights. In these situations there is ample basis in the 14th Amendment for this state-Federal transfer of jurisdiction. This view is supported by the U.S. Commission on Civil Rights, whose recommendation is the basis of this provision in the bill.

The Negro or civil rights worker who is victimized by local law enforcement officers by arrest and prosecution on false or flimsy charges should also have the right to get his case out of the control of the local court house gang, and my bill would make it clear that he has this right.

I believe the Attorney General should have a broad grant of authority to file civil suits to prevent interference with civil rights. H.R. 12807 would give such a grant of authority in much broader terms than the Attorney General now seeks. It is likely that if the Attorney General had possessed this authority in recent years many of the confrontations between demonstrators and local authorities and unruly mobs could have been prevented and the rights of free speech and assembly could have been better protected.

I believe that the time has come to give serious consideration to indemnification for persons who are injured in the civil rights struggle, along the lines of damages awarded in workmen's compensation cases. Recently there has been some discussion of such indemnification for persons who are the victims of crime. For those who say that any such program of indemnification should cover all victims of crime, not just those victimized because of their civil rights activities, I would say a beginning must be made somewhere, and this is a logical place. This is a civil rights bill to discourage acts of violence against civil rights workers, both Negro and white. If those who practice such violence knew that the victims could recover indemnification and that the U.S. government could in turn sue those responsible for the violence, I feel this would constitute a deterrent to unlawful conduct.

Another provision in my bill would extend the coverage of the equal employment opportunity law to state and local government. Such an amendment might begin a breakthrough in the all-white personnel now administering the law in large areas of our nation.

There also is a provision in H.R. 12807 authorizing the removal by the Federal government, through administrative hearings, of local law officers who violate their constitutional duties by grossly abusing persons in their custody. Such a law is long overdue. It is bad enough to have officers immune from punishment for their misdeeds. It is much worse that they are allowed to continue as law officers. As an example I cite the situation in Neshoba County, Mississippi, where law officers continue to wield power while under indictment for one of the foulest deeds of the century. The least we can ask is that they be suspended from office pending disposition of these charges.

The problems we seek to solve are not simple, and their solution will not be easy. But there is no reason why we should not try. I believe that these problems will be solved primarily through the political and legislative processes. Individual redress may be obtained in specific court cases, but litigation on a case by case basis is too complicated and too drawn out to provide an across-the-board cure.

Reform of the institutions of law through political action offers hope, and the Voting Rights Act of 1965 may accelerate such action. Hopefully a strong civil rights bill of 1966 will bring further meaningful reform through the legislative approach. For this reason I hope that the Congress will act expeditiously to speed the pending legislation to passage. It is my further hope that when en-

acted, the Civil Rights Act of 1966 will in essence contain the principal provisions of H.R. 12807.

The CHAIRMAN. The Chair wishes to read a statement in the record as follows:

I am encouraged by the decision of the California State Supreme Court yesterday which held the so-called Proposition No. 14 unconstitutional. The decision holds that the Fourteenth Amendment to the Constitution, through the equal protection clause, secures the right to acquire and possess property without racial or religious discrimination.

Proposition No. 14 was a referendum to amend the Constitution of the State of California. It was intended to void that State's Fair Housing Law. It was approved by the electorate of that State in November 1964.

The effect of this California Supreme Court decision, in my opinion, is rather electrifying. It supports the principles of Title IV of my civil rights bill which proscribes discrimination in the sale, rental or financing of residential housing on account of race, color, religion or national origin. It makes it clear that Title IV is not unconstitutional, notwithstanding contrary claims by critics of the Federal Fair Housing proposal. Beyond cavil and contentious argument, the housing provisions of the pending bill are perfectly proper, fair, reasonable and constitutional.

I think it is better to suspend and reassemble.

Mr. MACGREGOR. I would be pleased to follow whatever the chairman wishes to follow for the schedule.

The CHAIRMAN. Reassemble when witnesses appear.

Mr. ROGERS. Yes, sir.

Mr. CRAMER. Mr. Chairman, I agree with that suggestion. I think it would be well to comment, before we recess, on the California case. As I understand it, the California case involves State action under the 14th amendment. Therefore, a determination by the court relating to State action would not have any bearing on the subject matter of disposition of property by individual, private ownership. The 14th amendment traditionally involves State action; and the California decision was a State action case, and the proposals before us by the administration go beyond State action and involve individuals.

Therefore, as I see the case decision, it would have no substantial bearing on the deliberations before us or in consideration of the bill before us, which involves individual action, individual ownership, separate from and exclusive of State action. However, I think it is a very interesting decision, Mr. Chairman.

The CHAIRMAN. I do not want to argue with the gentleman, but, of course, I look at this case from a different angle than the gentleman from Florida does. I think he is looking at it from the wrong end of the telescope.

Mr. CRAMER. Well, Mr. Chairman, as far as I am concerned, there is only one end of the telescope you look into, and that's the one that the court looked into when it made its decision. I think the chairman would agree that this case involves State action, period.

The CHAIRMAN. That is correct, but——

Mr. CRAMER. And the bill involves individual ownership, so there is a clear distinction.

The CHAIRMAN. That is correct, but correlating this decision of the California court with the other decisions of the Supreme Court, I am quite convinced that this California decision points the way to-

ward declaring the provisions of the bill before us on housing to be constitutional.

The Supreme Court has gone far in its interpretation of the various factors of the 14th amendment, as the gentleman knows. However, let us recess at this time.

(Whereupon, a recess was taken from 9:37 to 10:05 a.m.)

Mr. ROGERS (presiding). The subcommittee will come to order, and our next witness is the honored member of our own full committee, the Honorable Jacob H. Gilbert, from New York, who has a statement and is ready, willing, and able to testify and set forth his own thoughts concerning the Civil Rights Act of 1966, H.R. 14770, which he has introduced.

Proceed in your own manner, Mr. Gilbert.

Mr. GILBERT. Thank you very much, Mr. Rogers.

STATEMENT OF HON. JACOB H. GILBERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. GILBERT. I say it is a pleasure to be here this morning and appear before Subcommittee No. 5 of the House Judiciary Committee, of which I am a member, before such a distinguished group of Members of the U.S. Congress.

Mr. Chairman, I am here to testify in behalf of my bill, H.R. 14770, which is entitled, "The Civil Rights Enforcement Act of 1966." Much, if not all, of the testimony before you and the committee the last several days has concerned jury selection and discrimination in housing.

These subjects are, indeed, of great importance; however, I am convinced that without a free and untrammeled right to vote, whatever we do in terms of freeing the jury selection process from discrimination will be totally undone by unsympathetic policemen, sheriffs, judges, prosecutors, and State legislatures, all officials who are subject to the electoral process.

For this reason, I will first address myself this morning to plugging existing loopholes in the 1965 Voting Rights Act which threaten to largely subvert that historical piece of legislation.

Secondly, I will discuss badly needed amendments to title IV of the Civil Rights Act of 1964—amendments that would do away with the so-called freedom of choice plans in the Southern States that would prevent flagrant cases of gerrymandering of school districts anywhere in the country. Neither of these education proposals would disturb the concept of the neighborhood school.

The third and final point that I will make is the great need for truly effective teeth in the administration's housing proposal.

The proposed amendments to the Voting Rights Act are found in sections 801 and 802 of my bill. Section 801 amends section 14 of the Voting Rights Act, which is the section that sets forth the definitions by precisely defining the phrase, "Voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting," to include all aspects of the electoral process.

My bill thereby brings into play the provisions of section 5 of the Voting Rights Act requiring the submission of any such changes in State law to the Attorney General before they may go into effect. I

point out that this provision is retroactive to November 1, 1964, in the six Southern States covered by the Voting Rights Act, and will suspend the operation of any such laws that those States may have enacted, until these laws have been approved by the Attorney General.

Section 802 of my bill amends section 6 of the Voting Rights Act of 1965 by adding an additional method of obtaining Federal registrars in the six States covered by the act. This method is the filing with the Civil Service Commission of 20 complaints under oath, as distinguished from the 20 complaints in writing filed with the Attorney General that now have only an advisory effect.

Moreover, my bill provides for house-to-house registration upon the filing of double that amount of complaints under oath. Also, 5 complaints under oath filed from a municipality, or similar area of compact population, will bring in a Federal registrar, and 10 complaints will require the Civil Service Commission to conduct house-to-house registration.

My bill also fills a void in the present law by precisely defining the phrase, "have been or are being denied the right to vote on account of race or color," to include harassment, intimidation, unreasonable registration hours, location, or other registration conditions, and registration periods limited to other than 45 days prior to election.

Secondly, my bill prohibits the present "freedom of choice" plans now widely used throughout the South to stave off any meaningful school integration by disallowing assignment of pupils from the same geographical area to different schools wherever such assignment results in racial imbalance. My bill strikes at gerrymandering of school districts for racial segregation purposes by requiring a school board to show that its assignment plan is a reasonable, fair, and rational one, and not based upon race or color. The concept of the neighborhood school is not touched by the proposed amendment.

Finally, my bill adopts the housing provision of the administration bill, but adds an enforcement section in addition to the provision for enforcement by private persons and by a pattern of practice suit by the Attorney General.

The added enforcement provision first prohibits any person violating the nondiscrimination provision of the housing title from receiving any benefits of any type from any Federal program concerning housing. Then, the Secretary of Housing and Urban Development is directed to issue regulations enforcing this prohibition.

In effect, these additional provisions constitute a statutory extension of the present housing Executive orders to the full limitation of present Federal involvements in housing. The coupling of these latter provisions with the other enforcement sections of the housing title should insure rapid and full compliance with section 1201 of my bill, which states:

It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation.

I thank you.

Mr. ROGERS. Mr. Gilbert, on page 3 of your statement you say: "Secondly, my bill prohibits the present 'freedom of choice' "——

Mr. GILBERT. I didn't hear the chairman.

Mr. ROGERS. On page 3 you say your bill prohibits the present "freedom of choice" plan.

Is that not a matter within the jurisdiction of the Education and Labor Committee?

Mr. GILBERT. Well, I think where we have areas of discrimination, this committee certainly has the prerogatives to deal with that question.

Mr. ROGERS. Well now, you say: "now widely used throughout the South to stave off any meaningful school integration by disallowing assignment of pupils" and so forth.

Mr. GILBERT. Yes.

Mr. ROGERS. What about de facto school segregation situations that exist up North where——

Mr. GILBERT. Well, this bill would certainly apply throughout the country. It is not limited to the South, and it certainly would apply to northern areas as well.

Mr. ROGERS. Thank you, sir.

Questions?

Mr. MacGregor?

Mr. MACGREGOR. I have just one or two questions, Mr. Chairman.

With reference, Mr. Gilbert, to the second paragraph on page 2 of your statement referring to section 802 of your bill, do I understand that the change that you propose, namely, that 20 complaints under oath be filed with the Civil Service Commission rather than with the Attorney General would require action then to be taken pursuant to those complaints?

Mr. GILBERT. Yes, sir.

Mr. MACGREGOR. In other words, it makes action mandatory rather than discretionary?

Mr. GILBERT. That is correct, Mr. MacGregor.

Mr. MACGREGOR. As I recall, we considered the proposed discretionary action in 1965. Some of us favored at that time a mandatory approach rather than a discretionary one. You feel, I gather, that practice or experience has indicated that mandatory provision would be beneficial in accomplishing the result?

Mr. GILBERT. Yes sir. I believe that it should be a mandatory provision which would cause a more effective method of registration to be conducted.

Mr. MACGREGOR. Are you moved to propose this because of a feeling that the discretionary provision has not resulted in the appointment of Federal registrars where Federal registrars might very well need to be appointed, in order to accomplish the results intended?

Mr. GILBERT. I would not appoint it for any one specific reason, Mr. MacGregor, other than to state I think it would be more effective under the provisions that I offer in my bill.

Mr. MACGREGOR. I agree with the gentleman.

Mr. GILBERT. Thank you, sir.

Mr. MACGREGOR. And I thank you for your thoughtful presentation here, Mr. Gilbert, and for the obvious efforts that have gone into the specific points that you have made and which you incorporated in the legislation which you offered.

Mr. GILBERT. Thank you very much, Mr. MacGregor.

Mr. ROGERS. Thank you, Mr. Gilbert. We are looking forward to seeing you work hard on the full committee.

Mr. GILBERT. Thank you.

Mr. ROGERS. Our next witness is the Honorable Theodore R. Kupferman, from the State of New York, who I understand has replaced a former member of this committee, who is now mayor of New York City.

Mr. KUPFERMAN. Thank you, Mr. Chairman. I have no prepared statement.

Mr. ROGERS. You may proceed in your own manner.

STATEMENT OF HON. THEODORE R. KUPFERMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. KUPFERMAN. I appreciate the refrence to my predecessor, John V. Lindsay.

I myself am a cosponsor with 18 other Republicans of a specific bill we call the Civil Rights Law Enforcement Act of 1966. I was sworn in on February 23; just 2 weeks later I was very pleased to join with Congressman Mathias, who played the leading role in the drafting of this bill, and the other members of the Republican Party in the House of Representatives in the preparation of this bill.

The bill itself, which runs H.R. 13323 through H.R. 13342, of which my copy is H.R. 13332, is discussed and analyzed—and that is one reason I did not bring a prepared statement—at page 4847 of the Congressional Record of March 7, 1966, in a statement by Congressman Mathias, and there are also analyses to some extent by myself and also by Congressman Morse of Massachusetts, and by Congressman Reid of New York.

I think that I would commend that to you for the purpose of our bill.

As I see the bill, what we were trying to do was to enforce and prevent nullification of the previous laws that your committee was instrumental in having enacted with respect to civil rights, covering jury selection in Federal-State courts, and we use, for example, in connection with jury selection and assuming that the Voting Rights Act of 1965 is properly enforced, we use that as the basis for jury selection.

We also in our title II cover civil rights crimes and we have in title III civil relief, and in title IV we have something that these other bills do not have. Incidentally, Congressman Gilbert was very good to do the analysis of his bill as against the other proposals and he also had that in the Congressional Record, as well as his statement.

I found it on May 3 at page 9231, and I have had an opportunity of looking at some of Mr. McCulloch's material and he mentions the fact that our bill is the only one that covers Indemnity, which we have in our title IV. And I really do think that it ought to be in the administration bill, because I think one way to prevent nullification of the acts presently in force, is to see to it that the locality or the State is held responsible when its officials do what they ought not to do or do not do what they should be doing. That is something we have that these other bills do not have.

We do not have two aspects of the administration bill. One is the public education aspect and the other is the housing aspect. And the reason for that is that we thought these could be taken care of by the administration itself and on an administrative and executive level.

For example, in the area of public assistance and public education, there is no reason why the Health, Education, and Welfare Department could not be doing its job in the school area a little bit better in terms of enforcing what ought to be done in order to prevent segregation in the schools.

As far as the housing aspect is concerned, I think Senator Javits has delineated that point very well, when in the Congressional Record of May 3, 1966, commencing at page 9055 and sequence, he makes it very clear that if this administration did its job in enforcing the Executive order which previously had been issued under President Kennedy—you recall the stroke of the pen—that if this administration were doing its job there, they could to a large extent cover what ought to be done to prevent discrimination in the housing area.

While I do not object at all to the proposals in the administration bill to cover public education and to cover housing, it does seem to me that including them in this bill may have the effect of making it very difficult to get it through the Congress and so, I think that the administration should have done what it could on its own in this area in the first instance.

The CHAIRMAN. I would say you are a poor poker player if you say that, because you show your cards to your adversary before you start playing. In other words, if what you say should be followed by us, why, we have nothing, for example, to compromise with.

Since usually legislation is give-and-take and the result of accommodations, why, maybe it is good to make the bill strong, so that we are in a better bargaining position, if nothing else.

That is not my personal view. I believe that the bill as written is a good bill and we should have it, and I am not worried about difficulties. I only face those difficulties when they are imminent. In other words, we do not cross that bridge until we come to it and we do not anticipate any trouble. We are going to do our best to get this bill through as is, and you would not object to that, would you?

Mr. KUPFERMAN. I yield to your superior judgment on that, Mr. Celler. I might also point out with reference to the poker playing that I am not a gambler. so maybe that's what prevents me from having that type of approach, but I was thinking in terms of what could have been done and should have been done previous to this time, but I certainly do not quarrel with the bill that the administration has proposed on any score other than the fact that there might have been a way to do it, which could have gotten through a lot easier.

That is the only point I raise on the overall question.

The CHAIRMAN. Do you think we could do this by Executive order as effectively?

Mr. KUPFERMAN. I think in large measure, as Senator Javits has pointed out in his statement; in fact, he reprints his letter to the President in the Congressional Record of May 3. He thinks that about 80 percent of what would have been involved in the housing area could have been covered by Executive order, and constitutionally so, by covering the various lending agencies, the Federal Deposit Insurance

Corporation, Federal Savings and Loan, Federal Home Loan Bank System and so on, and I yield to his superior judgment on that score.

The CHAIRMAN. I do not yield to his superior judgment in that regard, because an Executive order could not provide certain sanctions which the bill that we have before us does provide.

For example, criminal sanctions. We provide for civil suits to be brought and for injunctions and so forth.

Mr. KUPFERMAN. I have always found monetary sanctions quite helpful.

As I was saying, I do not object to the administration bill to take care of these points. I do have some questions that we might raise with respect to it.

Incidentally, I might say that in connection with the jury service aspect, I realize that in New York State they had a property qualification for jury service. It had never been enforced because I checked with the jury clerk, and when I found that it was still carried on the books, I got in touch with Majority Leader Brydges of the New York State Senate and with Speaker Travia in the assembly to ask, while the legislature is still in session in New York, that this technical provision which does not seem to be enforced at all in the State of New York be repealed, and I am hopeful that will be done, if possible, at this session, because I do not think that New York State should in any way be considered, even on paper, backward in this area.

That is one aspect I just wanted to mention on that score.

Now, as far as the bill of the administration itself is concerned, I would suggest that we follow the approach of the Sharkey-Brown-Isaacs law in New York City, which became law some 10 years ago, and the Metcalf-Baker law of the State of New York, which does have one exception in the housing field, and that exception has strictly to do with owner occupation in the rental area, and I do feel that you do not have to impose on an owner's personal feeling, strictly with reference to rental in a one- or two-family house, which I do not believe has anything to do with the area of discrimination at all. It is a question of personal choice.

There are many white people who do not want other white people living with them, and there could be many people of color who do not want of people of color living with them, and I do not believe this is a question of discrimination. So, I would be willing to accept as an amendment to the administration bill, which I, in general, support, a specific provision eliminating solely for rental purposes that area that has to do with owner occupation.

I might point out one other thing that perturbs me in the administration bill, because I do not believe it has anything really to do with civil rights and is very unrealistic otherwise. That is at page 11, lines 15, 16, and 17, which has to do with jury excuse, excuse for nonservice on a jury, and it provides there that any person summoned for jury service may be excused by the court for not more than 6 months at a time upon a showing of unusually severe hardship, and I think that is too great a limitation on the power of the court.

I myself served as a law secretary to the presiding justice of the appellate division in the New York City area, the Honorable David W. Peck, some 15 years ago, and at that time they revised the jury

rules, which actually were worked on by the present presiding justice, Honorable Bernard Botein, and we found it was necessary to be more flexible insofar as a juror's service might be concerned than to limit it in this way.

I listened to Attorney General Katzenbach and I note that at page 11 of his statement he says you take care of the problem simply by eliminating some of the economic hardship, you pay more for jury service and so on. Actually, when a person is engaged in a specific line of work, 6 months may not be a sufficient time for him to have as a postponement, and it ought not to be solely for unusually severe hardship. I put quotations around the word "unusually."

I don't think this has any relationship to civil rights at all. I think this is a question of court administration and I do not think the limitation should be as severe as it is in this paragraph. I would ask you about that strictly from a judicial point of view without regard to the specifics before you.

I think that concludes my statement and I appreciate the fact that you had me here today.

Mr. ROGERS. I note that in your bill and Mr. Mathias' bill, it provides:

> Whoever, acting under color of law or otherwise, injures, oppresses, threatens, or intimidates another. * * *

Mr. KUPFERMAN. Page 8 and the line please?

Mr. ROGERS. Title II, it is "Federal Civil Rights Claims."

Mr. KUPFERMAN. Yes, sir.

Mr. ROGERS. Now, you put it: "However, acting under color of law * * *" Of course, that is the old section of 241?

Mr. KUPFERMAN. Yes, sir.

Mr. ROGERS. And it is just a restatement of "under color of law."

Now, due to the fact that since this bill was introduced, the Supreme Court has gone further to say that it could apply to what we call the private acts of violence; you would have no objection to including that?

Mr. KUPFERMAN. No, sir. And I might also state that I have no pride in the language in our bill as such, that what we are trying to do here is to accomplish a result which is to see that the civil rights laws are properly enforced and whatever language you think would accomplish the result which I have tried to indicate, I would certainly accept.

Mr. ROGERS. You would agree that if in addition to covering "acting under color of law", that if we had the private acts covered so as to make them a crime, then that would improve the present situation?

Mr. KUPFERMAN. That is right, Mr. Chairman.

Mr. ROGERS. Now, on page 12, the question of indemnity is raised. Would that be under some notion that the county or State is responsible for actions taken by its officials? Must it be some county official?

Mr. KUPFERMAN. I do not think you could apply it to private acts; it should apply to those acting under color of law.

Mr. ROGERS. In other words, it would have to be under the color of law?

Mr. KUPFERMAN. That's right, I think the State ought to be responsible for its public officials in this area.

Mr. ROGERS. Before you could hold the county, city or municipal subdivision liable?

Mr. KUPFERMAN. That's right, sir.

Mr. ROGERS. And in order to do it, you would also have to prove a conspiracy according to your proposal, if as a result of such a conspiracy a person is injured, and so forth?

Mr. KUPFERMAN. Well, I refer back to section 1985, subdivision (3) of title 42 of the United States Code, and it is referenced back to that aspect that we are talking about here.

Mr. ROGERS. Thank you, sir.

Any questions?

Mr. Kastenmeier?

Mr. KASTENMEIER. Mr. Chairman, I want to compliment the gentleman for the presentation and for his advocacy of civil rights.

As I understand it, the bill that you introduced on March 7, if it were today you would include some additional areas in it than were included in the bill at that time, for example, housing?

Mr. KUPFERMAN. My point was not that I would include it; I did not think it was necessary to include it. I have no objection to it being included. My point was that it could have been done, in my opinion, and still can be done by Executive order to a large extent, and the thing that perturbed me was that it might be in the administration bill and as a result thereof could affect the possibility of passage through the Congress and then if it were defeated, there might have been some legal implications as to whether the administration did have the power to act by Executive order.

And that is the only point I raise. I do not object at all to the overall provisions in the housing area except for the one suggestion I made, which was that there be some limit along the lines the progressive States have had, like New York State, which is that when there is an owner in occupancy in a one- or two-family dwelling, that in that specific situation that the law not apply for rental purposes.

Mr. KASTENMEIER. Not apply for sale or rental purposes?

Mr. KUPFERMAN. For rental purposes. No, I do not think I would say for sale purposes. Then the owner will not be in occupancy. I am thinking strictly of the right of an individual, which I do not think has anything to do with the civil rights aspect or the question of discrimination, to make his own determination as to who lives in the house with him. But when he is selling his house, I do not think that would apply. I am talking strictly about owner occupation for rental purposes.

Mr. KASTENMEIER. Do I understand, then, that while you do not oppose it except for that caveat, that you would not go beyond your bill of March 7 in any other particular?

Mr. KUPFERMAN. Well, again, I made the statement with reference to the public education area, that I also thought that the administration could handle a good deal of that through the Department of Health, Education, and Welfare, and the way funds were administered, but I do not object to the bill itself.

I think there is another way that a good deal of this could have been done and avoided the problem of trying to get it through the Congress, because I cannot see how anybody could really object to the provisions of the bill that I introduced with Congressman Mathias and the other 18 Republicans, because what we are saying really is,

you have now got civil rights laws but they ought to apply. And the purpose of our bill was to see to it that these laws were enforced and that is why we call ours the Civil Rights Law Enforcement Act of 1966 rather than simply the Civil Rights Act of 1966. This is because we believe that a great deal of what is necessary is already available in law and what we want to do is to be sure that this is enforced.

Mr. KASTENMEIER. May I say we have the same interest, although I think it is also clear that the existing law of the courts and of the Executive orders, present the state of what needs to be accomplished, and I do think that these several bills that we are examining—including the administration bills, of course—are a step in the right direction.

Thank you.

Mr. KUPFERMAN. I want to make it clear I do not object to the administration bill as such. I am merely talking in terms of possibly a better way to have done it and that would be my position.

The CHAIRMAN. Mr. Kupferman, your bill, and that of our distinguished colleague, Mr. Mathias, on page 12 has a title called "Title IV, Indemnity," and then on page 13, section 1986. Do you have it before you there?

Mr. KUPFERMAN. Yes.

The CHAIRMAN. In section 1986 you provide as follows: The heading is "Refusal or Neglect To Prevent Injury or Loss of Life."

"Every person who, having knowledge that any wrongs mentioned in section 1985(3)"—that is the preceding section—"of this title are about to be committed, and having power to prevent or aid in preventing the commission of same, neglects or refuses to do so, shall be liable * * *" and so forth.

You mean thereby, for example, to hold that private citizens who may just be a witness to some infraction or some wrong done under section 401 shall be liable? For example, suppose a person standing on the sidewalk minding his own business just views a situation and he does nothing? Will he be involved in this section 1986? He is included in the term "every person," and he might or might not have power to prevent or at least he might have the power to aid in preventing.

Would you embrace such a bystander within the realm of those who might be subjected to damage liability?

Mr. KUPFERMAN. The key word there, Mr. Celler, is the word "power," and there is no intention by this paragraph to go beyond the normal law at the present time in the field of torts, which is a question of what the obligation is of the bystander who can act and who does not act, and this language, in my opinion, is using the standard language now in the field of torts as to what the obligations are of a person.

If you were about to be hit by a car, for example, and there was someone who was standing there who could do something in order to prevent that from happening, had the power to do it and refused to do it, they might very well be liable in the general tort area. And what we are trying to do here is to embrace this same approach.

I do not mean for it to go any further than that.

The CHAIRMAN. You would put an affirmative duty on a bystander standing on the sidewalk who is watching these proceedings to inter-

vene. He may get a bloody nose if he did it; nonetheless, if he does not do it, he would be liable for damages?

Mr. KUPFERMAN. I do not think it means that at all. As I have said, it is a question of what his obligation would be in the general tort area, and if his obligation in the general tort area when that car was bearing down on you was to warn you, so you might get out of the way, and he allows you to be hit by the car. In the same situation there would be an obligation here.

I read into this the general law of torts.

Mr. MACGREGOR. Will the distinguished chairman yield?

The CHAIRMAN. Yes.

Mr. MACGREGOR. I note, Mr. Kupferman, that the language of your bill is very close to, if not verbatim, with section 1986 of title 42 in existing law. That particular section taken from the act passed by Congress April 20, 1871, reads, and I quote:

> Every person who, having knowledge that any of the wrongs conspired to be done and mentioned in section 1985 of this title are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do; if such wrongful act be committed, it shall be liable if the party injured or his legal representative for all damages caused by wrongful act, which such person by reasonable diligence could have prevented.

It appears to me——

Mr. KUPFERMAN. The gentleman is absolutely correct, but again we have the problem of what does it mean? What I was trying to state was my understanding of it, was to apply the general law of torts in this area the way it would otherwise be applied.

The CHAIRMAN. I was curious whether or not there has been any instruction on that language by the courts.

Mr. KUPFERMAN. Not that I recall on this specific language, but there are cases in the tort field as to what the obligation is.

For example, there is a case that went to the Court of Appeals of the State of New York on the obligation of the city of New York in connection with a young man that was killed in Brooklyn, who had informed on a very well-known gangster, Willie Sutton, and the court of appeals of the State said that the city had an obligation, when they knew he had been threatened, to protect him. It was a very close decision, but that again is in the field of the obligation of the city. It was a tort obligation, and it is in that sense that I read this paragraph, which may have an ancient derivation, but there is still a question of what it means.

Mr. MACGREGOR. My point, Mr. Kupferman, was, there is nothing new or novel in your inclusion——

Mr. KUPFERMAN. You are correct.

Mr. MACGREGOR (continuing). of this section in your bill and that of our distinguished colleague, Mr. Mathias, and the other Republicans who joined with you in the sponsorship of this legislation.

Mr. KUPFERMAN. Thank you.

The CHAIRMAN. Nothing further, Mr. MacGregor?

Mr. MACGREGOR. Mr. Kupferman, I was pleased with your answers to the distinguished gentleman from Wisconsin, Mr. Kastenmeier.

So that the record may be complete and those reading the report may have the full benefit of the wisdom of your comments, I would like to quote briefly from the September 1964 publication of the Hous-

ing and Home Finance Agency, entitled "Fair Housing Laws," in which it describes present law in the State of New York.

At page 137 of that HHFA document there appears the language:

New York in its comprehensive law against discrimination prohibits discrimination in the sale, lease, or rental of all housing, except the rental of a unit in an owner-occupied two-family dwelling and the rental of rooms in a dwelling by the occupant thereof.

I gather your answers indicate, Mr. Kupferman, that you feel that the existing New York State law in the field of discrimination in housing, with the exception that I have just quoted, is a very good law and a workable, effective measure against discrimination in the field of fair housing?

Mr. KUPFERMAN. Well, I thank the gentleman for having been so lucid in his statement as to the New York State law. There are suggestions afoot for New York State to eliminate any exceptions, but I think that the country cannot as a whole be asked to go faster than the State of New York, which is one of the leading States in this area, has gone. As you may recall, the State of New York was the first State to have an FEPC law, the Ives-Quinn law, back under Governor Dewey. And I think New York State has been a leader in this field and I would not expect the United States to go faster than New York State did, although New York State may very well eliminate in the near future this exception, and at that point I would then suggest that the Federal Government might also look to the same end. But at this point, I think the New York State provision is a sound one to follow.

Mr. MACGREGOR. I gather you would agree it is a general philosophy the Federal Government might learn from the States in this field and in others?

Mr. KUPFERMAN. Yes, sir.

Mr. MACGREGOR. I yield to the gentleman from Wisconsin.

Mr. KASTENMEIER. Just a question: Do I understand, then, if we enacted title IV with your amendment——

Mr. KUPFERMAN. You mean title IV in the administration bill? There is a title IV in the bill I have.

Mr. KASTENMEIER. Title IV in the administration bill with your amendment, that is to say, the New York law; that it would not change the situation in New York State?

Mr. KUPFERMAN. No, it would not, which raises another interesting point, if I might bring it up with you, and that is something that I heard discussed here yesterday. And that is the fact that in some States, because they do approach this matter from a very fair and objective point of view, as I believe New York State does in this area, we might have the question of overlapping jurisdiction.

This came up not too long ago in connection with the Equal Opportunity Act and Congressman Goodell of New York asked and got a concession from those who would be enforcing it that they would not come into a picture when the local jurisdiction was doing its job properly, and I think that he set the record straight from a congressional legislative history point of view on that score. And you might very well, as a suggestion, try to get some similar concessions without changing anything in the law itself, from the Department of Justice

in terms of their interest, because it seems to me that wherever you can have a local area do its job, that they ought to, in the first instance, be allowed to do it, and so in New York State I would hope that we would not try to impinge on the very good organization we have at the New York City level and on the New York State level in the job they are doing.

Mr. KASTENMEIER. Do I understand your desire to be that title IV in the administration bill not affect the State of New York?

Mr. KUPFERMAN. No; I would not want to prevent that, because I do not think that you could apply this law to some States and not to others. But I think you could, from a matter simply of legislative history to the extent that it was necessary, ask those who will be enforcing this law for their statement that they will not interfere when a locality is doing its job.

I do not think you can handle it in any other way and still get proper, uniform operation. This is what Congressman Goodell did in the Equal Opportunity Act, and it seems to me to be a very good way to handle it.

Mr. ROGERS. Mr. MacGregor, are you through?

Mr. MACGREGOR. Yes.

Mr. ROGERS. Thank you so much. We appreciate your testimony.

Mr. KUPFERMAN. It was very good of you to have me. It is the first time I have testified as a Congressman, that is, before any committee.

Thank you.

Mr. MACGREGOR. You have done it very well indeed.

The CHAIRMAN. Congratulations; you have done a very good job.

Mr. ROGERS. Is the Honorable James Harvey present? Or the Honorable Phillip Burton of California?

The CHAIRMAN. Mr. Chairman, I think they have been given an opportunity to be heard and, therefore, if they wish to say something, they will have to submit their statements for the record.

Counsel will make manifest to those gentleman that they had their opportunity to be heard and they were not present and, therefore, they will have to submit statements for the record.

The meeting will now adjourn, to reassemble tomorrow morning at 9 o'clock, when we shall hear from Mr. Weaver and from Mr. Hannah—Mr. Hannah of the Civil Rights Commission and Mr. Weaver from HUD.

(Whereupon, at 10:45 a.m., the subcommittee recessed, to reconvene at 9 a.m. the following day, Thursday, May 12, 1966.)

CIVIL RIGHTS, 1966

THURSDAY, MAY 12, 1966

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

The subcommittee met at 9:10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rogers, Donohue, Corman, Cramer, and MacGregor.

Also present: Representatives Conyers and Hungate.

Also present: William R. Foley, general counsel; Benjamin L. Zelenko, counsel; and Martin R. Hoffmann, associate counsel.

The CHAIRMAN. The meeting will come to order.

Our first witness this morning is the distinguished Secretary of the Department of Housing and Urban Development, the Honorable Robert C. Weaver.

Mr. Weaver, we will be very glad to hear from you.

STATEMENT OF HON. ROBERT C. WEAVER, SECRETARY OF HOUSING AND URBAN DEVELOPMENT

Secretary WEAVER. Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify on behalf of H.R. 14765, the Civil Rights Act of 1966.

Substantial progress has been made in recent years toward eliminating discrimination from American life, particularly in the fields of voting, public accommodations, public facilities, and in the use of Federal funds. The Civil Rights Act of 1964 and the Voting Rights Act enacted last year are impressive milestones, marking historic stages in a long and difficult journey toward achieving civic equality. But, we have not reached our destination, and the legislation before your committee points the direction of this continuing journey.

The Civil Rights Act of 1966 has four principal goals:

Titles I and II establish detailed procedures to eliminate discrimination in the selection of Federal and State juries, thereby strengthening the administration of justice at its very source.

Title III will broaden the authority of the Attorney General to bring suit for the desegregation of schools and public facilities, thereby speeding the task which was begun 12 years ago when the Supreme Court decided the school segregation case.

Title V of the bill will reform our Federal criminal statutes to provide those who labor for racial justice better protection against the

more violent forms of interference with the exercise of long-established rights.

Attorney General Katzenbach has testified in detail concerning the need for and desirability of these several titles. I share his views and urge prompt enactment of this important legislation.

My testimony, Mr. Chairman and members of the subcommittee, will be directed to title IV of the bill, dealing with discrimination in the sale and rental of housing.

Title IV would prohibit discrimination in the sale or rental of dwellings. This prohibition covers existing housing as well as new, and applies to activities of real estate agents and brokers as well as of owners.

Discrimination in the financing of housing would also be prohibited. Lending activities which are covered include those for the construction, purchase, improvement or repair of housing, regardless of whether the lender or loan is aided under Federal housing programs.

In addition, the title would make it unlawful to interfere with, threaten, or intimidate any person seeking to exercise his right to rent, or purchase, or finance the purchase of, housing.

Enforcement of the rights under the title would be primarily by private civil actions. The Attorney General could intervene in the private suits brought by others when the litigation is of general public importance. The Attorney General could also himself institute a civil action for preventive relief when he has reasonable cause to believe that there is a "pattern or practice" of resistance to rights under the title.

In addition, the provisions of title IV would require the Secretary of Housing and Urban Development to—

(1) Make studies of the nature and extent of discriminatory housing practices in representative communities throughout the United States;

(2) Publish reports, recommendations, and information derived from these studies;

(3) Cooperate with and render technical assistance to Federal, State, and local, and other public or private agencies and institutions carrying on programs to prevent or eliminate discriminatory housing practices; and

(4) Administer the programs and activities relating to housing and urban development in a manner furthering the policies of title IV.

Federal action to combat discrimination in housing is not new. In the Civil Rights Act of 1866 Congress declared:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

In 1917, the Supreme Court declared racial zoning unconstitutional. In 1948, the Supreme Court held that racial restrictive covenants governing the sale of housing could not be enforced in either State or Federal courts. In the Housing Act of 1949, the Congress established a national goal of "a decent home and a suitable living environment for

every American family"—a goal which can, in fact, be attained only if widespread discrimination in housing is eliminated.

In 1962, the Executive order on equal opportunity in housing was issued. This order established the President's Committee on Equal Opportunity in Housing. It directed all Federal departments and agencies to take appropriate action to prevent discrimination in the sale, rental, or use of residential property and related facilities owned by the Government or provided, after the date of the order, with Federal financial assistance.

The order was directed primarily at newly constructed housing financed with mortgages thereafter insured or guaranteed by the Federal Housing Administration or the Veterans' Administration. It also covered newly constructed low-rent public housing, residential property in federally assisted urban renewal areas, college housing, senior citizens housing and some rural housing, but only where there was Federal aid under a contract entered into after the date of the order.

The Executive order on housing also directed Federal departments and agencies "to use their good offices and take other appropriate action permitted by law" to promote the abandonment of discriminatory practices in housing and related facilities federally aided before the order was issued. Although many efforts were made by the President's Committee and our Department to exercise our "good offices," the results were minimal.

The larger tract developers and the owners of multifamily projects generally resisted what they considered to be a retroactive reform, applying only to those who had received earlier Federal aid. They insisted that the adoption of an open-occupancy policy was not practical unless competing developers and owners also adopted nondiscriminatory practices.

The most recent important Federal prohibition against discrimination in housing is contained in title VI of the Civil Rights Act of 1964. Title VI requires that no person be discriminated against because of race, color, or national origin in any program or activity receiving Federal financial assistance.

The title applies to all newly constructed housing provided in urban renewal areas on land conveyed by the local public agency to redevelopers after January 3, 1965. It also covers all newly constructed housing units financed with Federal assistance under the college housing, and senior citizens direct loan programs. In the case of federally aided, low-rent public housing, the title covers all units, both new and existing.

However, title VI does not apply to the FHA mortgage insurance program or to the VA mortgage guarantee program; nor to housing financed with funds benefiting from the operations of the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation. The Congress specifically excepted contracts of insurance and guarantee from the coverage of the regulatory provisions of title VI.

The legal reach of these earlier Federal actions to reduce discrimination in housing is quite limited.

Title VI of the 1964 act governs federally aided, low-rent public housing, existing as well as new. But the 600,000 or so completed public housing units constitute only about 1 percent of our total housing supply.

The 1962 Executive order extends to privately owned housing, but primarily reaches FHA- and VA-aided housing, and then only if it was federally aided after the date of the order. About 750,000 housing units, mostly of recent construction, are in this category.

Along with some 200,000 units federally acquired because of defaults in mortgage repayments, some 20,000 dwellings for the elderly recently built with the aid of direct Federal loans, and other minor categories, we find that about 1.6 million private and public dwelling units are covered by Federal nondiscrimination requirements. These are less than 3 percent of our total housing supply.

Nor are we rapidly increasing the percentage of all dwelling units covered by Federal nondiscrimination requirements. Low-rent public housing may account for perhaps 2 percent of all new construction in a given year; and the FHA and the VA last year assisted in financing only 17 percent of the approximately 1.5 million private housing units started in that year.

Since total new construction in any 1 year adds perhaps 2.5 percent to the total supply, of which only one-fifth is covered by our present nondiscrimination requirements, it follows that the rate at which we are now increasing nondiscrimination coverage of the total housing supply is only one-half of 1 percent annually.

Nor do these figures fully show the inadequacies of our present Federal requirements designed to help eliminate discrimination in housing. The figures reveal the limited, possible scope of the present Federal requirements. Their practical, effective scope is even narrower.

The extension of legal coverage to new private housing projects may prohibit discrimination in the sale or rental of all the dwellings in those projects, but the practical effect may be slight when the projects themselves are hidden away in a large suburban area which is otherwise unavailable to nonwhites.

Similarly, the extension of legal coverage to several hundred thousand units of existing, low-rent public housing does not mean that these dwelling units can be made immediately available without discrimination. Vacancies must first occur.

It has been my purpose so far to summarize title IV of H.R. 14765, emphasizing the broad scope of its housing coverage.

May I go off the record a moment, Mr. Chairman?

(Discussion off the record.)

The CHAIRMAN. In other words, you have come to the conclusion, beyond peradventure of doubt, that the Executive order of 1962 was inadequate to meet the situation.

Secretary WEAVER. I don't think there is any question about that, both from the scope of the order and the results we have been able to achieve to date.

The CHAIRMAN. I want to place at this point in the record the order, so we can see exactly what it is.

(President's Executive Order 11063 follows:)

PRESIDENT'S EXECUTIVE ORDER 11063—EQUAL OPPORTUNITY IN HOUSING

WHEREAS the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin is unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

WHEREAS the Congress in the Housing Act of 1949 has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

WHEREAS discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

WHEREAS such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

WHEREAS the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly administered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I—PREVENTION OF DISCRIMINATION

SECTION 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereinafter insured or guaranteed by the Federal Government.

SEC. 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section (a) (ii), (iii), and (iv).

PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

SEC. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

SEC. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

SEC. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III—ENFORCEMENT

SEC. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

SEC. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccessful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

SEC. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

SEC. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any

agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 401. There is hereby established the President's Committee on Equal Opportunity in Housing which shall be composed of the Secretary of the Treasury; the Secretary of Defense; the Attorney General; the Secretary of Agriculture; the Housing and Home Finance Administrator; the Administrator of Veterans Affairs; the Chairman of the Federal Home Loan Bank Board; a member of the staff of the Executive Office of the President to be assigned to the Committee by direction of the President, and such other members as the President shall from time to time appoint from the public. The member assigned by the President from the staff of the Executive Office shall serve as the Chairman and Executive Director of the Committee. Each department or agency head may designate an alternate to represent him in his absence.

SEC. 402. Each department or agency subject to this order shall, to the extent authorized by law (including § 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691)), furnish assistance to and defray the necessary expenses of the Committee.

PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

SEC. 501. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules. It shall: (a) adopt rules to govern its deliberations and activities; (b) recommend general policies and procedures to implement this order; (c) consider reports as to progress under this order; (d) consider any matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. A report to the President shall be made at least once annually and shall include references to the actions taken and results achieved by departments and agencies subject to this order. The Committee may provide for the establishment of subcommittees whose members shall be appointed by the Chairman.

SEC. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, creed, or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local public agency, civic industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendatons as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

SEC. 503. The Committee shall have an executive committee consisting of the Committee's Chairman and two other members designated by him from among the public members. The Chairman of the Committee shall also serve as Chairman of the Executive Committee. Between meetings of the Committee, the Executive Committee shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee to the extent authorized by it.

PART VI—MISCELLANEOUS

SEC. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term

"State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

SEC. 602. This order shall become effective immediately.

JOHN FITZGERALD KENNEDY.

THE WHITE HOUSE,
November 20, 1962.

Secretary WEAVER. It has also been my purpose to describe the narrow scope, both at law and in practice, of our present Federal requirements in the field of housing discrimination.

But I do not wish to leave the impression with your committee that the sole difficulty with our present tools for combating discrimination is their very short reach. Equally important is the fact that these tools are too blunt to do the job for which they were designated, even within the very limited areas that they do reach.

For example, our present controls make a legally defensible distinction between lenders who do, and those who do not, receive the direct benefits of Federal mortgage insurance or guarantees. However, this has the practical effect of regulating most heavily the mortgage banking segment of the residential lending industry, that being the segment which relies the most on FHA mortgage insurance and on the secondary mortgage funds made available by the Federal National Mortgage Association.

The savings and loan segment of the residential lending industry receives important Federal assistance in the form of insurance of share accounts by the Federal Savings and Loan Insurance Corporation and of loans provided by the Federal Home Loan Banks, of which there were about $6 billion outstanding at the end of 1965. Yet savings and loan associations are largely unaffected by the 1962 Executive order.

The mortgage banking segment of the residential lending industry has, with considerable justification, complained of this result. Meanwhile, the savings and loan segment has urged, if controls similar to those contained in the Executive order are extended to them—on the basis of insurance of accounts by the Federal Savings and Loan Insurance Corporation—that they also be extended to yet other segments of the lending industry. These would include commercial banks and all those savings banks that benefit from the insurance of deposits by the Federal Deposit Insurance Corporation.

Savings and loan associations, commercial banks, and mutual savings banks represent the major source of conventional mortgage loans, and most of the country's housing is financed through them. As of January 1, 1966, they held, in the aggregate, residential mortgage loans of more than $174 billion. The Executive order, however, only covers the small proportion of the housing that these institutions finance where the mortgage is insured or guaranteed by the Federal Government.

If nondiscrimination requirements were to be extended on the basis of Federal assistance provided by the Federal Savings an Loan Insurance Corporation and the Federal Deposit Insurance Corporation, even then conventional lending by insurance companies, pension funds, investment trusts and nonfinancial corporations, and individuals would still not be covered, perpetuating troublesome distinctions among competing types of lenders.

Even more serious practical problems arise from the uneven application of our present requirements as among different builders, different neighborhoods, and different sections of metropolitan areas. The theoretical availability to all citizens, regardless of their race, of a new FHA-aided housing project may, as I stated in another connection, be of no practical effect when that project is hidden away in a large section of a city or a large suburban area which is otherwise segregated. But, if the project does attract a few Negro families, the very fact that it is the only project in the area open without regard the race may result in its attracting many more Negroes, while prospective white tenants or purchasers find housing elsewhere.

As the Attorney General has testified, the particular landlord or homebuilders who resist renting or selling to a Negro family may often do so not out of personal bigotry, but out of fear that his project will, because he is among the first not to discriminate, attract only one segment of the market. The fears of landlords and builders in this respect are not entirely unfounded under a system which provides open occupancy in selected projects while maintaining barriers in most others. It is the very pressure of segregation that often directs disproportionate numbers of Negro families to those housing projects and those neighborhoods which accept them.

This is the same phenomenon that often leads to widespread sales of homes by white families whose objection is not to having some Negro neighbors, but rather to living in a Negro ghetto.

The advantage of comprehensive nondiscrimination coverage thus lies not only in the greater coverage as such, but also in the avoidance of elements of unfairness and of serious market distortions.

The enactment of title IV, with its broad coverage, would do more than remove defects in the present Federal laws relating to housing discrimination. It would, in effect, declare, as national policy, that denying a man a fair opportunity to provide a decent home for himself and his family is morally and legally wrong.

At present, millions of Negro and other minority group families are trapped in racial ghettos from which they cannot escape because housing is, as has been well stated, "the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay."

The existence of the racial ghetto is the most serious problem affecting our large cities. To save our cities from spreading slums and blight, three steps are required: (1) the elimination of all forms of discrimination in housing; (2) the provision of additional housing for families of low and moderate income in all areas of our central cities and suburban areas; and (3) the revitalization of the central city itself.

The 1960 census clearly showed the extent of the sharp differences in the quality and the crowding of housing occupied by white households and nonwhite households. About 13 percent of the housing occupied by white households was found to be substandard. This, itself, is a challenge to us as a nation; but 44 percent of the housing occupied by nonwhite households was substandard, and this is a national disgrace.

Dwelling units with more than one person per room accounted for about 9 percent of the total for white households, but the percentage for nonwhite households was 27 percent, or three times as high.

The fact that the average income of Negro families is far below that of white families is a primary cause of these differences. However, another major factor is racial discrimination in the sale, rental, and financing of housing. By artifically limiting the supply, discrimination increases the cost of housing available to minority groups.

Seriously substandard housing available to Negroes all too often costs more than good housing available to others. Studies have shown that Negro families occupying decent housing are forced to pay a far higher percentage of their limited incomes than white families in the same income group.

As our urban communities grow ever outward into the surrounding countryside, larger and larger portions of our central cities are turning into racially segregated slums, thereby multiplying the demands on municipal budgets, while at the same time diminishing municipal tax revenues. Thus, the problems of our minorities become the problems of our cities.

The President has proposed, and the Congress has enacted, new programs for the provision of housing for low- and moderate-income families and for urban renewal. With established programs and imaginative new proposals, we are striving to help our cities rebuild their slum and blighted areas. I share the President's great hopes and high expectations that this country can build cities in which people can come together to lead the good life. But it cannot be done so long as the ghettos of our major cities exist to deny freedom and the fruits of American citizenship to millions of Americans.

The widespread denial of access to housing and the creation of large racial ghettos bring with them a denial of good schools and a diminution of educational opportunities, both formal and informal. Inferior housing and inferior education go hand in hand, and together they foster and reinforce inferior employment opportunities and inferior incomes.

Neither poverty nor bad housing is an end result of these forces, but both are parts of a cycle of intertwined causes and effects, strengthening each other like the strands of a rope which binds and chokes millions of American families.

The Nation as a whole suffers when so many of its people are prevented from making the contribution they are able to make to the country's social and economic well-being.

I believe that enactment of title IV of this bill would benefit all segments of our society. I believe enactment of title IV would—

(1) Help over 20 million American Negroes and other minorities attain the same freedom to choose the home in which they wish to live as is available to any other Americans;

(2) Make available to Negroes and other minorities the only major commodity which is not now available to all Americans on the basis of ability to pay;

(3) Greatly simplify the housing relocation process in all Federal and local government programs by making more sale and rental housing available to relocatees;

(4) Stabilize neighborhoods and help eliminate panic selling;

(5) Free builders, investors, lending institutions, real estate brokers and agents of the fear of economic loss if they are among the first to support open-occupancy housing in their own localities or neighborhoods;

(6) Open up a new housing market for the urban nonwhite middle class which, in increasing numbers, has the income needed to pay for good housing; and

(7) Help rid us of one of the basic obstacles to revitalizing our cities.

The task of eliminating discrimination in housing requires the concerted effort of all levels of Government and private groups and individuals. History teaches us that this task cannot be left to voluntary effort alone.

The enactment of this legislation will not only establish a national policy against discrimination in the sale and rental of housing, but will represent a great step forward in the Government's efforts to guarantee to every American all the civil rights to which he is entitled under our form of government.

The CHAIRMAN. That was a very splendid statement, Mr. Weaver. I would like to ask you a few questions. I take it you agree with me that this question of slums, ghettos, which you are trying to get at and prevent, is a huge problem. We have used every weapon available to aid us in the process; is that correct?

Secretary WEAVER. Yes, Mr. Chairman. I do not think there is any question that it is a tremendous problem.

The CHAIRMAN. You feel that this bill will go a great way toward that end?

Secretary WEAVER. I think this bill is a necessary tool and I do not think we can do the job without accomplishing that which this bill hopes to accomplish.

The CHAIRMAN. You believe, therefore, that it would be deleterious, to say the least, to make exceptions to these provisions that we have in the bill?

Secretary WEAVER. I think there is a great danger in weakening the bill and making it less effective to do a job that I think is far overdue.

The CHAIRMAN. There has been some controversy in the last few days with reference to exceptions which I think would weaken the bill and I would like to ask you: Do you see any difference in principle between a boarder in a boardinghouse and a tenant in an apartment house as far as race is concerned?

Secretary WEAVER. Well, I think here there are great dangers in carrying this difference, which is minimal, to the point that you get such an exception as to make an operation of this sort ineffectual. I think that there are psychological differences. I think as far as the impact on the housing market is concerned, that making the differences and making the exceptions weakens the law and presents problems which I think are unfortunate.

The whole question of the relationship between certain types of roomers and tenants, I think, has sometimes been exaggerated. I

would favor not having the exceptions, from a practical, operational point of view, from the efficacy of doing the job that needs to be done.

The CHAIRMAN. Therefore, you would deplore, I take it, our making an exception to this bill, for the so-called five-boarder boarding-house?

Secretary WEAVER. I would say that any exception weakens the bill and obviously the exception of the roominghouse is the one which is for many people the most palatable one. I think it is an unfortunate one.

The CHAIRMAN. My experience as chairman of this committee is, once we open the door to exemptions, a little bit, why, the door gets opened a great deal more to all kinds of exemptions.

On that basis alone I personally would oppose this exemption, let alone for many other reasons that I am opposed to it.

Secretary WEAVER. I would say I am very much impressed by that point of view. I think that once you begin to get exceptions, you get the most likely ones, and by the time you get through, you get so many that by the time you get through you might not have much left.

The CHAIRMAN. We understand that the title of this bill is based in part upon the power of the Congress under the Constitution to regulate commerce.

Can you give the committee some information as to the interstate commerce aspects of the residential housing industry?

Secretary WEAVER. On the surface, I think it would appear that this would be difficult to do if you look at the physical properties which, with the exception of trailers, do not move, but actually the occupants do, and it is largely in this aspect of the problem that we get the compelling figures.

Not only do the occupants move, but materials move and money moves, but just getting back to the people—we made an analysis of what had happened in the 5 years from 1955 to 1960, for example, and we found that some 14 million persons moved from one State to another, and this has been true in every 1 of the 50 States. And we are probably the most mobile people in the history of mankind, and our mobility is increasing.

I would be very happy to submit for the record a table which would indicate the extent of this movement State by State, sir.

The CHAIRMAN. We will be glad to receive that information for the record.

(Table follows:)

Question: Mr. Secretary, as you may know, there is some question as to whether the commerce clause of the Constitution would give to the Federal Government authority to enact legislation pertaining to the sale or transfer of residential properties. Can you give us some data that shows the interstate movement of people who purchase or rent housing?

Answer: Residential properties, of course, are stationary, and with the exception of mobile homes and trailers, relatively few are moved from one place to another. However, transactions involving residential properties are between people, those who buy and those who sell. The United States population has evidenced a great deal of mobility. For example, between the years 1955 and 1960 some 14.1 million persons moved from one State to another, all of whom must find a place to live by purchase or rental of property in their new State of residence. I would like to submit for the record a table showing the gross move-

ment of population between States between the years 1955 and 1960 showing the number of in-migrants and out-migrants for each of the 50 States.

Gross movement of population between States (1955–60)

State	Gross	Immigrants	Outmigrants
Alabama	472, 866	210, 596	262, 270
Alaska	150, 136	80, 833	69, 303
Arizona	462, 884	312, 597	150, 287
Arkansas	371, 748	152, 853	218, 895
California	2, 754, 056	1, 938, 130	815, 926
Colorado	502, 851	281, 000	221, 851
Connecticut	374, 905	205, 366	169, 539
Delaware	101, 134	59, 057	42, 077
District of Columbia	304, 513	111, 170	193, 343
Florida	1, 539, 078	1, 157, 937	381, 141
Georgia	635, 005	296, 252	338, 753
Hawaii	179, 508	94, 768	84, 740
Idaho	181, 758	86, 184	95, 574
Illinois	1, 355, 755	615, 036	740, 719
Indiana	686, 430	317, 454	368, 976
Iowa	394, 318	149, 970	245, 348
Kansas	525, 207	222, 659	302, 548
Kentucky	481, 131	186, 765	294, 366
Louisiana	402, 726	198, 081	204, 645
Maine	156, 554	66, 541	90, 013
Maryland	605, 841	346, 187	259, 654
Massachusetts	614, 713	275, 100	339, 613
Michigan	842, 542	338, 645	503, 897
Minnesota	427, 146	198, 621	228, 525
Mississippi	346, 890	137, 900	208, 990
Missouri	718, 745	326, 402	392, 343
Montana	152, 930	67, 971	84, 959
Nebraska	284, 169	111, 358	172, 811
Nevada	136, 656	78, 894	57, 762
New Hampshire	122, 694	65, 448	57, 246
New Jersey	888, 762	500, 243	388, 519
New Mexico	322, 616	182, 658	139, 958
New York	1, 578, 157	587, 669	990, 488
North Carolina	620, 879	272, 172	348, 707
North Dakota	121, 261	42, 094	79, 167
Ohio	1, 206, 495	572, 387	634, 108
Oklahoma	515, 703	221, 155	294, 548
Oregon	400, 352	197, 878	202, 474
Pennsylvania	1, 076, 938	398, 343	678, 595
Rhode Island	156, 607	70, 550	86, 057
South Carolina	380, 564	167, 847	212, 717
South Dakota	143, 519	52, 784	90, 735
Tennessee	586, 836	253, 217	333, 619
Texas	1, 392, 897	682, 421	710, 476
Utah	173, 569	89, 522	84. 047
Vermont	75, 141	33, 268	41, 873
Virginia	869, 502	456, 398	413, 104
Washington	621, 415	325, 230	296, 185
West Virginia	321, 265	92, 043	229, 222
Wisconsin	427, 087	198, 759	228, 328
Wyoming	118, 520	56, 074	62, 446
U.S. total	28, 282, 974	14, 141, 487	14, 141, 487

Source: Bureau of the Census.

The CHAIRMAN. Are there any other aspects that you can think of with reference to the interstate commerce characteristics of the housing industry?

Secretary WEAVER. As I mentioned before, the other two components in the housing area after the people, who I always put first, would be the materials and the money. Here there are figures which are rather significant again.

In 1963, we found that some 29,000 tons of wallboard were transported by the American railroads from one State to another. This

does not include that wallboard that might have been transported by trucks, and also about 109,000 tons of lumber and shingles were transported, again only by the railroads, from one State to another.

We have tables on this by various types of materials which I would be happy to submit for the record.

The CHAIRMAN. We will be glad to receive it.

(Table follows:)

Question: I appreciate that many home buyers may be persons who have recently migrated from another State. However, could you give me some data which shows that the construction of real estate properties is a result of interstate commerce?

Answer: The construction of residential buildings involves a number of materials, many of which are imported from states other than the state in which the property is situated. Many of the building materials that are moved from one state to another are handled by the American railroads. For example, in 1963, 29,000 tons of wallboard were transported by the American railroads from one state to another, a large part of which went into the construction of residential properties. Similarly, about 109,000 tons of lumber shingles were transported by the railroads from one state to another. I am submitting for the record a table showing the interstate railroad movement of commodities that were used in residential construction during the year 1963.

1963 Interstate Railroad Movement of Commodities Used in Residential Construction

Commodity:	*Tons*
Cement, portland	92,119
Brick, building tile	17,533
Plaster, stucco wall	1,902
Wallboard	28,505
Insulating materials	2,807
Building woodwork, millwork	577
Furnaces	276
Bathroom fixtures	371
Stoves, ranges, parts	318
Floor covering	1,363
Veneer plywood	41,379
Lumber, shingles, lath	108,581

Source: Interstate Commerce Commission "Carload Waybill Statistics, 1963; State to State Distribution."

Secretary WEAVER. But also perhaps one of the most striking aspects of the interstate nature of residential construction is in the flow of money and we have made a slight analysis of this.

In 1964, of the total mortgage holdings among mutual savings banks for which data were readily available, of some $39 billion, some $15 billion or 39 percent were on properties located outside of the States in which the savings banks were located.

This is an increasing tendency, because we found that the percent of funds, mortgages, out of the State where the institutions were located was 34.8 percent in 1960, 36.2 percent in 1962, and 39.3 percent in 1964.

In other words, about two-fifths of these funds are utilized outside of the States in which the institutions are located.

Then we have another table relating to the savings and loan associations. We compared the purchases and sales in 1964 of such participa-

tion loans according to the Federal home loan bank district. This is the way the statistics are assembled, and these tables show that there is a sizable flow of mortgage funds from one geographic region of the United States to another, and we have, for example, the heaviest sales—which means the heaviest mortgage activity—in San Francisco and Greensboro districts, and the heaviest purchases—that's the investment—were located in New York and Chicago districts.

Then we have a third set of data which relate to State-by-State comparison of nonfarm mortgage loans, which are owned by the life insurance companies in various areas, State by State, and all of the insurance that these companies have.

This again shows that where 11 percent of the life insurance in force is on persons residing in the State of New York, only 6.7 percent of the nonfarm mortgage loans owned by the life insurance companies were located on properties in the State of New York. And, on the other hand, while only 5 percent of the life insurance in force covers persons residing in the State of Texas, over 10 percent of the mortgage loans held by the insurance companies are on properties located in Texas.

Again, we would be happy to submit tables which would indicate the actual impact of this State by State.

The CHAIRMAN. You might submit any other additional data you think might help along these lines, which would indicate the interstate commerce characteristics of housing.

Question: Mr. Secretary, most residential properties are financed in part with a mortgage loan. Can you furnish any data which would show the interstate character of such mortgage credit?

Answer: I have three sets of data that clearly indicate sizeable interstate movement of mortgage loans. First, a table showing the mortgage holdings of mutual savings banks broken down by location of property. Thus, in the year 1964 of total mortgage holdings of $39 billion, some $15 billion, or 39 percent, were on properties located outside of the state in which the mutual savings bank is located.

Second is a table showing the home mortgage participation loans made by insured savings and loan associations. For this purpose,we compared the purchases and sales in 1964 of such participation loans accordingly to Federal home loan bank district. As will be noted, there is a sizeable flow of mortgage funds from one geographical region of the United States to another, with the heaviest sales by the savings and loan associations located in the San Francisco and Greensboro districts. On the other hand, the heaviest purchases of participation loans were made by associations located in the New York and Chicago districts.

A third set of data compares by states the nonfarm mortgage loans owned by, and the life insurance in force of, all United States life insurance companies. As will be noted, whereas 11 percent of the life insurance in force occurs in the State of New York, only 6.7 percent of the nonfarm mortgage loans owned are located in that State. On the other hand, whereas only 5 percent of the life insurance in force occurs in the State of Texas, over 10 percent of the mortgage loans held by the insurance companies are on properties located in Texas.

These three tabulations clearly show that there is considerable interstate movement of mortgage loan funds to finance residential property transactions.

(Tables follow:)

Mortgage holdings of mutual savings banks by location of property, selected dates, 1960–64

[Dollars in millions]

Year	Total mortgage holdings	Within State where savings bank is located	Out of State	Percent out of State
1960	$26,213	$17,013	$9,110	34.8
1962	31,583	20,145	11,438	36.2
1964	39,135	23,741	15,394	39.3

Source: National Association of Mutual Savings Banks. "National Fact Book: Mutual Savings Banking," 1965

Home mortgage participation loans made by insured savings and loan associations—comparison of purchases and sales in 1964 according to Federal home loan bank district

[Dollars in millions]

Federal home loan bank district	Sales of participation loans		Purchases of participation loans	
	Amount	Percent	Amount	Percent
Boston	$13.8	1.0	$85.2	6.0
New York	88.5	6.3	204.6	14.4
Pittsburgh	30.3	2.1	94.0	6.6
Greensboro	129.7	9.2	195.6	13.8
Cincinnati	32.8	2.3	105.7	7.4
Indianapolis	23.6	1.7	32.2	2.3
Chicago	54.0	3.8	201.9	14.2
Des Moines	25.9	1.8	100.1	7.1
Little Rock	92.2	6.5	107.9	7.6
Topeka	35.9	2.5	99.7	7.0
San Francisco	836.2	59.0	122.4	8.6
Spokane	53.4	3.8	70.5	5.0
Total	[1] 1,416.8	100.0	[1] 1,419.8	100.0

[1] Owing to sales to institutions other than insured savings and loan associations and because of differences in timing of reporting of participation activity the total amount of sales do not equal the total amount of purchases.

Source: Federal Home Loan Bank Board, "Participation Loan Transactions."

All life insurance companies[1] nonfarm mortgage loans owned and life insurance in force[2]: comparison by States

	Life insurance in force		Nonfarm mortgages owned	
	Amount (billions)	Percent	Amount (millions)	Percent
United States	800.0	100.0	$45,739.2	100.0
Alabama	11.9	1.5	921.2	2.0
Alaska	.7	.1	31.5	.1
Arizona	5.3	.7	563.8	1.2
Arkansas	4.3	.5	240.4	.5
California	80.5	10.1	6,429.6	14.1
Colorado	8.5	1.1	873.9	1.9
Connecticut	15.2	1.9	413.4	.9
Delaware	3.0	.4	175.9	.4
District of Columbia	5.7	.7	539.1	1.2
Florida	20.3	2.5	1,763.9	3.9
Georgia	16.8	2.1	1,272.5	2.8
Hawaii	4.0	.5	201.8	.4
Idaho	2.2	.3	120.7	.3
Illinois	52.4	6.6	2,189.2	4.8
Indiana	21.3	2.7	1,139.4	2.5
Iowa	10.4	1.3	456.0	1.0
Kansas	8.2	1.0	511.9	1.1
Kentucky	9.0	1.1	541.0	1.2
Louisiana	11.9	1.5	971.4	2.1
Maine	3.3	.4	39.1	.1
Maryland	14.1	1.8	1,137.7	2.5
Massachusetts	24.1	3.0	313.0	.7
Michigan	37.8	4.7	1,759.8	3.8
Minnesota	13.2	1.7	685.5	1.5
Mississippi	4.9	.6	365.4	.8
Missouri	19.0	2.4	1,092.9	2.4
Montana	2.3	.3	95.9	.2
Nebraska	5.7	.7	377.7	.8
Nevada	1.4	.2	86.1	.2
New Hampshire	2.7	.3	17.0	----
New Jersey	34.2	4.3	1,194.6	2.6
New Mexico	3.3	.4	276.3	.6
New York	89.0	11.1	3,073.7	6.7
North Carolina	15.5	1.9	943.1	2.1
North Dakota	2.0	.3	44.1	.1
Ohio	45.7	5.7	2,140.6	4.7
Oklahoma	8.7	1.1	733.8	1.6
Oregon	7.0	.9	483.3	1.1
Pennsylvania	52.6	6.6	1,572.4	3.4
Rhode Island	3.9	.5	36.8	.1
South Carolina	7.9	1.0	447.1	1.0
South Dakota	2.2	.3	63.0	.1
Tennessee	12.8	1.6	1,040.5	2.3
Texas	39.4	4.9	4,642.7	10.2
Utah	4.0	.5	312.2	.7
Vermont	1.4	.2	10.6	----
Virginia	16.5	2.1	1,490.7	3.3
Washington	11.2	1.4	1,086.9	2.4
West Virginia	5.3	.7	190.1	.4
Wisconsin	16.1	2.0	534.2	1.2
Wyoming	1.3	.2	96.0	.2

[1] 1963.
[2] 1964.

Source: Institute of Life Insurance "Life Insurance Fact Book, 1965".

The CHAIRMAN. In your opinion, what has been the impact of exemptions of owner occupied one-family and two-family dwellings under the fair housing laws of some States, like my own State of New York, or the State of Ohio, the State of Pennsylvania? Have these exemptions, in fact, insulated, for example, suburban areas from the major thrust of the State fair housing legislation?

Secretary WEAVER. Well, I think, as we brought out earlier, Mr. Chairman, any exemption reduces the efficacy of a law of this type. I think the whole genius of the present approach lies in the fact that it is a comprehensive approach and that it is one that covers the total area, the total universe that we are attempting to deal with.

Now, obviously, if you are going for a comprehensive approach such as this proposed legislation does, you weaken it as you make it less comprehensive.

Also, in certain areas where you have a large amount of existing housing and where you have a small amount of new construction, the individual sales assume a great deal more importance than would be true in an area which is being newly developed largely by tract developments or by projects, and so forth.

So I would say that certainly the lack of comprehensiveness is a weakness to any type of nondiscriminatory approach, but becomes even more significant where you have a bill which tends to be a comprehensive bill.

The CHAIRMAN. Along these lines, Mr. Secretary, does your Department have any information concerning the impact that housing discrimination has had on the off-base housing of members of our Armed Forces?

Secretary WEAVER. We do not have systematic data on this, but as a member of the President's Committee on Equal Opportunity in Housing and also in my former capacity as the Administrator of the Housing and Home Finance Agency until the new Department was established, I have frequent case histories of complaints and of actual situations where this has occurred.

As you know, on the Army bases themselves discrimination is prohibited. However, this does not follow for housing in and around these installations.

We have had a score of instances where particular cases have come to our attention. We have been able in several cases under the Executive order to assist the complainant in finding housing and in opening housing which would not otherwise be available to the individual and the family.

I think there is no question, and the Department of Defense can document this better than I, but there is no question that in many instances the present patterns put a great, great burden and exert a great hardship upon men in the uniform.

One of the simplest situations is where these people have to probably travel all the way across town to get to their place of employment, whereas their white counterparts are living in that neighborhood which has access to the plant.

Also, in some instances sometimes they cannot even find any adequate housing within a reasonable distance from their place of employment, whereas the white officers and the white servicemen have no difficulty in so doing.

(See report of Department of Defense set out at p. 1752 et seq.)

The CHAIRMAN. Mr. Secretary, a question has arisen in the course of these hearings as to the definitions in title IV. I refer to page 25 in the bill before you, as to the definition of "dwelling"—lines 15 to 21.

Under the definition of the bill, "dwelling" includes vacant land that is offered for sale or lease for residential purposes.

In your opinion, is the inclusion of vacant land within the definition of dwelling essential, and if so, why?

Secretary WEAVER. Well, I would give a categorical yes as an answer to that, and I would support it for the following reason: It is absolutely impossible to separate the land from the dwelling; even where you have mobile homes this is impossible. And I might say parenthetically that one of the reasons why this is the situation is because of the situation with our trailer parks, which are now even uncovered by State law. That again goes back to your earlier question. We have many instances where members of the Armed Forces who do live in trailers, if they are nonwhite, find that they cannot get a decent trailer park location for their mobile homes.

In addition to that, clearly, the idea of where you are going to build has a great deal to do with all of the patterns of occupancy, and if you wait until after the house is built to attempt to do something to make it accessible to all elements in the population, you are letting the horse get out of the barn before you attempt to give him some direction. So, I think this is absolutely necessary and completely desirable.

The CHAIRMAN. Have members of the Armed Forces been compelled to change their patterns of off-base living because of this difficulty?

Secretary WEAVER. The members of the Armed Forces have found themselves at a great disadvantage if they are nonwhite and if they depend upon trailers. Some of them have had to give up their trailers when they did not want to, others have had to place their trailers in places with unsatisfactory facilities and still others have had to move their trailers far distant from the point of their employment, where there may be a trailer camp which would be much more accessible to their work.

The CHAIRMAN. Has it become a serious problem as to the number of trailers?

Secretary WEAVER. This, I could not tell you because we have not had systematic data, but we have had enough reports of this to indicate there is a problem here. Its magnitude I could not tell you, but I think particularly with our servicemen if there is only one case, I think it is a serious case.

The CHAIRMAN. Does the inclusion of vacant land in the definition of dwelling present, in your views, any particular problems of enforcement?

Secretary WEAVER. No; I do not see any difference here, for example, from the question of the structure itself, its financing or the other details.

However, on this, again, I would defer to the Attorney General, who I think has looked at this very carefully and it is my understanding he feels there is no problem and I would certainly accept his point of view on this.

The CHAIRMAN. Now, in title IV there is an absence of any so-called antiblockbusting provision. That is a provision that proscribes ac-

tivities that induce or provoke the sale or lease of residential property by arousing some sort of a fear of change in the racial, religious, or ethnic complexion of the neighborhood.

For example, I understand that the cities of Wichita, Kans., also Detroit, Mich., Buffalo, N.Y., Washington, D.C., St. Louis, Mo., Shaker Heights and Toledo, Ohio, among others have such antiblockbusting ordinances. Would you care to comment on that?

Secretary WEAVER. I think the reason for this, again, and the real necessity for this at many of the local levels is because you have a segmented approach to this problem. You do not have complete coverage and panic selling is a result of a lack of a comprehensive approach.

If all property is covered, and if you have the comprehensive type of thing that we are talking about here, the need for antiblockbusting legislation becomes much less than it would be under those other circumstances, and this attempts to get at the root cause which leads to the blockbusting rather than to attempt to prohibit something which economically would be less feasible under an effective bill of this type.

The CHAIRMAN. Now, title VI of the Civil Rights Act of 1964 prohibits discrimination in federally assisted programs. As you know, the Federal programs operating on the basis of contract of insurance or guarantee were specifically excluded from that title VI. This means that the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation are not covered by that title.

In your opinion, would title IV of the administration bill absolutely require that these agencies impose sanctions on financial institutions that discriminate, contrary to the provisions of section 404 of title IV in the extension of housing loans?

Secretary WEAVER. I would hesitate to answer this categorically because I think this draws a legal interpretation. As I said earlier, I am not a lawyer and I am talking to lawyers about law, and I think the Attorney General would be able to answer that much more competently than I.

Again, these are agencies which are not under the Department of Housing and Urban Development and, consequently, I would have to check them out as carefully as I could, but it is my guess and understanding that there would not be this conflict. But this I would not be able to say categorically.

The CHAIRMAN. Questions, Mr. Rogers?

Mr. ROGERS. Mr. Secretary, in answer to a question asked by the chairman, in effect you said that the Executive Order heretofore issued was not broad enough to cover and meet the problem. I assume that you would take the position that we should enact legislation covering all of the problem rather than covering it by Executive Order?

Secretary WEAVER. Yes, sir; I think mainly for the reasons that have been presented before. Two reasons:

In the first place, there is a question of some legal problems which arise here, which I only know of by having heard them discussed. I am not competent to give an opinion on that.

Secondly, however, there is the practical administrative problem, and that is the fact that no matter how far the Executive order may go, it is not going to cover the whole field and we are still going to

have the problems. We figure it would cover at best about 60 percent of the dwellings and then there would be the other 40 percent, not only the inequities that would be there in the industry, but—more important than that—the escape hatch that that would offer.

Mr. ROGERS. Now, what I want to know is, if a State has a fair housing law with certain exemptions do you see any possible conflict between the provisions as provided in this bill and such State law which would cause difficulty in administering the Federal law?

Secretary WEAVER. Let me say that I think this is again a legal question and my very competent lawyers have advised me that there is none. In other words, I think that this bill, if it is passed in its present form, its provisions would prevail over inconsistent provisions of State and local laws. But, again, I am no authority in this area, so I would simply give that as an opinion rather than as a——

The CHAIRMAN. Would the gentleman yield?

Mr. ROGERS. Yes.

The CHAIRMAN. This to my mind is rather important, Mr. Weaver, because it refers to your jurisdiction.

If you turn to page 30 of the bill, you will find that certain duties are imposed on you.

Secretary WEAVER. Yes, sir.

The CHAIRMAN. Section 408 says the Secretary of Housing and Urban Development shall—and you get down to (e) on line 22:

> Administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

What would you do if you find violations?

Secretary WEAVER. I think there are several types of violations that would be involved here.

In the first place, insofar as the housing activities which are under the Department of Housing and Urban Development, we would immediately issue, of course, the necessary regulations to be consistent with the word, the spirit, and intent of this act.

We would also administer the various programs that fell under our jurisdiction in a way to carry out the purposes and the requirements of this act. We would check, not waiting for complaints to come in, but would check in the general operation to be sure that our activities were consistent with the provisions of the section.

The CHAIRMAN. Be more specific; what else would you do?

Secretary WEAVER. In the event there were several—I think this came out in the Attorney General's testimony. If there were several alternative proposals that came in for a given development, as far as housing is concerned, I think the one that would lend to open occupancy patterns of some permanence and the other would perpetuate the existing patterns, we would certainly give preference to the one that would lend itself to open occupancy patterns.

The CHAIRMAN. Let's go further. You find after an investigation a certain bank is discriminating in its financing. What would you do with that bank?

Secretary WEAVER. Well, we would probably not have any contractual relationship with that bank, but we would have a relationship with FHA insurance, which may be the basis of the mortgages which

that bank was underwriting, and if that bank continued in violation of the law, that bank would no longer be able to do business with us.

The CHAIRMAN. Suppose the FHA, say, does not cooperate with you?

Secretary WEAVER. Beg your pardon?

The CHAIRMAN. Suppose FHA doesn't cooperate with you.

Secretary WEAVER. With me? [Laughter.]

Secretary WEAVER. FHA is part of the Department. We would have a new Assistant Secretary.

The CHAIRMAN. What I had in mind was some bank that discriminates that would be covered by these broad provisions. What would you do with those banks?

Secretary WEAVER. In those instances we would have no direct relationship with those banks unless they were participating under our programs.

Now, the types of regulations that would be developed under this law, I could not say at this time. I think the first things that would happen with those banks would be that they would come under the action which the Attorney General is authorized to take here.

The CHAIRMAN. Would you strike them off the list?

Secretary WEAVER. Suppose there were a consistent pattern of this discrimination. I can well envision that the Attorney General will call this matter to my attention and request that we assist him in bringing the bank into line, and this might be a type of leverage we could put on that particular institution, and this would be something that would be developed as time went on.

The CHAIRMAN. Would discrimination be deemed by you to be a default in the insured mortgage, with reference to the terms of the insured mortgage?

Secretary WEAVER. I do not think that. I think the insured mortgage is already in existence and the bank is not the only one involved with that; in addition, there is the person who took out the mortgage. I think the only way you could deal with a bank in this regard would be its future activities as far as its relations with the Department are concerned.

I don't think you could get a mortgage that is supposed to last over 25 or 30 years without doing irreparable harm to the person who has taken out the mortgage.

The CHAIRMAN. You mean you could not declare under regulations a default under those circumstances?

Secretary WEAVER. Yes, you could, but I do not know whether you would be penalizing the right person, that is my point.

The CHAIRMAN. If the bank deliberately entered into a pattern or practice of this kind of discrimination, why shouldn't the bank suffer some sanctions?

Secretary WEAVER. I am worried about the person who gave the mortgage, and let us say the interest rate changes. First, he has a mortgage at 5 percent—a 30-year mortgage with 20 years to run and when the discrimination by the banks is uncovered—any other mortgage he can get is at 5.5 or 5.75 percent, then it is that person who is penalized much more than the financial institution would be by canceling that particular mortgage.

The CHAIRMAN. Is there any remedy that you could think of by which the bank would suffer rather than the mortgagee?

Secretary WEAVER. Yes, I think a possible remedy here would be, and one that we have used in connection with FHA mortgages in the past—that is, that the institution would no longer be permitted to participate in the insurance program and by that way the burden would be placed upon the financial institution, which is the party which has made the violation, rather than on somebody who has already entered into a contract and will suffer by the abrogation of the contract.

The CHAIRMAN. I have just been handed a note which seems to say the following:

The Farmers Home Administration, Department of Agriculture required that mortgages closed after December 14, 1962, contain a nondiscrimination covenant, violation of which "shall constitute a default under the mortgage."

Secretary WEAVER. I do not know what the basis of that is, but I do know that when you begin to foreclose these mortgages, that you are not usually penalizing the financial institution, particularly when you get a mortgage which is made at a relatively low rate of interest which is of a benefit to the person who has taken out the mortgage to keep it, and it is a benefit to the financial institution to get rid of it, and the foreclosure of some of these mortgages would be helpful instead of hurting the institution; you would help the institution and hurt the individual who was in no way involved in what would be a violation of the law.

The CHAIRMAN. Well, you say then, the only sanction that you could think of is to strike that bank off the list that might be involved in these FHA mortgages?

Secretary WEAVER. Off the top of my head, I think this would be the most equitable and the most effective.

The CHAIRMAN. Why can we not go a little further than that and invoke a more drastic sanction, since we have agreed before to use all the weapons at our command to prevent discrimination? In our attack on this gigantic problem, should we not provide that the bank shall have committed a violation of its charter and have the burden of proof to show that they did not discriminate and if the bank cannot sustain the burden of proof, then the charter might be revoked?

Secretary WEAVER. This would not fall within my jurisdiction. This would fall within the jurisdiction of the agency that issues the charter. I was restricting myself to what I could do and what my department could do.

The CHAIRMAN. We are asking your opinion.

In other words, do you think that the remedy that you just outlined is sufficient to prevent discrimination by these financial institutions?

Secretary WEAVER. I think it would be a rather effective remedy.

Mr. CORMAN. Would the chairman yield for a question on this point?

The CHAIRMAN. Yes.

Mr. CORMAN. It seems to me if you have a loan that is already made, the house exists, built since 1962, for there to be any discrimination it must be by the person who is the mortgagee. And so, if you

foreclose that mortgage, declare it in default, it would have to be because of some action on his part, not the bank's. And actually, the kind of discrimination you are trying to get at that the bank would be exercising would be on potential loans, so I do not think there is this dilemma.

We are not going to harm an innocent mortgagee. There would not be any discrimination as to his house, if he did not do it. Is that not correct?

Secretary WEAVER. This was exactly the basis of my reaction, I think you are hitting the wrong person from the point of view of any wrongdoing. And you do not get any benefits.

Mr. CORMAN. You are talking about a specific mortgage being defaulted because of racial discrimination, right? And that house was already occupied by that borrower and there is not going to be any racial discrimination unless he exercises it in the sale or rental of his house. Would that be a fact?

Secretary WEAVER. I think what was involved here was that there would have been a form of violation of this law in that sale which seems to me, as you suggest, would have had to have been an action not on the part of the bank if the bank made the mortgage.

Now, where the bank would discriminate would be usually where it would refuse to make a mortgage on a sale that was a possible sale, but once the sale has been made, unless the owner had refused to sell to a minority person, and this would be a discriminatory action on the part of the seller and not of the lender, I do not see how the bank would be involved in this, as you suggest, unless at the time of the sale where you had a seller willing and ready to sell to anyone and the bank refuses to offer the mortgage to that person.

This is where I think we are trying to get at it as far as the bank is concerned. So I agree completely, nothing would be gained by this.

Mr. CORMAN. But it seems to me you have a better way to get to the bank by ceasing to do business with them if they undertake a practice or pattern of discrimination.

Secretary WEAVER. This would be the only action we could take, and I think it would be a very effective one.

Mr. CORMAN. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Mr. Secretary, on page 11 of your statement you outline that the census of 1960 shows that 13 percent of housing occupied by white householders was found to be substandard. At the same time 44 percent of the housing occupied by nonwhite householders were substandard.

I think that we will agree that a lot of this substandard housing is due probably to violation of city ordinances in relation to plumbing, water, and other facilities.

Is there any method whereby under this proposal you would be able to get at such a situation as that?

Secretary WEAVER. Yes, indirectly. I think that one of the things, and I have done quite a bit of research in this field before coming to Washington, and others have done much more—one of the things that becomes crystal clear is that there are several elements in bad housing which exists for the nonwhite population.

The first is the fact that incomes are low and if you do not have enough money, you cannot get housing.

We also know that in our present segmented housing markets, under the present situation of enforced segregation in residences and discrimination in housing, that the housing dollar in the black hand does not buy as much housing as the housing dollar in the white hand.

This means that many times nonwhites are paying prices for houses, both purchase and particularly for rental housing, which would, if they had access to the total market, enable them to buy standard housing and they are getting substandard housing. And the reason they are doing it is because they are so limited and with a limited supply the buyer loses his leverage.

So, this is how it operates.

Mr. ROGERS. Mr. Secretary, in response to the questions asked by the chairman concerning the burden on interstate commerce, that could you supply information about discrimination in housing so that we will have full evidence before this committee relating to the burden such discrimination places on interstate commerce?

Secretary WEAVER. We will supply all of the data that we can, sir, and there will be some—I do not know whether it will be complete, but we will certainly have additional data that will be pertinent to these questions.

Mr. ROGERS. We would appreciate it if you would, because part of the burden in connection with this legislation is to show definitely that such practices do place a burden on interstate commerce.

Thank you, Mr. Secretary. I have no further questions, Mr. Chairman.

(Information follows:)

THE EFFECTS OF HOUSING DISCRIMINATION UPON INTERSTATE COMMERCE

The tremendous growth of the American economy during the past two centuries can be attributed to such factors as a plentiful supply of natural resources, an industrious population, adequate financial capital, imaginative business entrepreneurship that successfully exploited technological innovations to increase the productivity of land, labor and capital resources and an absence of governmental barriers to interstate commerce. Unlike the situation prevailing in Europe or Asia, where the industrial revolution of the past 150 years was accompanied by an elaborate structure of nationalistic barriers to movements of population, goods and currency, the United States has grown as a single, unified economy.

Within the United States people are free to move across State lines without having to present a visa or a passport to border guards. Shipment of raw materials and finished goods may be made from one region of the country to another without being subject to any interstate tariffs. Finance capital can be transferred across state lines with no fear of exchange controls on the repatriation of the capital or the receipt of earnings thereon. A single national currency system precludes the possibilities of foreign exchange losses which sometimes arise when one currency has to be converted into another. National systems of interstate highways, railroads, air and sea transportation, free of customs inspection, assure rapid movement of goods across State boundaries, and lead to reduced transportation costs.

Freedom from interstate barriers has enable sizable internal migrations of the United States population from year to year in response to emerging economic forces that attract workers from one area to another. In recent years there have been four notable internal population migration patterns that frequently involve population shifts across State borders.

First, scientific and technical progress with respect to farm mechanization, chemical fertilization, insect control, and post-harvest processing has enabled fewer and fewer farmers to provide a rapidly increasing volume of food and fiber. There has resulted a sizable movement of population from the farm to the city. The number of people employed in agriculture in the United States has probably declined since 1860 while the total population has meanwhile increased about sixfold.

Second, scientific, technological and industrial innovations and the development of many new products have contributed not only to a movement from farms to cities, but also major regional population shifts. Workers seeking new job opportunities have been attracted from East to West; from South to North; and increasingly, in recent years, to portions of the South and Southeast. These regional migrations, like the migration from the farm to the city, have their root causes in major changes in the patterns of industry and commerce.

Third, within major regions, there have been important shifts in the relative rate of growth as between smaller towns and cities and larger urban centers. Larger urban centers have grown at a more rapid rate than smaller towns and cities because the more complex forms of science-oriented industries and the more complex patterns of financial, commercial and governmental activities tend to center in large urban centers. For example, electronic, pharmaceutical and similar science-oriented industries gravitate toward major cities having major scientific, university and cultural facilities.

Fourth, within our cities, large and small, there are major economic forces which result in a shift of population from the center of cities to the suburbs. The ease with which electric power can be transmitted, the ease with which high-value but light-weight modern products and product components can be shipped over highways, and improvements in communication make possible the dispersion of industrial plants to the suburban fringes of rapidly growing metropolitan areas.

These four distinct, but interrelated, forces have made Americans the most mobile of all people. About one American family in five moves his home every year, many of them across State lines. Between 1955 and 1960, 14.1 million persons migrated from one State to another. No doubt very many of them moved for purely personal reasons. By and large, however, major migrations occur because of major economic forces, such as those described above. In the case of each of at least seven States, moves into or out of the State during this five-year period involved over a million people. This is shown by the following figures:

State	Gross	Immigrants	Outmigrants
California	2,754,056	1,938,130	815,926
Florida	1,539,078	1,157,937	381,141
Illinois	1,355,755	615,036	740,719
New York	1,578,157	587,669	990,488
Ohio	1,206,495	572,387	634,108
Pennsylvania	1,076,938	398,343	678,595
Texas	1,392,897	682,421	710,476

A high proportion of these people moved in search of, or in response to, better employment opportunities.

Although the United States is free of any "de jure" barriers to interstate commerce, it is nonetheless, subject to "de facto" barriers that seriously impede, if not reduce, interstate commerce, e.g., impediments to the free movement of certain minority groups across State borders. Such "de facto" barriers result from the widespread housing discrimination against Negroes and other nonwhite groups. This discrimination extends to the sale and rental of housing and to credit for the construction, purchase, improvement or repair of homes.

These forms of discrimination severely limit the supply of housing available to minority groups and thereby greatly increase its cost to them. Negro families occupying decent housing are often forced to pay a far higher percentage of their limited incomes than white families in the same income group; and frequently Negro families pay far more for seriously substandard housing than white families do for good housing. Also, it is often true that the only housing

available to a Negro family in a community is in a racially segregated, slum or blighted area.

It may be noted at this point that surveys show a very significant rise in income of the Negro population during the last few years. It is known that Negro consumers' funds are available to purchase moderate-priced housing which cannot be purchased or rented because of racial discrimination. This situation has an impact on interstate commerce because if there were an open housing market the effective economic demand for dwellings and for the thousands of types of materials and components that go into a housing unit would be increased.

White professionals and technicians will generally move from one region to another when offered jobs that much better utilize their skills, training and education. They have reasonable assurance that they will find housing accommodations within their means that enable them to raise their families and to enjoy the amenities of life corresponding to their level of income. Negro professionals and technicians have no such assurance.

Instead, faced with "de facto" exclusion from most middle class neighborhoods, both in the cities and in the suburbs, Negro professionals, skilled workers, and technicians are often loath to move from one region to another since they have dim prospects of finding housing accommodations that befit their level of income. Rather than relocate in an overcrowded slum area in an out-of-State city in pursuit of a better job, many Negro professionals and technicians prefer not to move, and hence they do not seek or accept the better job opportunity. Thus, in a period of critical shortages in a number of professional and technical skills, the "de facto" barrier to the interstate movement of Negro families resulting from housing discrimination interferes with labor mobility. The result is less national production or more costly services than would otherwise be attainable if these "de facto" impediments to population movement did not prevail.

Housing discrimination also impedes the interstate movement of the far greater number of low-income, unskilled or semi-skilled Negro workers. In recent years there has been a tremendous expansion of factories, shopping centers and service establishments in the suburban areas of the Nation, creating a large number of job opportunities. Many of these jobs go unfilled because of labor shortages in the suburban areas. Yet within the nearby cities (which are frequently in an adjoining State), particularly in the Negro sections, there exist large pockets of unemployed labor. Many of the unemployed have migrated hundreds of miles from rural areas to the city in search of a job that remains a few suburban miles out of reach. The dweller in the central city slum is often cut off from the suburban job opportunity because the area where he can live is not served by public transportation extending into the area where the jobs are to be found.

The housing discrimination which impedes the interstate movement of workers, which causes out-of-State jobs to go unfilled, and which adds to the welfare and fiscal burdens of our central cities results in a far lower level of national production and commerce than would otherwise be attainable.

The CHAIRMAN. Mr. Corman?

Mr. CORMAN. Mr. Secretary, is it not a fact that the greatest burden of segregation falls on children of school age or at least a very severe burden?

Secretary WEAVER. Oh, I would believe that first if you look at it from the general problem of bad housing, which comes as a consequence in large measure from the limitations in the housing market, that it is the youth that probably suffer the most, because they are in areas without the evidence of hope. They are in areas which are dilapidated; they are in areas which are neglected; they are in areas where the public facilities are usually—and the public services are of the least quality, the lowest quality.

And it is reflected, of course, in their schools. It is reflected in the fact that they are living in an enforced ghetto area which all of that implies, so that from society's point of view over the long run, I think it is the youth and the citizens of tomorrow who are the ones that should cause us the greatest concern and who actually suffer the most

from the point of the total society, as well as from the point of view of themselves.

Mr. CORMAN. Thank you.

Is it not true that probably the ideal for a family with children is the single-family dwelling?

Secretary WEAVER. Well, there is a lot of thought in that regard. I must say that sometimes I am not in complete agreement with it, but it certainly is the American norm and the American ideal. I would assume that for most families I would say, yes.

I can think of instances, being an apartment liver like myself, I cannot go along with that completely.

Mr. CORMAN. Is it not a fact that people with large families and modest incomes, that they, generally speaking, are limited to homes that are older, aside from race, so far as just their economic bracket is concerned?

Secretary WEAVER. There is no question that for low- and moderate-income families of large size, the existing secondhand home market is about the only hope they can get to find enough space to live in decency if they have large families.

Mr. CORMAN. Am I to conclude that of all the exemptions—we will concede that neither of us want to make any—probably the worst exemption would be the existing single-family residence?

Secretary WEAVER. I do not like to make a comparative scale of the undesirable. I would simply say categorically that I think if we are going to have a comprehensive bill, we have to have it comprehensive and any time you make an exemption, you erode into that.

I would say that certainly from the point of view of the housing situation where we have the great paucity of adequate housing for low- and moderate-income families of large size, that it would be most unfortunate if this great reservoir of possible supply, which is the existing market, were to be excluded under this law, I think it would weaken it materially.

The CHAIRMAN. May I interrupt just a moment?

Mr. CORMAN. Certainly, Mr. Chairman.

The CHAIRMAN. Suppose you have a situation like this, to get back to my other question which I asked you before: Will you put forth regulations, for example, which would state that all financial institutions coming within four-square of the act shall, whenever they make agreements with builders to build houses or dwellings, that those builders shall provide in their pronouncements or their advertisements that there will be no discrimination in the sale or the rental of these houses, and if they fail to do that or refuse to do that, or fail to abide by that regulation, what would you do under those circumstances?

Secretary WEAVER. Well, we have now certain regulations under the Executive order, to wit, that a builder has to enter into an agreement at the time that he gets an FHA-insured loan, and the VA does the same thing, we operate under the same principles—that he will not discriminate.

Assuming that he does, and we have a ready, willing and able buyer, and we have a hearing. We check it out, and we establish the fact that he has discriminated. He has two choices: He can either make a

property available to that person or to other nonwhite persons—and to other nonwhite persons who are qualified, or else he is put on an ineligible list and he does not do any business with us.

Now, this does not become as effective now as it would under comprehensive coverage, because very often he can go to some source of finance which is not covered by the nondiscrimination, the open-occupancy requirements.

So that this is an inconvenience to him.

If this were universal and if it had the sort of comprehensive coverage we are talking about here, then this becomes very, very effective.

The CHAIRMAN. Excuse me.

Mr. CORMAN. Mr. Secretary, apparently in implementing the 1962 Executive order, FHA prohibited persons and firms receiving its benefits from discriminating, and then according to the Civil Rights Commission's 1963 report, not affected by its action was one- or two-family owner-occupied housing.

I am wondering how we arrived at that, if that is still the regulation.

Secretary WEAVER. Yes. There are two reasons for that:

In the first place, remember we are dealing in the present time of the Executive order, not with a comprehensive, but with a small sector of the total market.

Secondly, our forms of enforcement are only the administrative action which we can take. There are no forms such as provided in here where you can get an injunctive action or where you can get immediate action.

When you get a single-family house coming in under our regulations, unless it is a part of a development, you have the house, you have the buyer, you have the charge of discrimination, you have to investigate it, you have to have hearings, and then you have to have findings. By the time this is all over, either the house is sold or the buyer is no longer interested and you accomplish nothing but an academic victory.

Whereas, if this is a part of a development, whereas you may not get that house, there are other houses, so you can change the pattern. But where you have the remedies that are provided here through the court, you can get much more immediate action and you can protect the rights of that person to that particular house, which you cannot do under administrative action.

This is why we did it.

Mr. CORMAN. Then those who are urging Executive action instead of legislative action would continue to allow this broad area of existing single-family dwellings to escape from the law; is that it?

Secretary WEAVER. I would not say that. I think that the executive action alone is going to make it very difficult to make the single-family individual case effective under an antidiscrimination approach. I think that you have to have more rapid relief before all of the documents are sealed, signed, and delivered to be effective here. I would think that we need both, which would be provided under this act.

Mr. CORMAN. You point out in your testimony that in the 1964 act we considered and rejected the theory of covering mortgage guarantees under title VI.

Do you think that beclouds the Executive's authority to cover by Executive order in view of the legislative history?

Secretary WEAVER. Well, not being a lawyer, I can only say I have been advised that there are some legal questions involved in extending the Executive order to all types of Federal insurance of share accounts and deposits.

Mr. CORMAN. You point out in your statement, page 10, that the advantage of comprehensive nondiscrimination lies not only in greater coverage, but avoids developments of unfairness.

It would seem to me that whatever we do in the way of bringing in exemptions is lending itself to unfairness in the market.

Secretary WEAVER. I would think that that would be true, and the only justification, it seems to me, would be one of two things: Either that you have a peculiar institutional situation on the one hand, or that you have an administrative problem on the other hand, which coupled with the peculiar situation is not worth the effort. But certainly you are dealing differently with people in the same market. And this, I think, is a sort of a natural in the nondiscrimination law.

Mr. CORMAN. Mr. Secretary, we are doing some things in rebuilding central cities and changing the kinds of people who live in them, and I take it that that means that people who live in central cities now probably are going to be living some place else as a result of urban redevelopment, changing from lower density slums to high-rise units, not necessarily suitable for families.

Can you give us an estimate as to how many people are probably going to be relocated in these programs in our major cities over the next 10 years?

Secretary WEAVER. Yes, we can give you those estimates, but I might say that we are also changing in many respects the thrust of urban renewal. (Insert attached.)

We have in recent years increasingly put emphasis upon rehabilitation rather than complete demolition. We have cut down materially the plans for economic dislocation in the sense of tearing down an area with low-income people and moderate-income people and rebuilding it for high-income occupancy. So that I think that the trend is away from that initial thrust of the program and several reasons are involved:

The first is that in 1961, for the first time, we established a moderate-income housing program which has proven to be quite successful, the 221(d)(3) below market rate programs. We have also developed a whole series of new tools to assist in rehabilitation.

We have stressed the utilization of the rehabilitation tools rather than the demolition tools, so that I believe that this will be minimized and certainly it will when the new demonstration cities program gets underway, because this is a program which does not involve economic dislocation.

ESTIMATES AS TO RELOCATIONS IN URBAN RENEWAL AND OTHER URBAN DEVELOPMENT PROGRAMS IN THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Experience with the urban renewal program indicates a complexity of variable elements which influence the number of families and individuals who will be subject to relocation during a stated period of time. It is apparent though that the movement toward rehabilitation and code enforcement will affect the volume

of displacement. Operations in the Department of Housing and Urban Development alone extend to at least 9 programs in addition to urban renewal which will, in varying degrees, require the relocation of people and relocation payments to them.[1] The estimated total for all these programs, including urban renewal, during the fiscal years 1966 through 1972 are as follows:

	1966	1967	1968	1969	1970	1971	1972
All programs:							
Families	24,995	31,101	37,212	43,029	45,376	48,676	35,025
Individuals	12,865	14,920	18,370	21,416	22,538	24,278	26,182
Businesses	8,148	12,365	12,227	13,159	13,527	14,019	14,670
Urban renewal:							
Families	20,375	23,050	22,675	23,290	23,825	24,700	25,600
Individuals	10,685	11,020	11,330	11,645	11,900	12,350	12,800
Businesses	7,740	11,420	10,560	10,960	11,160	11,400	11,700

It should be noted that there are several other Federal programs, including the highway program, that involve displacement and which are not included in the above-stated tables.

It goes into the slums and blighted areas; it rehabilitates it; it rebuilds them not only physically with all of the facilities that they need, but also socially, and from a point of view of human beings, and this is an idea of rehabilitating an existing area.

So this is the direction we are moving in this program, away from the earlier manifestations, but there is still some hangover left from the other programs.

Mr. CORMAN. Would it be fair to say that desegregation might be a part of the objectives of this rehabilitation work?

Secretary WEAVER. Well, certainly one of the objectives is to have open access to the market on a much wider scale than before, and this would be one of the things that certainly would be a consideration of doing this, because I do not believe that you can affect just one section of the city without affecting other sections of the city and ultimately without other sections of the whole metropolitan area. Even if we were to continue as well to some degree catching up with the dislocation in the past, and there are other programs that dislocate more people than does urban renewal, the highway program, for example.

If we are going to find places to relocate these people, we are going to have to open the market wider than it is now on a racial basis, because so many of the displacees are minority group people.

Mr. CORMAN. Thank you, sir.

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. Mr. Secretary, I have two or three areas of interrogation I would like to follow in order to help clarify the record.

There are several bills before the committee which include provisions directing you to issue regulations to enforce an additional statutory provision denying benefits of any Federal housing program to any person violating the provisions of titles of the acts providing nondiscrimination in the housing.

To what extent would such a proposal give you an authority to promulgate regulations that you do not presently have under Executive order?

[1] The 9 programs other than urban renewal are: demolition grant, code enforcement, neighborhood facilities, open space, public housing, mass transit, basic water and sewer, public facility loans and advance acquisition of land.

Secretary WEAVER. I would have to give you a written answer on that. There are so many grave legal problems involved here and I could not answer it off the top of my head. I would be happy to submit something for the record on it.

(Information follows:)

I assume that you are referring in particular to the bill introduced by Congressman Gilbert, H.R. 14770. Under Sections 1208 and 1209 of this bill the Secretary is directed to issue regulations insuring that no person violating the nondiscriminatory provisions of the Bill would receive the "benefits of any Federal program directly or indirectly concerning the sale, rental, construction, management, or financing of housing." The bill provides that such regulations shall include—

(1) a specification of the agency programs covered,

(2) the agency procedures for enforcement,

(3) the length and degree of the sanctions imposed for noncompliance in accordance with section 1208, and

(4) sufficiently broad placement of responsibility to secure prompt and effective compliance upon institutions, agencies, or other economic organizations dealing with housing.

These provisions would authorize the Secretary of the Department of Housing and Urban Development to issue regulations affecting other departments and agencies. Under Executive Order 11063 on Equal Opportunity in Housing, on the other hand, the Secretary is directed to exercise regulatory authority only with respect to the various programs which he administers.

Mr. CRAMER. Do you feel, absent any express provision in the law, you would have power to promulgate rules and regulations under title IV of the administration bill?

Would your agency, in your opinion, have power, even though it is not specifically spelled out in section 403, to issue regulations?

Secretary WEAVER. This, again, we could issue regulations always, of course; as to what the regulations would entail and what they would cover, this again is something I do not think I could answer off the top of my head.

We would have to check this out; and I think, too, a great deal of the extent to which what we could issue and what we can issue now is a legal question we will have to research as to what we could, under the law, would depend not only upon the language, but also from the legislative history.

Mr. CRAMER. Well, I see nothing in section 408 that specifically authorizes the issuance of regulations by your Department. I assume there was a reason for not including that power?

Secretary WEAVER. I assume that we have general authority for that, and my general counsel tells me that I am right. We have that general authority.

Mr. CRAMER. So, without specifically including that power, you would feel that the passage of this title would give you authority to issue regulations?

Secretary WEAVER. I think we would have that authority.

Mr. CRAMER. Let us assume a State bank in its portfolio of loans has not made a loan to a minority member, as defined——

The CHAIRMAN. Will the gentleman yield? I think under general law the executive departments are empowered generally.

Mr. CRAMER. I wanted to make sure the record was clear.

The CHAIRMAN. And also to issue regulations under the general statute.

Mr. CRAMER. I understand that. I wanted to make sure the record was clear whether or not section 408 carries with it powers to issue rules and regulations.

Let us assume that a State-chartered bank has a portfolio that does not include loans made to any of the minority groups who are to be protected, based upon race, religion, color, national origin. Let me ask, No. 1: Would you, in fact, if this were passed, issue a regulation or request information from all banks as to what their portfolio includes relating to these specific prohibited groups?

Secretary WEAVER. No, not in that manner. I think, for example, the law does say that we would make studies as to the extent and nature of discrimination. It might well be that this might be one of the areas of studies we would make, but we would not just issue an order of this type, ad hoc.

Mr. CRAMER. Section 404 specifically says it shall be unlawful for any bank, savings and loan institution, credit union, insurance company, or other persons that make mortgages, and so forth to deny such a loan to a person applying therefor, or discriminate, and so forth.

Do you think that gives you authority to request of banks in making this study information as to how many of the groups that are to be protected, how many loans there are in the portfolios of those banks?

Secretary WEAVER. I do not think that section does, but the section sets forth what I am supposed to do.

Mr. CRAMER. 408 on page 30; is that right?

Secretary WEAVER. I think here it says "shall make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban and rural, throughout the United States."

Mr. CRAMER. Yes.

Secretary WEAVER. Here it seems to me that we have the authority to make studies of a general nature. I do not think it is restricted here, but this would be in a pattern of a study analysis rather than a pattern of an administrative operation.

Mr. CRAMER. Well, we have had experience in the field of education, for instance, where the Department has sent out questionnaires to individual pupils, asking, as some have suggested, questions not related to the legislation that was passed—a broad, general interrogation.

Would it be your intention to send out in making these studies questionnaires to the different financing institutions, including real estate boards, for instance?

Secretary WEAVER. I could not answer that now. I think that we would certainly, in carrying out the responsibilities that are set forth in section 408(a) make inquiries and make studies.

Now, I cannot tell you now in detail the nature of those studies but I can assure you, however, that if there is not authority in the law for doing certain types of studies, we will not do them. But I cannot interpret this at this early period in making any categorical commitment.

Mr. CRAMER. I will yield to you, Mr. Chairman.

The CHAIRMAN. Mr. Weaver, if you wish to have counsel with you to advise you, even in these questions, you have a right to have counsel with you. Is your counsel here?

Secretary WEAVER. Yes. I am not sure that he has had an opportunity to delve into this. Remember the bill has just come out and we have had some other responsibilities, but I will be happy to get him up here. I was trying to protect him.

(At this point Secretary Weaver was joined by Robert Sauer, Director, Equal Opportunity Standards and Regulation, and Ashley Foard, Acting Director, Office of General Counsel, Department of Housing and Urban Development.)

Mr. CRAMER. That is a proper indication, Mr. Secretary. We, too, have not had a chance to find out what the full thrust might be. We have also just gotten the bills.

Let me ask it this way: Were you consulted with regards to what your function should be, your Department, under this title?

Secretary WEAVER. Yes, we worked with the Department of Justice on this.

Mr. CRAMER. Did you recommend then the power set forth in section 408 regarding the power relating to your Department?

Secretary WEAVER. This was jointly set up between us and the Department of Justice.

Mr. CRAMER. Will you tell me how you plan to do this work, making the studies, publishing and disseminating reports and so forth?

Secretary WEAVER. I think if you look at this, and I am subject to consultation with my General Counsel if he does not agree with me. If you look at section 408(a), it says make studies with respect to the nature and extent of discriminatory housing practices, and so forth and so forth, and I think this means we will do a research program to find out what the patterns are as far as discrimination in housing is concerned, what the elements are that contributed to those patterns and what the incidence of those patterns may be and what the trends may be in the general overall field of racial discrimination in housing.

Mr. CRAMER. Do you think this would empower an individual, this title, to complain to your Department, as well as the Attorney General if that party aggrieved was claiming he had been wronged?

Secretary WEAVER. If it were a program which was administered by our Department, yes. If it were not, no.

Mr. CRAMER. If a complaint came to you, how would you handle it? A complaint that this bank X, he did not think gave him the same consideration as others in requesting a loan.

Secretary WEAVER. We would refer that to the Attorney General, unless there were a program of our Department involved in it. If it were FHA mortgage insurance, then we would be involved.

Mr. CRAMER. If an individual under the act believes he has a cause of action, would you encourage that individual to take such action through your Department when such a complaint is made to you?

Secretary WEAVER. I would encourage him to get any benefits that are provided for in the law, as I do in every law.

Mr. CRAMER. You indicate, of course, that the basic thrust of this is to the individual seller and buyer, and as I understand your testimony, you think that is essential. Is that correct?

Secretary WEAVER. I am not sure I understand your question.

Mr. CRAMER. Individual homeowner selling that would be covered by title IV?

Secretary WEAVER. Yes, he would be. I do not think that is, as you say, the thrust. I think this is a necessary element. I think that the larger developers and the larger units of real estate are vitally important and just as important, in some instances will be more important than the individual, but I think you have to have both covered.

Mr. CRAMER. In view of the fact that a great number of State fair housing laws presently exempt various classes of housing which I am sure you are familiar with, many have been spread on the record here, Minnesota and such.

Secretary WEAVER. Yes.

Mr. CRAMER. Do present FHA and VA regulations promulgated pursuant to the Executive order include any such equivalent exemptions?

Secretary WEAVER. Yes.

Mr. CRAMER. Would you indicate some examples of what they are?

Secretary WEAVER. Single-family housing.

Mr. CRAMER. Is it true of the 1964 FHA regulations, that they exempt one- and two-family owner-occupied housing?

Secretary WEAVER. Yes.

Mr. CRAMER. But I understand your testimony is, you do not think that this title IV should have such exemptions?

Secretary WEAVER. That's right.

Mr. CRAMER. Why?

Secretary WEAVER. Two reasons: In the first place, this is a comprehensive plan; the other is a segmented approach. In the second place, this has remedies through action in the court which are of such immediacy as to make that effective.

Where you have administrative remedies such as we have under the Executive order, having hearings, having appeals, et cetera, by the time you get the situation solved, the one-family house has already been sold and the transaction is already completed.

Whereas, if we are working with multiple-family or in tracts, if that house is sold or that transaction is completed, there are hundreds of others left and you can do something to change the pattern.

Here the process of a restraining order from the Court, you can protect the individual concerned with that particular house while you are doing the investigation and establishing the facts.

Mr. CRAMER. I am very interested in your concept as to how that order of the Court would affect the sale of this individual home to a buyer.

Is it your idea that the Court would issue an immediate temporary injunction to prevent the sale?

Secretary WEAVER. I do not know, but there is the possibility of more immediate action by the judicial route than by the administrative route. As to what the Court would do, I think it would depend upon several things, possibly from the facts in the case, I would assume.

Mr. CRAMER. It is quite possible, then, under rule 65(b), that an ex parte hearing could result and an automatic temporary injunction issue?

Secretary WEAVER. I could not answer that.

Mr. CRAMER. A temporary restraining order.

Now the 1964 act exempted Mrs. Murphy, establishment located within a building which contains not more than five rooms for rent or hire, which is actually occupied by the proprietor of such an establishment as his residence.

Are you with or against Mrs. Murphy insofar as being in or out of this proposed title?

Secretary WEAVER. I would not like Mrs. Murphy discriminated against; I would like to have her included among all the others. [Laughter.]

Mr. CRAMER. Do you think that the Congress was wrong, then, in writing in the Mrs. Murphy provision in the 1964 act?

Secretary WEAVER. Well, No. 1, this was done in a different context and with a different type of problem, and secondly, I do not think this is a matter of right or wrong. I think it is a matter of efficacy or lack of efficacy, and I think in this particular law that a comprehensive law in the field of housing trying to do away with discrimination in housing is much more comprehensive and much more effective if it has no loopholes in it and no exceptions to it.

Mr. CRAMER. Including the exception written into the 1964 act relating to private clubs? Those that have housing facilities?

Secretary WEAVER. I think that one of the areas here that worries me particularly is that the private clubs are usually—not usually, but very often used as a subterfuge, and they are not quite so private. They may be clubs, but they are not quite so private, and I think this is a very dangerous loophole, because it can be, as it has been abused, to really vitiate the whole approach.

Mr. CRAMER. So you would object to an exception as was written in the 1964 law exempting private clubs?

Secretary WEAVER. I would rather speak of it not in the context of the 1964 law, but in the context of the law before us. I would say that I think that this would be unfortunate.

Mr. CRAMER. Let's examine what the results of Mrs. Murphy might be if your recommendation were followed.

Mrs. Murphy has a place that serves transient guests. Mrs. Murphy has two extra rooms that she rents out. Mrs. Murphy at present is not covered.

Now, Mrs. Murphy would be covered under this proposal of title IV?

Secretary WEAVER. I think there is——

Mr. CRAMER. That is a little bit inconsistent, is it not?

Secretary WEAVER. Mr. Congressman, I think there is a question here of the temporary leases and short-term contracts.

Mr. CRAMER. That is a very interesting observation. Can you show me where it is in the proposed bill?

Well, a definition, Mr. Counsel. The definition is on page 25—"Dwelling Coverage."

Secretary WEAVER. We think it would probably exclude transient occupancy.

Mr. CRAMER. Now, where? Dwelling is defined as including any building or structure or portion thereof, whether in existence or under

construction, which is intended, designed or arranged for residential use by one or more families.

Secretary WEAVER. I think it would follow from the interpretation that would have to be given to the term "dwelling" as distinguished from a hotel room or something of that kind. And then the term "residential use," I think, might be involved here.

Mr. CRAMER. Well, it is intended for residential use by one or more individuals. Only one party lives there and is a resident, rents it out to other people who may be there for a week, 2 weeks, 3 weeks, what-have-you. Mrs. Murphy would be covered under those circumstances.

Secretary WEAVER. Well, I do not know. I think this is something that I could not answer.

Mr. CRAMER. The prohibition is in section 403:

It shall be unlawful—

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for the owner, lessee, sublessee, assignee, or manager of, or other person having the authority to sell, rent, lease or manage a dwelling, or for any person whose real estate broker or salesman, or employee or agent of a real estate broker or salesman, to refuse to sell, rent or lease.

And so forth.

So, it appears to me that any facility that is a dwelling and also a rental unit would be covered. Perhaps your counsel could comment on it?

Mr. FOARD. It certainly is not spelled out in the law, but we think that the term "dwelling" would have to be interpreted and defined in some way.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes; I yield.

The CHAIRMAN. Why shouldn't that be covered? Isn't a boarder a dweller? And this language seems clear enough to me that Mrs. Murphy's boardinghouse is included in section 402, because the boarder uses the boardinghouse as a residence and he is a dweller in that particular establishment and therefore is included, and he should be included.

Secretary WEAVER. I think the question that we were trying to turn our attention to was not whether it was a roomer or boarder, but whether or not this is a transient or whether it were a person of a more permanent occupancy tenure. I think this is the only issue that would be involved here.

Mr. CRAMER. Mr. Secretary, the practical aspect of this thing, it perhaps has a thrust broader than necessary to accomplish the basic objectives as I see it, and the experiences I have had in my district with retirees, widows who have a couple of extra rooms in their home that they rent out, they need it for income and they need companionship.

Now, do you believe that that type of situation should be covered?

Secretary WEAVER. Well, let me——

Mr. CRAMER. It is under the present title.

Secretary WEAVER. Let me say this: I think that there are some real dangers and possibilities of abuses if it is not covered. I think that there are some arguments that can be made as to the peculiar

nature of certain of these relationships, but I think on the whole and looking at it in total, that the possibilities of using the peculiar relationship of a few cases will lead to abuses and loopholes which may weaken the act materially.

I do not know how you can define in law the particular case that you were talking about.

Mr. CRAMER. Do you not think the poor social security widow who needs the income, needs companionship, and has a few extra rooms, does she not have certain rights that likewise, if possible, we should try to protect, at the same time trying to carry out the objectives of the preventing racial discrimination?

Secretary WEAVER. Yes, but again, I have not yet seen a statute drawn up in such a way that this particular individual is, No. 1, identified from the person who has a roominghouse where many poor people have to live, who has a very personal relationship with her tenants, and I think that this is the problem that is involved here, plus the fact that you weaken the law when you begin to make exceptions.

Mr. CRAMER. The State of Minnesota, as has been pointed out previously, has certain exceptions: rental of a unit in a two-family, owner-occupied dwelling, rental of a room or rooms in an owner-occupied, one-family dwelling, sale or rental of an owner-occupied one-family apartment dwelling.

The State of Minnesota had no difficulty, evidently, in spelling out what they thought were reasonable exceptions. Many other States have similar exceptions. I gather you feel those exceptions should not be made in the bill before us?

Secretary WEAVER. Your belief is accurate and I would say the reason for that is that this whole matter of legislation in this and other fields is an evolutionary matter and the earlier legislation in the field becomes perfected as time goes on and as experiences develop, and I think we are now at a point where we have to make a real thrust at this and I think the real thrust would not be done with the exception of one-family house or two-family house.

Mr. CRAMER. Let us assume in a situation I have previously discussed, and that is the bank that is on the surface discriminating; there has been a complaint they are, in fact, discriminating. The portfolio indicates no inclusion of minority groups of loans made. There is a charge made by the State.

Would that bank be instructed to accept applications from everyone regardless of race, color, creed, or religion? The bank continues, you instruct the State to take action. The State does not take action. Do you think that would trigger the withholding of Federal funds to that State in any program?

Secretary WEAVER. I do not believe that it would. Again, I am talking off the top of my head. I think in the first place, that such action, if it were taken, would be the final action and not the initial action taken.

I think there are other forms of relief and other forms of activity that are available which would be taken before that were taken, if that were taken.

Mr. CRAMER. Do you think that would give you authority to bring into play title VI of the 1964 act, nondiscrimination in federally assisted programs?

Secretary WEAVER. No.

Mr. CRAMER. You have some thought, though, that you might, under those circumstances or similar circumstances, have the authority to withhold Federal assistance to a State that does not cooperate?

Secretary WEAVER. Well, I would like to—I would like to check this out, but as a practical matter, let me say, as I said before, that withholding of funds to the State is not an immediate action. It is the last resort and I think there are other—both administrative and other—actions that would be taken certainly short of that.

Now, if you had a consistent and a stubborn situation where every other activity had been not effective, then it would seem to me that this might be the action that would be taken, but I certainly do not think you would take that as the initial action in a situation like this, because the law does provide certain other remedies that could be used.

Mr. CRAMER. The reason I asked the question, very intentionally—in title VI there were intentionally put into that act certain protections to the States and certain opportunities to give them a chance to conform, for instance, until the department or agency has advised the appropriate person or persons of the failure to comply with the requirement to determine that the compliance cannot be secured by voluntary means.

Then, the agency or department has the right to a hearing. Now, what would be the procedure, and it is not set out at all in this section 408 what the procedure should be—what would be your procedure in administering this title?

Secretary WEAVER. I would have to read that amendment very carefully.

Mr. CRAMER. That is in the present law relating to title VI: Withholding of Funds. Would you contemplate using the same procedure under section 408 in administering this act?

I raise the question because I asked the Attorney General previously as to whether he felt a conciliatory action, some type of conciliation and negotiation with the aggrieving party or agency should not precede Attorney General action based upon a pattern of practice in section 408, which is precisely what we wrote into title VI?

Secretary WEAVER. I cannot speak to the Attorney General's action on this. I think here under the 408 it would be section E, administer the program and activities relating to housing and urban development in a manner affirmatively to further the policies of this title.

This is affirmative action. I think it involves, as I said earlier, that we would be sure that our regulations were in conformance with this. We would be sure that our administrative action insofar as how we made selections and what we would do and where we would do it and so forth, would be in accordance with the spirit and the letter of this law.

I do not see in here that the affirmative administration would mean that we would initially cut off funds, but I would not like to say that this would not be a possibility if we had a stubborn situation and nothing would develop.

But here again, the regulations would have to be developed and they would be developed by us in consultation with the Attorney General as to what legal authority we might have in this regard.

Mr. CRAMER. In your opinion, you would have authority to recommend either your agency or others take affirmative action in withholding of Federal assistance or Federal guarantee of loans? If discrimination were shown, that is?

Secretary WEAVER. Well, as far as recommending to other agencies is concerned, I do not think we have any authority to do that at all.

Mr. FOARD. No; there is no authority in here with respect to that.

The authority under title VI to withhold funds is limited to our programs and it can be applied only to the specific programs involved in the violation.

We could withhold funds under our own program administratively in the event of a violation, but that would apply only to violations in connection with our programs.

Mr. CRAMER. If this came to your attention, the example I mentioned of a bank—no minority groups included in the portfolio, as a matter of long-standing practice—an action brought by the Attorney General would not necessarily have to be a condition precedent to your action. Would you then recommend to the Home Loan Bank Board that they take such action as they deem appropriate inasmuch as you have found this condition to exist?

Secretary WEAVER. If we found this condition to exist, we would certainly, No. 1, share that information with the Home Loan Bank Board, and we would assume they would take whatever actions they should take. We would simply transmit this to them.

Mr. CRAMER. Under 408(c) you would have that authority, would you not, cooperate with, render technical assistance ot other Federal, State, local, public or private agencies—and so forth?

Secretary WEAVER. I do not think so. I think that says in effect that we are to render technical assistance wherever we have it in order to help people to do what they want to do.

I think this is a matter of our lending our technical knowhow, if we have any, to assist all of the other agencies and parts of Government which are faced with these problems, to solve them.

Mr. CRAMER. Let me ask just one other question on this specific point. If these facts were brought to your attention, would you follow the procedure presently set out in title VI, permitting the agency that is administering this loan program, in this instance the bank and the State comptroller, an opportunity to be heard?

Secretary WEAVER. I do not think we would probably be involved in this with the State bank or the State comptroller.

I think this would be between him and the Attorney General. The only place where we are involved in this administratively as far as taking action is concerned relates to programs which are under our Department. They are spelled out in section 408(e).

Mr. CRAMER. Let's take an urban renewal agency, then, administered by local urban renewal commission, under the authority of the State, the State agencies, Governor and so forth. Would you give them an opportunity to be heard before you recommend the withholding of funds or taking such other action?

Secretary WEAVER. Under title VI that is already covered, and I think we are required under title VI to do that, yes.

Mr. CRAMER. Do you think that the title we have under consideration would permit you to do so without a hearing?

Secretary WEAVER. Well, I do not know whether it would or would not, but I do not think we would do so——

Mr. CRAMER. This is relating specifically to housing: Is it not true that title IV would give you the authority to withhold and take action necessary, as provided for in title VI of the existing law?

Secretary WEAVER. I would doubt very seriously if we would withhold funds in any instance without some sort of a hearing, as an administrative principle which we have followed in comparable situations.

Mr. CRAMER. How often have you had occasion to use title VI relating to federally assisted programs in the present law?

Secretary WEAVER. Well, what part of it, do you mean withholding funds?

Mr. CRAMER. Withholding funds, or suggesting a violation has occurred and hearings have been held?

Secretary WEAVER. Not too frequently. I can check that out.

Mr. CRAMER. Why not? Has there not been a violation of the recipients or the agencies that administer automatically confirmed, or what?

Secretary WEAVER. No, we have a system under title VI——

Mr. SAUER. Under title VI the compliance program is initiated originally by the request for an assurance or statement of compliance from the recipient, whatever that may be. It may be the local housing authority or local public agency administering urban renewal, or a college or anyone else, any other institution.

Now, those assurances have been received. The regulations were effective in January 1965, and we are at the stage now where we are requiring compliance reports from the various recipients of Federal funds.

We have processed numerous complaints, but we have never had occasion as yet to actually withhold funds from any recipient.

Mr. CRAMER. You have had complaints; have you held hearings pursuant to title VI?

Mr. SAUER. We have never found it necessary to reach that stage, because the complaints were resolved amicably.

Mr. ROGERS (presiding). Just for the record, identify yourself.

Mr. SAUER. My name is Robert Sauer. I am director of the equal opportunity standards and regulation staff of the Department of Housing and Urban Development.

Mr. FOARD. I am Ashley Foard, acting director, office of the General Counsel.

Mr. CRAMER. The agency conforms or you do not make the money available to them in the first instance? That is practically how it works in the school program.

Secretary WEAVER. What we do in our programs, when the agencies come in for new funds, they have to make an agreement to follow the requirements of title VI. And this is put in as a part of their contractual requirements with us.

In the case of urban renewal, there is an agreement requiring that the land be so utilized over a period of time for a particular purpose and in a nondiscriminatory manner.

We then follow up to see that these commitments are being carried out. We are now in the stage of following up. If we get a complaint, we investigate the complaint.

If the complaint is not amicably satisfied, we will have hearings, and if the facts then warrant, we will go ahead and take whatever administrative action we can take, including withholding funds if necessary.

We have not as yet withheld them.

Mr. CRAMER. In fact, no hearings have as yet been held?

Secretary WEAVER. Not yet.

Mr. CRAMER. That is what disturbs me with the education program in the withholding of funds, the experience has been in a number of areas where if the local school board did not conform with the regulations, and refused to state so, they withheld the funds rather than holding a hearing. To what extent could you conform? Is this moving too fast in the area and so forth?

I think the Congress wrote into it the procedure, so that local agencies would have a chance to be heard. I would hope that in administering this title, likewise hearings would be held.

Secretary WEAVER. All I can say to that is, this has been the administrative technique we have used to date and I think we would continue it, provided it was consistent with the law.

Mr. CRAMER. Do you feel that the Executive order in existence might have been more effective had its scope been broadened?

Secretary WEAVER. Yes.

Mr. CRAMER. Then there are areas where the Executive could have issued regulations to cover a substantial portion of areas not now covered and that would be covered under this title?

Secretary WEAVER. The difficulty there is that the definition of "substantial proportion," as I said earlier in my testimony. We are convinced that if the most inclusive order, Executive order, that anyone has yet proposed that looks as though it were in the realm of possible legality, had been issued, only about 60 percent of the market would be covered and a 40-percent escape hatch vitiates the effectiveness of that type of approach.

Mr. CRAMER. The reason I asked the question—one reason. I was rather interested in the statement as I read it from the distinguished Senator from New York, Senator Javits, who is, of course, extremely friendly to these programs, to the effect he felt if the Executive had gone as far as it could go under present law. But the larger portion of the problem would have been resolved.

Why has that not been done? He said 80 percent of it, as I recall. Why has that not been done?

Secretary WEAVER. I disagree, No. 1, with his figures, and No. 2, with his analysis.

The reason that it has not been done is because—two reasons: In the first place, there are legal problems which I think even my good friend, Senator Javits, would recognize and does recognize as to how far one can go in this area by Executive action. There is no question. He says 80 percent; I say 60 percent.

I think the 80 percent is a figure that we issued before we had done our research as carefully as we have done now, so maybe he would

accept the 60 percent now. But be that as it may, you still have a substantial escape hatch which makes for a very, very unhappy situation, both administratively and also from a point of view of equity. And you are going to be effective in 1966 in this field, I think, only if you have to have a broad approach and not a segmented approach. And the only broad approach that I know that you can get to be comprehensive is going to be through a legislative device.

Mr. CRAMER. Be it 70 or 80 percent, whatever the percentage is, there are substantial areas that are not covered now that could be covered by Executive order. My question is: If this is such a great need and you are asking the Congress to take this step, why has not the Executive been willing to take the necessary steps to carry out the full thrust of Executive powers to accomplish the same end?

Secretary WEAVER. There are two reasons: There is a difference of opinion among legal authority as to how far the Executive can go. As I said earlier, if the degree which is the farthest that anyone can contemplate were used, you would still only have 60 percent coverage. I do not think 60 percent coverage will do today.

I think you have to have complete coverage and this is why the only way you can get that is by the legislative route, and this is why the legislative route is the necessary route.

Mr. CRAMER. Assuming that regulations were adopted to cover all the programs that you could, it is true also, is it not, that there is presently in existence in title 42 of the United States Code not only the section you cited relating to property rights of citizens, all citizens of the United States shall have the same right in every State and territory as is enjoyed by white citizens thereof to inherit, lease, sell, or hold personal property.

But there is a civil action already in existence to take care of that, section 1983 of title 42, United States Code. Every person who under color of any statute, order, regulation, custom, or usage of any State or territory subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution—and so forth.

That would cover any program under your jurisdiction.

Let me ask you this question: If legal action is so necessary, what legal action has your Department recommended to the Attorney General under existing law?

Secretary WEAVER. I am not sure I follow you.

Mr. CRAMER. Under this statute.

Mr. FOARD. To my knowledge we have not made any recommendations for action under that statute at all.

Secretary WEAVER. Let me point out two things: First, I think that the matter of the legal interpretation, the legal coverage are matters that fall under the jurisdiction of the Attorney General, and I feel that he should be the person to reply to those.

I do want to point out something that falls within my area of competence. That is the fact that when you begin to get into those areas where you are attempting to secure equal opportunity through financial institutions, you have the problem of how this is to be administered if it is under Executive action and if this is going to be administered, including those institutions which have insurance for their deposits.

You are placing upon the private banks the responsibility for administering this particular proposal and I think this is absolutely unrealistic. I do not think you are going to get results. I do not think they can do it and I do not think this is a viable means of getting enforcement.

Mr. CRAMER. I think the recommendations, for instance, of the Commission on Civil Rights, and the legislation previously passed by the Congress, has at all times suggested that mediation, conciliation, discussion of these problems, and an effort to solve them on the basis of sitting down and working out the problem, if possible, has been followed, has it not?

That has been the pattern of the recommendations, and the actual statutes enacted. Now, why would you object to providing similar machinery in this new approach to a new subject?

Secretary WEAVER. I would have to see what the machinery was before I could answer this. I think there would be the question of the nature of the machinery rather than the ideological question of whether machinery of that type should be utilized.

In our own approaches we have utilized conciliatory machinery and will continue to do so. But I do not think you can rely on that machinery alone, and I think there are grave dangers in having so much machinery that you are negotiating and investigating so long that by the time you get all the facts in, the development is completed or the house is completed and the apartment is completed and nobody gets anything but an academic victory.

Mr. CRAMER. I am referring to the U.S. Commission on Civil Rights on housing, hearings that were held and recommendations that were made, 1959, and Senator Javits testified at that time to this effect relating to the State commission against discrimination:

> In New York we felt very strongly, said publicly, and indeed our views prevailed, that the process of mediation and conciliation and technical assistance then backed up by civil injunction power of the Courts was the right way for us to deal with the problem, which involved so much emotion and had such deep social implications, and that criminal law, in fact, was the wrong way.

Now, where is the conciliation and mediation possible under this title? That is what I am getting at.

Secretary WEAVER. Which title?

Mr. CRAMER. IV. That is what I am getting at.

Mr. ROGERS. If the gentleman will yield, we have gone a long way since 1959, and I think citing a man's statement back that far is not pertinent today.

Mr. CRAMER. New York law still provides the same procedure and Congress wrote the similar procedure into the 1964 act.

Secretary WEAVER. I might note since I am from New York, that the New York law to which the Senator referred to in that hearing has been changed since he made that statement. It has been strengthened a great deal and it has gotten a much more effective instrumentality in its present form than it was at the time that that testimony was given, so this, I think, demonstrates the fact that we are moving and that the things that might have seemed possible and desirable and feasible in 1959 are not now sufficient to meet the needs of 1966.

Mr. CRAMER. The 1964 act so spoke. Why should not this have a conciliation, mediation tool?

Secretary WEAVER. I think it does have it to some degree. As I recall the testimony of Attorney General Katzenbach, he spoke of the utilization of the Community Relations Service, and by section 408(d) I am authorized to cooperate and render such technical and other assistance to the Community Relations Service, which obviously implies that the Community Relations Service will be utilized in this.

And also under 408(c) I am told to cooperate and render assistance to all of the people who are involved in carrying out this program, which means that there will be negotiations and there will be the type of activity short of a withholding of funds in carrying out this program. Certainly by implication, it seems to me it is there.

Mr. CRAMER. That is what I am concerned about basically, and I think my questions lead to that conclusion. I think some of your answers justify the concern that the effect of passage of this title would be as follows: the authority given your Department under this title, could easily result in an end run around the safeguard procedures set out under title VI of the existing law.

And having helped draft that and including the necessary conciliation—notices to the States, rights to hearing, right to review of those hearings, other safeguards written in, I do not want to see them negated as protection and resulting in accomplishing this objective through consultation with the administering agencies.

Mr. FOARD. Congressman Cramer, as to private parties, in view of the rights given to parties for injunctive relief and damages here, there could be conciliatory arrangements between the private individuals, between the plaintiff and the defendant here which would be on top of the Government conciliatory services as to public actions.

Secretary WEAVER. I would like to point out another thing. That is, if you look at 408(e), this relates to the program of our Department. These are primarily concerned not with States, but either—mostly with private individuals under the mortgage insurance program, to some degree with local governments, to the public housing and through the urban renewal, and insofar as the public housing and urban renewal activities are concerned, they are already covered by title VI of the 1964 Act in which you have the conciliation protection which you are concerned with. So that as far as our relations with public agencies are concerned, we are already covered by the title VI in 1964. There would be no problem there.

Mr. CRAMER. It is true, is it not, under section 408, your power to make studies goes far beyond what your present statutory authority is relating to specific programs? Your study power is much broader than that, any area of "discriminatory housing practices"?

Secretary WEAVER. I think there is nothing in our present authority that would prevent us from making studies of any nature, this simply directs us to make studies of this nature. This does not give us any authority that we did not have before. It simply gives us an injunction to use the authority in a specific area which we already have.

Mr. CRAMER. I hope you don't——

Secretary WEAVER. There is nothing in our present law that prevents us from making studies of this type. The problem is—and we have already done so, I might say.

Mr. CRAMER. I hope you do not use it as a basis for fishing expeditions and requiring a lot of information not necessarily related to this

subject matter, as some other agencies have used that authority in the past. People in business today are already overloaded with paperwork required by the Federal Government and already are subject to interrogations of all sorts.

And I would hope that this section 408, power to make studies, will be used with discrimination.

Secretary WEAVER. I would like to say two things in that connection: The first thing is, as I said before, this does not give us the power—this gives us the direction to do this. We already have the power.

Secondly, I do not think that we have harassed the industry or individuals to date in any of our studies. And finally, I must point out for the record, however, that the guy who is the guiltiest guy is the guy who is going to say that he is being harassed.

Mr. CRAMER. One more question: Mr. Secretary, under title IV of the bill, section 407, the Attorney General's power to bring action against a pattern or practice, would you comment on what your role would be in either preparing or suggesting cases to the Attorney General?

Secretary WEAVER. I think we would have several roles here and I will have the General Counsel elaborate on it.

In the first place, the one that you suggested earlier, where an individual would complain to us of any situation which would be outside of the purview of our Department where we could not take any administrative action, where we would not have any administrative requirements.

Secondly, where we have exhausted our administrative activity in a program that related to our own agency, or where there is a situation which obviously requires quicker action perhaps than could be taken by our agency we would in every instance, I think, refer such matters to the Attorney General. I think we would also keep the Attorney General informed as to what complaints and what situations were before us.

Mr. Foard, do you want to elaborate on that?

Mr. FOARD. I think that covers it. It would be basically a matter of us giving information to the Attorney General, as we would with respect to other laws which come to our attention. It is just that here inasmuch as we would be participating in these operations with respect to our own programs, more information of this nature would now come to our attention.

I think we would follow what the Attorney General wanted us to do and what he requested.

Mr. CRAMER. The point I am making is that it is not contemplated that it is necessary for there to be a complaint before you would make such a recommendation to the Attorney General. If you came across information that might indicate a pattern of practice from your section 408 studies, that, too, could be a basis for your recommendation, could it not?

Secretary WEAVER. Well, yes; I think obviously the intent here is, as I read the proposed legislation, for us to conduct studies to indicate the general trends and the general situation. We would certainly share these with the Attorney General and this would be a part of the

fact-finding activity which would be the basis on which he would develop his programs and at the same time they would also be the basis on which we would develop our programs.

Mr. CRAMER. So the Federal Government itself would be in a position to make investigations, studies, and so forth, based upon which the Attorney General could then bring a suit. He does not need a complaint of an individual, group of individuals, or otherwise?

Secretary WEAVER. I think as I remember the statute, proposed statute, that it says that where there is a pattern of discrimination the Attorney General can act, and as I recall his testimony he described what a pattern was and I think it may be pertinent as someone said earlier, this is the direction which New York State has been moving.

Mr. CRAMER. That is all I have, Mr. Chairman.

Mr. ROGERS. Mr. MacGregor?

Mr. MACGREGOR. Mr. Secretary, I left the room for a moment or two to answer a telephone call from Mr. William McCulloch from Ohio, who unfortunately is detained on business of long standing in Cincinnati, and wishes me to express to you his regret that he is not here personally to discuss these issues with you this morning.

Mr. Secretary, often those of us who are desirous mutually of reaching the same goals have trouble with communicating properly with one another. I have carefully read your formal statement here this morning and I have noted your use of the word "ghetto" several times on pages 10 and 12 of your statement.

In the interest of understanding one another exactly, would you tell me what you feel that term to include as you use it in your testimony here?

Secretary WEAVER. I use the term "ghetto" here to describe a situation in the housing market where a large segment of the population, an identifiable segment, is generally restricted to well-defined areas of occupancy and does not have free access to the total housing market. This is an involuntary form of residential segregation to which I refer.

Mr. MACGREGOR. The word "ghetto," of course, has come into very popular and frequent modern usage and I suspect it is a much broader term than the original use of the term to describe the Jewish quarter of ancient Rome.

Secretary WEAVER. It is a modification of this, of the same family, but a different type of city.

Mr. MACGREGOR. Your use of the word here then today, Mr. Secretary, does not necessarily include any classification of housing as to being standard, substandard, rat-infested, or otherwise, but refers to the fact that it is segregated by race?

Secretary WEAVER. Yes; but unfortunately as time has gone on, the features of the ghetto have changed. I think that the word has two connotations. First, it has the connotation of this segmented market and of this enforced segregation which creates a ghetto, then the modern ghetto, the American ghetto, which becomes an area which is occupied almost exclusively by minority groups to which most of the members are restricted either to that or a similar type of neighborhood, and in which you have high incidence of substandard housing, in which you have high incidence of slums and which you have all the social and difficult problems that are associated with bad housing.

Mr. MacGregor. Let me explore that for a moment because in your testimony you give examples of several housing projects one or more of which may be free and open to members of all races and the great majority of which may be segregated.

You indicated in your formal statement that this process tends to not only drive up the prices available to the Negro and other nonwhite families but tends to concentrate Negro families into one or more of those housing projects.

Is this the case in Long Island, for example, where if I am correct, Levittown and other major developments have been free and open to members of all races since their original construction?

Secretary Weaver. I regret to say that was not true of Levittown, it was not open originally, it was only opened many years after it had been established, it was a cause celibre of the instance of residential segregation and nonwhite exclusion and it was probably a decade after it had been built and occupied that a token number of nonwhite families were admitted.

Mr. MacGregor. When was tokenism eliminated in Levittown?

Secretary Weaver. Anywhere from 5 to 10 years after the development was completed.

Mr. MacGregor. And in that 5 or 6 years has that housing project deteriorated so as to become substandard in any way?

Secretary Weaver. No: the number of nonwhites, for what reason I can not tell you, I do not know, has been very small. There was a little bit of flap when they first were introduced and as a result I might say of the New York State law primarily, but after they were I think things have moved on without any difficulty and certainly has had no adverse effect upon property values.

Mr. MacGregor. This is what I specifically wanted to bring out because I did not want, Mr. Secretary, to be left here in the record any implication that merely because some housing projects are free and open to Negroes that they became ghettos.

Secretary Weaver. No; what I think I was trying to say, and I was trying to capsule it, was this: That in a housing situation where most of the desirable areas, certainly most of the newly constructed areas are not open to nonwhites, if you open one or two there is a pent-up demand and then you get a large number of nonwhites moving in because they do not have the freedom of choice, they have just a little bit of freedom of choice, and instead of distributing themselves around where they would have the type of impact they had on Levittown which would be minimal, you get an inundation and this is what causes the fear among the existing older residents that there is going to be inundation, this is what permits you to have blockbusting, this is what permits you to have panic selling, and this is what causes rapid change in the racial composition of the neighborhood with a concentration of nonwhites. This did not happen in Levittown, largely because Levittown is out from the beaten path and is in an area which is quite removed from any concentration. If Levittown had been in the heart of Manhattan this would have been a different situation in all probability.

Mr. MacGregor. But the development that you describe where there is a rapid influx of Negroes, for example, into a housing project,

does not necessarily produce a ghetto in the sense that the housing becomes unattractive or even substandard?

Secretary WEAVER. No; it does produce very often—if it is one in a unique situation—it does produce a rapid transition, first from all white to racially mixed, then to practically all nonwhite, as a matter of fact, over the short run property values go up because one of the reasons that the whites leave is because both they on their own and because of the real estate blockbusters who come in and buy up properties at a low price because of fear and sell them at an inflated price, or else if they are just interested in a commission, say "Look, you paid $12,000. it was worth $14,000 last week, but now we can get $17,000 from a house-hungry nonwhite family." So this is the process that goes on, and the result is that, No. 1, you get this rapid transition in racial occupancy, No. 2, the nonwhite family, because it is restricted, pays much more than the price at which property would be sold to a white family and more than it is worth over the long run, and you get an artificial movement of people away from one or two areas.

Now, if the coverage were universal this would be impossible.

Mr. MACGREGOR. So we may conclude this point, your use of the word "ghetto" here in your testimony and in answers to questions, Mr. Secretary, describes a situation of racial segregation and not of quality of housing?

Secretary WEAVER. Yes; but actually it does both because when I speak of the ghetto I am speaking of these large concentrations and I am speaking of areas which become neglected, I am speaking of areas which become overcrowded because of the whole economics of the segregated market.

It is the segregated market that creates the bad housing, but it is the ghetto that leads to the segregated market or what is the reflection of the segregated market.

The CHAIRMAN. Will the gentleman yield?

Mr. MACGREGOR. Yes, of course.

The CHAIRMAN. Of course the term "ghetto" comes out of Europe. It means the "pale of settlement." and these pales of settlement existed in most of the countries like Russia and Poland and Austria and Rumania. It meant that there was a certain geographical area where the Jews had to live, where they were compelled to live. And Harlem is the ghetto, or the Bedford Stuyvesant section of Brooklyn is the ghetto. not in the sense that the Government compelled people to live there but economic conditions compelled them to live there. And the general situation is they cannot live elsewhere with the whites so they are compelled to live in the segregated area, in that sense and in that sense only is the word "ghetto" really applicable to any Harlem or Stuyvesant Heights or Watts in Los Angeles.

Secretary WEAVER. You are perfectly right. What has happened and I was partly responsible for this, has been the application of a word to a modern situation which differs from the original situation in which the connotation of the word represented government action as you so rightly point out, as contrasted to market action.

Mr. MACGREGOR. I appreciate the chairman's development of this point. While the chairman was briefly absent from the room I started my question from the fact that "ghetto" was formerly a proper noun. It was spelled with a capital and started in the Ghetto in Rome.

Mr. Secretary, referring to the regulations you and your Department promulgated pursuant to President Kennedy's Executive order of late 1962, will you please detail for me and for the record the existing exception or exceptions that are written into current regulations?

Secretary WEAVER. I think I can say that a quick way: it is any one- or two-family dwelling which has been occupied by the owner.

Mr. MACGREGOR. Owner-occupied, single-family dwellings, first; and, second, owner-occupied two-family dwellings.

Secretary WEAVER. Yes.

Mr. CORMAN. Will the gentleman yield at that point?

Mr. MACGREGOR. In a moment I will, Mr. Corman.

Does this cover just sale or do the exceptions also cover rental?

Secretary WEAVER. Both.

Mr. MACGREGOR. So that at the present regulations promulgated by the Department of Housing and Urban Development, pursuant to President Kennedy's Executive order of late 1962, except or exempt from the coverage of the nondiscrimination provision single-family owner-occupied dwellings and double-family owner-occupied dwellings, and runs to both sales and rentals of those housing units?

Secretary WEAVER. Yes, sir.

Mr. MACGREGOR. I will yield to the gentleman from California.

Mr. CORMAN. You have excluded the part of the answer that I was concerned with, because I think in a prior opinion in the record reference was made to single-family residences two or three times without the additional qualification of its being owner occupied.

Secretary WEAVER. You are right.

Mr. CORMAN. As I understand it, single-family residences that are not owner occupied are covered by the order.

Secretary WEAVER. Let me put it this way. As soon as an FHA-insured single- or two-family dwelling becomes owner occupied it is exempt and remains exempt.

Mr. MACGREGOR. I appreciate the gentleman from California stating the point I was trying to clarify and the Secretary clarified very well.

Mr. Secretary, what are the reasons for the exceptions or exemptions that you have just outlined?

Secretary WEAVER. As I tried to explain earlier, and I think it is in the record, but I will be happy to say it again, the main reason is because this is a segmented approach rather than the comprehensive approach that we are talking about.

Secondly, that the Executive order obviously has to be enforced by administrative actions and the administrative actions involved here are usually very time consuming; you have a complaint; to investigate the complaint you have to then get the parties together and then you have to try to resolve it. By the time you do that on an individual single-family or small two-family owner-occupied dwelling the whole process is done, the sale has been made, and all you can do is to either—we have no penalties in our Executive order—I mean we cannot penalize the owner for doing it, all you can do is to make a finding that he should not have done it, and he is then out of the market until he sells again, but that particular unit is out of the market, whereas, if you have the subdivision which may be made up of single-family

or two-family houses but they are not owner occupied, which is being developed by a developer and if you get the fact that 221 A street is in this situation and although the sale would be consummated or the lease may be consummated there are other sales or leases in that development which you can then effect a change in the pattern by saying that a willing and able other buyer, or that same buyer, who came up with the original complaint, is accommodated in another unit rather than in that particular unit if it has already gotten off of the market, either as a rental unit or as a sales unit. This was why this was done here, the remedies are not only administrative but also judicial and therefore it is more applicable here and also this is comprehensive.

Mr. MACGREGOR. With respect to the exceptions as they exist in current regulations promulgated by your Department, then, there was no legal reason or no lack of authority which necessitated the exception?

Secretary WEAVER. Definitely, this was an administrative action which was taken.

Mr. MACGREGOR. Based upon judgment?

Secretary WEAVER. Based on judgment and based upon the efficacy of doing this this way as contrasted to eliminating them, concentrating in the areas where more productive results would occur.

Mr. MACGREGOR. Was the judgment decision then based exclusively on administrative considerations, or were there also considerations of propriety or the balance of individual rights?

Secretary WEAVER. I would say that the first concern was the administrative problem and I would say that it was predominantly an administrative decision. The other was—we were conscious of but I do not think the other was the determining factor.

Mr. MACGREGOR. In other words, you were conscious of strong differences of opinion among the American body politic as to whether or not regulation should go that far and, secondly, whether or not you would gain compliance, I expect, with the regulations if you did make them as broad as title IV is now drafted.

Secretary WEAVER. I would say as I said earlier, primarily we looked at this from the point of view of what can we do most effectively with the instrumentality that we have or the leverage we have and we came out to the decision that we could concentrate most on the multiunit rather than on the individual unit. When I say, "multiunit" I do not mean structure, I mean as far as ownership is concerned.

Mr. MACGREGOR. And as far as a housing project is concerned?

Secretary WEAVER. Then I think that once this decision had been made the other things were not the determining factor.

Mr. MACGREGOR. Mr. Secretary, you and Mr. Cramer talked percentages a while ago and Senator Javits' 80 percent, your original 80 percent, and your revised 60 percent. In that connection, what percentage of the overall housing market is now covered by your Executive order and the regulations that you have promulgated?

Secretary WEAVER. In 1965 about 17 percent of newly constructed units were assisted by FHA and VA financing.

Mr. MACGREGOR. Yes.

Secretary WEAVER. However, less than 3 percent of the existing nonfarm housing supply is covered by Federal nondiscrimination requirements.

Mr. MACGREGOR. I believe that is in your statement.

Secretary WEAVER. Yes, it is less than 3 percent of the total housing market.

Mr. MACGREGOR. Right, that is what I wanted to pin down because we had to talk about percentages some time later than the time you talked about percentages in your opening statement.

How would that 3 percent be, to what extent would that 3 percent be expanded if you were to eliminate the exceptions or exemptions that are contained in your present regulations?

Secretary WEAVER. I would have to do some lightning calculation. I would be happy to supply that for the record.

(The information follows:)

First, it should be noted that the Veterans Administration and the Federal Housing Administration, by regulation, exempt from coverage of the nondiscrimination requirements of Executive Order 11063 all one- and two-family owner-occupied dwellings. Accordingly, if such one- and two-family existing dwellings financed with FHA-insured and VA-guaranteed loans had been subject to the Order, an additional 2 percent of the total nonfarm inventory would have been subject to the Order. Thus, approximately 5 percent of the total nonfarm housing supply would be covered instead of the 3 percent figure which was used earlier. Furthermore, in addition, about 1 percent of the existing nonfarm housing supply sold with FHA and VA financing each year would become subject to the Order.

Mr. MACGREGOR. Without prejudice to your later supplying it, could you give us a rough idea for us here, with the understanding that nobody is going to hold you to your rough estimate?

Secretary WEAVER. I would guess it would go from the present 3 percent to somewhere about 5 and 10 percent.

Mr. MACGREGOR. That, of course, would cover virtually all new housing.

Secretary WEAVER. It would cover practically all new housing, yes, but the new housing is only about less than 3 percent of the total in any year.

Mr. MACGREGOR. I thank you, Mr. Secretary. That concludes my questions, Mr. Chairman.

The CHAIRMAN. The Chair wants to announce that we have a delegation from the Minnie Howard Elementary School present, particularly the seventh grade, headed by Chuck Corman, who is the son of our distinguished member from California. We welcome the students of the school.

Are there any other questions?

Mr. MACGREGOR. I have no further questions, Mr. Chairman.

Mr. CORMAN. Just if I may on one point, Mr. Secretary, because I suspect as we proceed we are going to hear some discussion about whether we ought to follow the practice of some of the States and eliminate some of the problems in this bill.

Is it fair to say that the fewer exceptions you have the greater is the voluntary compliance because of the fact that all elements of the market are playing the game by the same rules?

Secretary WEAVER. Yes, I think this is the basic thrust of this approach. As I said earlier, the thing that has to be constantly recog-

nized is that this is a comprehensive approach and that we know that in the past there are many persons, and I alluded to this in my testimony, who do not have strong feelings against having open occupancy and I am speaking of people in the housing industry, but who are hesitant to go out and to be the first one or to be one among few, lest two things happen, and this has happened, and this happened in a city which I shall not identify, but where in an urban development area a large corporation initiated open occupancy before it was required to do so under law, and its competitors, private developers, began to pull occupants and purchasers away from this by saying, "Look, if you live there you will be living in an area which will one of these days become all Negro, but if you move into our area you will move into an area which will support whatever fears you may have already."

In other words, this was just built in to support the fear approach which is so dominant here.

In addition, this gives security to the person who may want to do this, may be hesitant to do it but now he has the moral and the legal authority and almost the "Good Housekeeping Seal of National Approval" on doing what he wants to do.

Finally, of course, there is the fact that the way you get voluntary compliance is to have a requirement which ultimately will not be voluntary so therefore you are voluntary between the point where it comes up and sanctions are applied.

This is the way progress has been made in this field in the past and other fields, too, minimum wages, child labor, and everything else we have had.

The CHAIRMAN. In other words, Mr. Weaver, this bill will act as a shield rather than a sword. Rather than having tools for the purpose of prosecuting those who might violate it, it would be welcomed by many, many builders who will say, we have to live under it, therefore, we should not discriminate. That is what happened in a number of instances. It happened with reference to title II—Public Accommodations of the 1964 Civil Rights Act. We did not have to bring too many actions to get compliance with that act, there was a general feeling of acceptance. Do you not think there would be a general feeling of acceptance of this bill once we establish it?

Secretary WEAVER. I think there will be a more widespread feeling of acceptance than many people have an idea of. There are already several elements in the building industry which have come out for comprehensive coverage. They are merely willing to abide by it if others have to abide by it, too. This is universal.

The CHAIRMAN. The best illustration of that is in the Public Accommodations Act. There is general acceptance of that through the Nation now. Of course, there are sporadic instances of violation. When we passed the Public Accommodations Act, there was a hue and cry, but I would say that on balance there has been a general acceptance of the public accommodations provisions of our laws.

Secretary WEAVER. I would agree, and I would also like to reiterate what you have suggested, and I think all of those of us who have had anything to do with the development of this legislation and those in the administration who are testifying in its behalf, look at it not as

a punitive action, but as an action to encourage compliance and encourage results rather than to penalize somebody who does not perform.

This is a necessary requirement but certainly not the objective of this legislation, to penalize anybody. It is to encourage people to do what we think needs to be done, which I think the Nation knows needs to be done, and then to give them a justification for taking this on a voluntary basis.

The CHAIRMAN We thank you very much, Mr. Weaver, and your counsel, you have been very, very helpful this morning on this matter.

Our next witness is John A. Hannah, Chairman of the Commission on Civil Rights. He is represented this morning by Mr. William Taylor. We have a problem. We are not permitted to stay in session while the House is in session. We might be able to finish your statement and then I think you will have to come back at the next session of the committee, which will be next Tuesday at 9 o'clock.

Which do you prefer, to withhold reading your statement, or do you want to have it read now?

Mr. TAYLOR. I am at your pleasure. Whatever you would prefer, I would be glad to come back at the next session.

The CHAIRMAN. I think it would be better then. We only have 5 minutes. I think it would be better to come back Tuesday, and then we can start with your statement.

Would Mr. Hannah be able to come back on Tuesday, do you think?

Mr. TAYLOR. I can check that, Mr. Chairman.

The CHAIRMAN. Not that I do not want you. But if Mr. Hannah could possibly be here on Tuesday I think it would be well to have him here with you also.

Will you try to arrange that, if possible?

Mr. TAYLOR. I will find out whether that is possible.

The CHAIRMAN. The committee will now adjourn until Tuesday at 9 o'clock.

(Whereupon, at 11:55 a.m. the committee was recessed, to reconvene at 9 a.m. Tuesday, May 17, 1966.)

CIVIL RIGHTS, 1966

TUESDAY, MAY 17, 1966

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

The subcommittee met at 9:10 a.m., pursuant to recess, in room 1241, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rogers, Donohue, Kastenmeier, and McCulloch.

Also present: Representatives McClory, Hutchinson; William R. Foley, general counsel, Benjamin L. Zelenko, counsel, and John W. Dean III, associate counsel.

The CHAIRMAN. The meeting will come to order. Mr. Donohue.

STATEMENT OF HON. HAROLD D. DONOHUE, U.S. REPRESENTATIVE FROM THE STATE OF MASSACHUSETTS

Mr. DONOHUE. Mr. Chairman and members of the committee, it has been a most personally satisfactory experience and duty for me to have participated, under the dedicated leadership of our distinguished chairman and with the diligent cooperation of committee colleagues in the achievement of a most impressive record, over the past decade, of legislative accomplishment in the challenging field of civil rights.

Consistently, through the committee comments and urgings of recommendations for approval of the various civil rights measures already enacted, it was stated as a committee consensus that whenever more comprehensive or definitive legislation was required, this committee would promptly study the further and particular needs and offer additional and appropriate legislative proposals.

The past and current history of our attempted advances in the area of insuring the fullest exercise of civil rights by every citizen clearly reveals that the hour has now come for this Congress, as urged by the President, to legislatively implement its previous pledges that the promises of equal opportunity for each citizen, as outlined in our Constitution, shall be more realistically fulfilled through and by Federal Government direction and authority.

Mr. Chairman, the immediate inspiration for the introduction of my own bill, H.R. 12086, to provide additional protection for civil rights guaranteed by the Constitution of the United States and other purposes, presently being considered, with similar and related bills, by your distinguished committee, arose out of the universal observation from human experience that unfortunate incidents of marked and

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heavy violence inevitably develop from certain peaceful activities.

In response to the fact of this human experience and to forestall any expansion of the circumstances and temptations of racial violence and discrimination, which no worthy citizen desires, I earnestly hope this committee and this Congress will very soon demonstrate a renewed legislative disposition to make available to each and every American throughout this country effectively strengthened Federal legal instruments to encourage the freest exercise of constitutionally guaranteed rights and to designate appropriate penalties for violations of these rights.

Mr. Chairman, while I, in deference to the great number of witnesses waiting to testify and the great burdens upon this committee, have concentrated principally on one aspect of our current civil rights challenge I do not, by any means, intend to confine my interest to this one aspect but do most earnestly urge you to include, in your final bill, provisions designed to expeditiously eliminate racial discrimination, not only in the area of interference with the right of peaceful march and assembly and security from violence in lawful demonstrations of public opinion, but also in the equally vital areas of housing, public accommodations, employment and education. These basic areas are the foundation stones of our pledged and guaranteed American way of life.

Mr. Chairman, may I also emphasize that the central issues you are reviewing here are not confined to any one regional area of this Nation; these issues are truly and factually existent in every North, South, West, and East section of the country. They are not problems affecting just one race; they are a test and a challenge to all Americans deserving the distinction of that name. Americans everywhere in this country must face up to the stark truth that it is hypocritical and contradictory, as well as self-defeating in our struggle against communism, to pretend to aspire for world leadership until and unless we remove every provocation for the occurrence of racial strife in the streets of our cities and every racial discrimination practice from the foundation activities of our civilized society.

I well know that this distinguished committee will diligently review all the individual legislative proposals before you, and I am equally certain that out of them you will finally forge a persuasive recommendation that, when enacted, will substantially further the reality of America as the home of the free and the land of the just.

The CHAIRMAN. At our last session we were about to hear from Mr. William L. Taylor, Staff Director of the Civil Rights Commission.

Are you ready, Mr. Taylor?

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. You may proceed.

STATEMENT OF WILLIAM L. TAYLOR, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS; ACCOMPANIED BY HOWARD A. GLICKSTEIN, GENERAL COUNSEL; AND MARTIN E. SLOANE, SPECIAL ASSISTANT TO STAFF DIRECTOR

Mr. TAYLOR. Mr. Chairman, I am William Taylor, Staff Director of the U.S. Commission on Civil Rights. I am sorry that Dr. Hannah, our Chairman, could not be here today. I did speak with him after

the session last week and he has a commitment in Michigan that h could not avoid, but he did ask me to say that he has reviewed th statement that I am about to present very carefully and that he is i full agreement with the positions we take in that statement.

I would like to introduce on my right, Mr. Howard Glickstein, wh is the General Counsel of the Commission, and on my left, Mr. Martin Sloane, who is special assistant to the Staff Director.

I appreciate the opportunity to appear before your committee toda in support of legislation to afford protection for the rights of American citizens.

I have a prepared statement which I would like to submit for the record and I will try to condense it orally somewhat.

The CHAIRMAN. Do you care to summarize your statement or reac it all?

Mr. TAYLOR. I would like to go through most of it. However, I will omit portions.

The Commission is here today to support the objectives of H.R. 14765, to provide more effective and impartial means of administering justice, to better secure the right to equal educational opportunity and to equal access to public facilities, and to remove racial discrimination as a barrier to obtaining housing.

We have amendments and changes to suggest in the text of the bill, but they reflect a desire to make the legislation more effective, not any fundamental disagreement with its purposes.

Titles I, II, and V of this bill are key elements in establishing a system of administering justice which will protect the physical security of American citizens and assure that they receive equal justice under law.

I will discuss first titles I and II. The importance of equal opportunity to participate in jury service can hardly be overemphasized. The jury provisions of this bill are all part of an effort to end a dual standard in the administration of justice and to protect American citizens in exercising their constitutional rights.

As was said in the 1961 report of the Commission on Justice—

> Jury service is the only avenue of direct participation in the administration of justice open to the ordinary citizen.

It is also the only guarantee that accused persons will be tried by impartial juries, from the composition of which their peers have not been arbitrarily excluded.

Impartiality in juries is not only a matter of the state of mind of each individual juror. In our society it results from interaction of the views of people of differing background, race, and religion. What seems fair and equitable to one group may seem irresponsible or oppressive to another. The arbitrary exclusion of any group from jury service results in a distorted view of what is considered to be just or reasonable in our society.

In the South the exclusion of Negroes from juries may be used, in the words of Commissioner Erwin N. Griswold, "to perpetuate a system of social control." Crimes or civil wrongs of certain types, committed against Negroes or whites believed to sympathize improperly with Negroes cease to be crimes at all.

Titles I and II of this bill not only protect the right of Negro citizens to serve on juries, but are a necessary part of the Federal effort

to end racial violence, in that they increase the likelihood that persons committing such violence will be punished for their crimes.

With respect to title I, the Commission noted in its 1961 report the undesirable custom, in some Federal jurisdictions, of following local jury selection practices. The administration's bill to assure that the Federal grand and petit jurors be drawn from a broad cross section of the population of each judicial district or division would alter this custom. It would make the Federal jury system both uniform and a model for State practice. Its enactment would insure that juries would be drawn from every part of our society.

One important provision of title I is that which would raise the fee to be paid persons called for jury service. A recent case in the U.S. Court of Appeals for the Second Circuit, *United States* v. *Bowe*, decided April 28, 1966, noted that prospective jurors are sometimes excused from service because it would cause a financial hardship. The raising of jury fees, together with the new standards for excusing prospective jurors from duty, will insure that the poor are neither unfairly burdened by nor excused from such service.

A number of proposed amendments of a technical nature to title I and to other titles of the bill are embodied in a staff memorandum, which with the permission of the committee I will submit for the record.

The CHAIRMAN. Without objection that will be included.

(Staff memorandum follows:)

UNITED STATES COMMISSION ON CIVIL RIGHTS

STAFF MEMORANDUM

Subject: Recommendation for Technical Amendments to H.R. 14765.

Title I—Federal Juries

There are two areas in Title I where technical improvements should be made:

Summoning of jurors.—The Administration's Bill amends and renumbers the sections of the present law which would not be changed, but omits the provision now numbered as Title 28 U.S.C. § 1867, without adding a substitute provision. Present section 1867 provides for the summoning of prospective jurors at the time they are required to serve. This appears to be a drafting oversight and should be remedied.

Testing of jurors.—The Administration's Bill requires prospective jurors to appear personally before the clerk to fill out a juror qualification form. This would require prospective jurors to make a special trip to the Federal district court, often some distance from their homes, without any compensation. We recommend that the Bill be amended to permit the juror qualification form to be returned by mail and, if necessary, completed on his behalf by someone other than the juror. This would mean that the literacy test portion of the form would have to be administered by the clerk after the prospective juror had been summoned to the court for actual jury duty, and that all persons summoned would be compensated whether or not they were able to serve.

Title V—Interference With Rights

The Commission recommends that Section 502(c) of the Administration's Bill be eliminated for additional reasons to those stated by Mr. Taylor. This section repeals several of the criminal provisions of the Voting Rights Act of 1965. In a prosecution for interference with voting under Title V of the proposed bill, the Government is required to establish a racial motive on the part of the defendant. However, in a prosecution under those provisions of the Voting Rights Act of 1965 which this bill would repeal, racial motive need not be established. It need only be proven that the defendant deprived persons of rights secured by that Act. Section 501(a)(1) of the proposed bill, however,

should be retained, since it provides more severe punishment where it can be established that the interference is on account of race.

Mr. TAYLOR. With respect to the State jury selection, dealt with under title II, the Commission found in 1961 that "The practice of excluding Negroes from juries on account of their race still persists in a few States. The burden of combating such racial exclusion from juries now rests entirely on private persons—almost invariably defendants in criminal trials."

Therefore, the Commission recommended "that Congress consider the advisability of empowering the Attorney General to bring civil proceedings to prevent the exclusion of persons from jury service on account of race, color, or national origin." H.R. 14765 accomplishes this and goes further in its coverage of discrimination based on religion, sex, and economic status. The Commission endorses those additions.

While I believe the enforcement provisions of title II are appropriate, I also believe they can be strengthened.

Section 201 creates a right which it vests in potential jurors. Under section 204 the Attorney General and private litigants may enforce that right in injunctive proceedings. Criminal defendants are also empowered to enforce the law's provisions. We recommend that plaintiffs and defendants in civil litigation in State courts also be permitted to enforce the provisions of section 201, just as they are permitted to do under section 1867(b) of title I in Federal cases.

Sections 204 and 205 provide suitable discovery proceedings and impose the requirement of preserving jury records. A further provision should be added requiring the recording of racial data.

Establishing the race of each name upon relevant jury records would be an impossible requirement for most private litigants. The Attorney General, when he was here, outlined for you the extreme conditions of jury exclusion in Lowndes County, Ala., found by the district court on February 7 of this year.

In that case the Department of Justice expanded extraordinary effort to sift through the thousands of names of persons appearing on jury records and to establish the race of each person on those records which was not indicated on the records. Similarly, in Mississippi, where voter rolls serve as a basis for jury selection, State law prohibits recording the race of registered voters.

We recommend that whenever a prospective juror is called to demonstrate his qualifications for jury service, the State should be required to record his race, color, religion, sex, and national origin. This is necessary in order to make the discovery procedures and recordkeeping requirements of section 204 and 205 meaningful. It is noteworthy that the relevant provisions of title I, section 1865(a) impose a similar requirement on Federal jury procedures.

Finally, I believe title II would be improved by facilitating proof of jury discrimination. Consideration should be given to provisions such as those contained in the pending Fraser bill (H.R. 12818) creating a rebuttable presumption of jury discrimination where there is a recent court decree finding such discrimination of any protected class over a period of time.

I will now discuss title V.

Assuring that juries are selected in a fair and nondiscriminatory manner is one important prerequisite to deterring and punishing racial violence. But Federal criminal remedies must also be strengthened if this goal is to be accomplished.

We must develop effective legislative and executive measures to remedy the intolerable condition, found in parts of the Deep South of violence and intimidation which goes unpunished and undeterred.

Among the most notorious examples are the murders of the three civil rights workers in Neshoba County, Miss., of Lemuel Penn and Viola Liuzzo on the highways of Georgia and Alabama, of the Reverend James Reeb in Selma, Ala., and of Jonathan Daniels in Hayneville, Ala. These outrages have received extensive news coverage, in part perhaps because they involved persons who were not inhabitants of the Deep South.

But there have been numerous other acts of violence in some areas of the Deep South which have gone and continue to go unnoticed by the national news media. Twenty-six Negro and white civil rights workers were murdered between the sit-in demonstrations in 1960 and the spring of 1965. In addition to these murders, during the same period, there have been numerous shootings, beatings, bombings, and church burnings. In Mississippi alone, for example, there were 150 incidents of serious racial violence reported from 1961 to the middle of 1964. Such incidents are still occurring.

I would commend to the committee's attention a report which was just issued last week by the Southern Regional Council, called "The Continuing Crisis," May 1966, which sets forth some of the incidents of violence that have been reported from September of last year until, I believe, February of this year and they are numerous.

Now the problem is magnified by the fact that the assailants are rarely brought to justice. In 1964 and 1965 the Commission investigated racial violence in several Mississippi counties. In two of these counties, Adams and Madison, in our law enforcement report in 1965 the Commission found that:

"From September 1963 to September 1964, in Adams County and the surrounding area, four Negroes were whipped and a white civil rights worker assaulted, one Negro was shot and seriously injured, and at least one Negro was murdered. There were also cross burnings on several occasions and arson attempts on two Negro homes, as well as destruction by fire of four Negro churches and a Negro cafe. A climax was reached on the night of September 26, 1964, when the homes of the mayor of Natchez and a prominent Negro contractor were bombed. Law enforcement authorities failed to solve any of these cases."

The results in Madison County were similar:

"Civil rights workers have been active in Canton, the county seat, since 1962. The violence which occurred in 1964 was primarily directed at them, at their headquarters, the 'Freedom House,' and at local churches. In Madison County from June 1963 to September 1964 five Negroes were wounded by gunshot and the Freedom House was bombed twice and shot at on three occasions. Three other buildings in the Negro community were bombed, and four Negro churches were destroyed by fire. There were also several assaults on Negroes

and white civil rights workers. In only two cases were the persons responsible for this violence arrested and prosecuted, and in both instances the defendants pleaded no contest and received minimal fines."

The Commission found that the investigations of these incidents by the responsible law enforcement officials were perfunctory or nonexistent and that in some cases officials treated civil rights workers as suspects rather than the victims of the violence.

In effect, the Commission found that so far as Negroes and their supporters are concerned, the administration of justice has broken down in the South. To quote Commissioner Griswold, these persons march in the streets "not because the law is not clear, but because it has not been followed."

Since the time of the Commission's investigation, law enforcement has improved in some parts of the South. In many places political leaders and community leaders have spoken out clearly against violence and have directed law enforcement officials to provide protection for people and ideas they do not like.

But racial violence continues, even when it does not receive headlines, and it is evident that in many areas the responsible State and local officials are still not completely willing or completely able to carry out their duties.

In this situation, there is a clear Federal responsibility for protecting the rights of citizens to be secure against violence and intimidation. Congress, in the last century, enacted laws to fulfill this responsibility, but these laws have not proved effective.

Title V, unlike previous Federal criminal statutes, does not require the Federal Government to prove that the assailant specifically intended to deprive the victim of a specific constitutional right. Instead, the Government need only prove that the assailant intended illegal violence which had the effect of depriving the victim of a Federal right.

The statute would also cover acts by private individuals, whether or not they conspired together and regardless of whether local governmental officials were also involved. It also would provide for penalties which are graduated in accordance with the seriousness of the crime, rather than the penalties we have right now.

Of great importance is section 501(b)(1) which strengthens existing law by covering random acts of violence against persons who have not attempted to exercise any of the rights enumerated in section 501(a), when such violence is intended to discourage other persons from exercising these rights. Our investigations in Mississippi in 1964 and 1965 revealed that much of the violence that occurred was aimed at persons selected at random and that such violence intimidated the Negro community as effectively as if directed at a person who was actually engaged in civil rights activities. Therefore, we think it is very important that the law cover these random acts of violence.

As this committee knows, the Commission's law enforcement report recommended that the FBI make on-the-scene arrests when civil rights violations are committed in their presence. One objection that has been raised against this proposal is that because of the vagueness of the civil rights statute FBI agents would be required to make complicated determinations about the intent of the assailants. Title V,

by making specific the conduct that is prohibited, should remove this obstacle to on-the-scene arrests.

We recommend in addition that Congress give serious consideration to amending title V in the following respects:

1. Section 501(a) should include an additional subsection making criminal any interference with a person using any road or highway in interstate commerce. Section 501(a) would not reach, for example, the murder of Lemuel Penn in Georgia last year while he was driving through the State, returning from duty with the National Guard. Section 501(a)(7) is limited to travel by common carrier.

While 18 U.S.C. 241 has been interpreted to make criminal any interference with interstate travel, that section requires the Government in a prosecution to establish the existence of a conspiracy. By covering interstate travel in this legislation, the Government would be protecting against interference with persons who are using the highways, even where there is not a conspiracy.

The CHAIRMAN. In this suggested amendment you ask for an additional section. Would that mean that while somebody is on the highway and is pursuing his civil rights or pursuing his rights under a congressional enactment held constitutional, that this new provision could be invoked?

Give me an example.

Mr. TAYLOR. Well, the *Penn* case, Mr. Chairman, would be one example, a person simply using the roads for travel in interstate commerce.

If he were violently interfered with for racial reasons——

The CHAIRMAN. Suppose it has nothing to do with civil rights, it is a highway robbery?

Mr. TAYLOR. The qualifying sentence to all of this language is "because of race, religion, color, or national origin." In other words, this statute would not cover a crime, if it was violence unconnected with race, religion, and so on. We are not proposing that you go beyond racially prompted crimes.

Mr. ZELENKO. Mr. Chairman?

The CHAIRMAN. Mr. Zelenko.

Mr. ZELENKO. Mr. Taylor, why would not the *Penn* case be covered by section 501(b)(1) of the bill?

Mr. TAYLOR. We would read (b) broadly enough, I hope, to cover cases like Penn.

Mr. ZELENKO. Couldn't the Penn murder be found to be designed to discourage others to attempt to exercise their rights? Wouldn't it come within the language of section 501(b) of the bill?

Mr. TAYLOR. Yes, it probably would. Our proposed amendment would simply use the commerce power as well as section 501(b) to assure that other kinds of crimes of this description would not fall within any loophole.

There would also be, perhaps, a question about the requirements of proof and if you had a section which made it a crime to kill somebody for racial reasons who is using a highway, the proof would be simplified somewhat.

The CHAIRMAN. Proceed with your statement, Mr. Taylor.

Mr. TAYLOR. Secondly, we propose a companion provision to section 242 of title 18 of the United States Code which would enumerate due process rights. This would supplement the coverage of equal pro-

tection rights provided by title V of the bill. This addition would eliminate the need for establishing the specific intent to deprive the victim of his constitutional rights which is now required to be proven in all section 242 prosecutions.

This was suggested in the 1961 report of the U.S. Commission on Civil Rights on "Justice." Such a provision would, for example, punish any law enforcement officer who inflicted bodily injury upon a prisoner in the course of eliciting a confession to a crime.

Thirdly, we think a section should be included which would forbid private conduct designed to preclude a fair trial. Such a statute would reach lynching by providing punishment for private individuals who, acting alone or in a group not including law enforcement officials, for example, killed a person who was in custody awaiting trial for a crime.

Fourth, we think title V should be amended to prohibit acts of economic as well as physical coercion. Title V as now written applies only to acts of "force or threat of force." In fact the bill would narrow existing law by repealing criminal provisions in the Voting Rights Act which make intimidation and coercion by State registration officials and private persons, by any means including threat of firing or eviction, a crime.

Economic coercion, as this committee recognized in connection with the Voting Rights Act of 1965, is a serious impediment to the exercise of Federal rights and should be brought within the coverage of this bill, and I am quite sure that the narrowing of remedies against such coercion was inadvertent.

Along with the criminal remedies which are provided by title V, additional civil protection is needed to effectuate the exercise of Federal rights.

Our Commission supports the proposal in title III to permit the Attorney General to bring civil actions against public officials to desegregate public schools and other public facilities without the necessity for a signed complaint from private parties who are unable to bring suit.

We particularly urge the enactment of section 301(b) of title III, which would authorize the Attorney General to institute civil actions against persons, whether or not they are public officials, who intimidate, threaten, coerce, or interfere with persons attending or helping others to attend public schools or any other public facility.

The Commission has found that fear, intimidation, and harassment of Negro parents are still substantial deterrents to desegregation of public schools in the South. Recently we issued a report on school desegregation in the southern and border States, and we found numerous instances of intimidation, harassment, and violent attacks on children and parents of children who attempted to attend formerly all-white schools.

For example, in one county in Georgia, bottles, stones, toilet paper and paint were thrown at the home of a family whose daughter was one of the first four Negro children to attend the county high school which had formerly been all white. The family of another of these four children lived under such attacks for a year. These families continued to send their children to the desegregated schools, but many others gave up.

All throughout the counties we visited in Georgia and Mississippi we found similar instances.

In another Georgia county, all of the Negro children who selected white schools under a desegregation plan approved by the Office of Education changed their choice. The father of one Negro student said that within 48 hours of submitting the choice form designating a white school, he was told by his employer, who also was his landlord, that he would lose his job and home if his child attended a white school.

In a county in Mississippi, two families who had chosen white schools and had altered their choice were nevertheless evicted by their white landlords. This confirmed the belief of other Negro families in that county that they could not afford to send their children to the white schools.

Such acts of intimidation and harassment have been an important factor in the continued restriction of school desegregation in the Deep South to token numbers of children. As you know, it was only about 5 or 6 percent last year. It was this finding that led the Commission to recommend legislation similar to that embodied in title III.

If this bill is enacted, the Attorney General will have the power under this bill and other legislation previously enacted to bring civil suits for injunctive relief in the areas of voting, housing, jury selection, schools, public accommodations, and employment. We think this sanction should also be available against interference with the advocacy of racial equality. Title III should be expanded to give the Attorney General this additional authority.

We would also recommend that Congress amend 42 U.S.C. 1983, to permit suits by private persons for injunctive relief against persons seeking to interfere with the exercise of rights set forth in title V of the administration's bill.

Section 1983 as presently written is applicable only to interference with title V rights when such interference is under color of law. The decision of the Supreme Court in the *Penn* case suggests that Congress has the power to permit suits by individuals for injunctive relief against private persons seeking to interfere with the exercise of these rights. That power, we believe, should be utilized.

In addition to these changes, we would also suggest a few additional amendments to the bill to improve existing civil remedies. Most of these proposals have been recommended in the past by the U.S. Commission on Civil Rights.

1. We would suggest that the administration's bill be amended to give persons who suffer physical injury or property loss as the result of exercising any of the specific rights protected by the criminal provisions of title V of the administration's bill, or as the result of urging or aiding others to exercise such rights, a right of action for money damages in Federal court against those responsible for the injury or loss. This would provide a more effective remedy for assuring compensation to those who are injured by racial violence than is available under existing law. The present code, sections 1983 and 1985, are inadequate because they are limited to actions against persons acting under color of law, or pursuant to conspiracies to deprive individuals of protected rights.

In other words, we think the civil provisions should be broadened to reflect what is in this bill.

2. In addition, 42 U.S.C. 1983 should be amended to include a provision that any county, city or other local governmental entity that employs officers who deprive persons of rights protected by section 1983 should be jointly liable with the officers to persons who suffer injury or loss from such officer's misconduct.

This amendment, recommended by the Commission on Civil Rights in 1961 and again in 1965, would not only assure the recovery of sufficient funds to compensate for the loss, but would encourage local governmental entities to recognize their responsibility for the misconduct of their employees. This is a good part of the problem in some parts of the South.

Several States, either by statute or judicial decision, already make local governments liable for the wrongful acts of their agents. But Federal remedies for violation of Federal rights should not be dependent on State law. We regard these remedies as minimal steps which should not preclude a serious study of proposals to establish Federal administrative machinery to indemnify the victims of civil rights crimes.

The CHAIRMAN. Let me ask you this: You propose this amendment to impose a tort liability on local and municipal governments. Would you care to comment on the legality of proposing such a liability by Federal statute on a State or local body?

Mr. TAYLOR. I assume, Mr. Chairman, that you are raising a question here of the sovereignty of the States?

The CHAIRMAN. That is right.

Mr. TAYLOR. I think there is clearly no such problem with respect to local governments.

The CHAIRMAN. Why do you make a difference between a local government and State government; a local government takes on part of the sovereignty of the State and it in that sense is part of the sovereignty.

Mr. TAYLOR. Yes, but——

The CHAIRMAN. I do not argue against it. I am asking you if you can give us some constitutional grounds for such provision.

Mr. TAYLOR. The reason I make the distinction, Mr. Chairman, is the immunity of the sovereignty from suit. That inhibition has been limited to the State itself, and we do not reach the State itself in this proposal. I would be glad to furnish the committee with a memorandum of the law on this subject.

We did come to the conclusion that it would be constitutional to impose such liability before we recommended it.

The CHAIRMAN. I would like to receive that. It will be accepted in the record.

(Memorandum follows:)

U.S. COMMISSION ON CIVIL RIGHTS

STAFF MEMORANDUM

Constitutionality of proposed amendment to 42 U.S.C. § 1983 to make municipalities jointly liable with their officials to pay damages to persons deprived of their civil rights.

Under the eleventh amendment, "the judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State." Although by its terms, the eleventh amendment seems only applicable to suits by citizens of one

State against another State, it has been construed to bar suits by a State's own citizens. *Hans* v. *Louisiana*, 134 U.S. 1 (1890). But the question is not whether this amendment prevents the Congress from enforcing the fourteenth amendment of the Constitution by giving a private citizen a right of action in Federal courts against a *State* arising from the discriminatory acts of State officials and employees. Rather, the question is whether a *municipality* may be made liable for the discriminatory acts of its officials. The courts have clearly held that the eleventh amendment is not applicable to municipalities. In *Lincoln County* v. *Luning*, 133 U.S. 529 (1890), the Supreme Court held that a municipality could be sued on its bonds by a private citizen in the Federal courts. The Court said that:

"While the county is territorially a part of the State, yet politically it is also a corporation created by and with such powers as are given to it by the State. In this respect, it is a part of the State only in that remote sense in which any city, town or other municipal corporation may be said to be part of the State." (133 U.S. at 530.)

The holding of the *Lincoln* case was reaffirmed in *Chicot County* v. *Sherwood*, 148 U.S. 529 (1893); *Kennecott Copper Corporation* v. *State Tax Commission*, 327 U.S. 537, 579 (1946), and more recently in *Griffin* v. *County School Board of Prince Edward County*, 377 U.S. 218, 233 (1964), where the Court stated that "it has long been established that actions against a county can be maintained in the United States courts in order to vindicate federally created rights." In that case, the Supreme Court held that the district court could require the county school supervisors to levy taxes to raise funds adequate to reopen and maintain without racial discrimination a public school system in Prince Edward County. See also, *Cooper* v. *Westchester County*, 42 F. Supp. 1 (S.D.N.Y. 1941) (suit against county for patent infringement); *American Hospital Sup. Corp.* v. *York County Distribution District*, 123 F. Supp. 187 (M.D. Pa. 1954) (suit on a contract for supplies); *Grady County, Georgia* v. *Dickerson*, 257 F. 2d 369 (5th Cir. 1958) (suit against county for negligence in allowing bridge to become disrepaired).

These cases dealt with claims of immunity of local governments from suit under the eleventh amendment. In the exercise of their governmental functions, local governments also enjoy traditional common law immunity from liability, which is recognized in many jurisdictions, 38 Am Jur. Municipal Corporations § 572 (1941). This immunity is a matter of State law and it would not override liability imposed by Congress under its power to enforce the provisions of the fourteenth amendment. Thus, in the area of maritime liability, the Supreme Court has held that where the city of New York was sued in admiralty for damage caused by its marine fire department to a private vessel, the city was liable under Federal law even though under New York law it enjoyed governmental immunity. *Workman* v. *N.Y.*, 179 U.S. 552, 562 (1900). The Court stated that if the rule were otherwise a municipal corporation could also violate the patent and copyright laws with impunity or regulations enacted under the commerce clause (179 U.S. at 558). See also, *United States* v. *City of New York*, 82 F. 2d 242 (2d Cir. 1936), where in a suit by the United States under the Revenue Act of 1928 to enforce a lien on the property of a delinquent taxpayer held by the city, the court held that the provisions of the Revenue Act overrode immunity from tort under local laws; *Frame* v. *City of New York*, 34 F. Supp. 194 (S.D.N.Y. 1940) (in suit for benefits under the Jones Act, State statutory provisions on suits against municipal corporations *held* inapplicable).

It should be noted that the Supreme Court has found that Congress, in passing the Act of April 20, 1871 (now 42 U.S.C. § 1983), did not intend to make municipalities liable for the acts of their employees in depriving citizens of their civil rights, although an amendment proposing to do so was passed by the Senate and vigorously debated in the House. *Monroe* v. *Pape*, 365 U.S. 167 (1961). Since it was clear that the proposed amendment was not adopted, the Supreme Court in *Monroe* said that it need not reach the constitutional question of whether Congress could have imposed such liability, although it noted that the arguments advanced for such authority were "powerful" (365 U.S. at 190). We believe that Congress would be acting in accordance with the Constitution if it selected this means to enforce the fourteenth amendment.

Mr. TAYLOR. What I was referring to earlier, I believe it is the holding of courts that the 11th admendment does not reach local governments, and this came up most recently in the *Prince Edward* case in

Virginia where the effort of litigation was to compel local goverment to reopen the schools, and the Court did not have difficulty in compelling this action on the part of local government. It was not inhibited by the 11th amendment.

The CHAIRMAN. All right, proceed.

Mr. TAYLOR. Our third recommendation is the administration's bill should also be amended to permit private persons to obtain injunctive relief notwithstanding the anti-injunction prohibitions of title 28, United States Code, section 2283, wherever State prosecutions are brought against persons for properly exercising first amendment rights directed at obtaining equal treatment for all citizens regardless of race, color, religion, or national origin. Such a proposal was made by the U.S. Commission on Civil Rights in its law enforcement report in 1965.

We also believe, and we think this is very important, that equal treatment under law will become a reality sooner if law enforcement and administration of justice become the work of all people, without regard to race. Negroes are still barred in many localities from becoming law enforcement officers and court officials.

We urge that title VII of the Civil Rights Act of 1964 be amended to cover discrimination in public employment in State and local governments and agencies. It seems to me quite anomalous that under title VII, as now written, obligations are imposed upon private employers and unions that are not imposed upon government.

Now as to title IV, "Equal Opportunity in Housing":

By outlawing discrimination in the rental, sale, financing, use and occupancy of housing, this title would establish a national policy of great importance. We believe that its enactment is appropriate and indeed necessary to the full realization of equal opportunity under law.

Commission studies over the course of years have provided ample support for its conclusion that "housing * * * seems to be the one commodity on the American market that is not freely available on equal terms to everyone who can afford to pay." This limitation on the availability of housing to nonwhites is not simply the result of an accumulation of individual decisions by individual homeowners and tenants who happened to agreed to discriminate or to segregate themselves.

On the contrary, we have witnessed during the past 30 years the development of large new communities in metropolitan areas made possible by Federal assistance and constructed under Federal policies which encouraged the creation and maintenance of racially homogeneous areas. Indeed until well after World War II discrimination against Negroes was a condition of FHA assistance. Prior to the issuance by President Kennedy of Executive Order No. 11063, none of the Federal agencies concerned with the extension of housing and mortgage credit took significant action to assure that the institutions they assisted—builders, mortgage lenders and realtors—made their service available to all persons on equal terms.

As a result of these policies, the increasing numbers of Negroes and members of other minority groups who have migrated to urban areas, have found themselves confined largely to deteriorating areas of the central city. With little new housing available to them, they have

paid exorbitant prices for housing that is overcrowded and often unsound.

In addition, other Federal policies, such as highway construction and urban renewal, have frequently aggravated rather than remedied this situation. In Cleveland, the Commission heard testimony from a Negro witness who was uprooted by highway construction from a $22,000 home he owned in a predominantly white section of the city. Unable to find a home in the same area because of discrimination and unaided by the government which had displaced him, he was compelled to move back to the slum area he had left 10 years earlier.

In these circumstances, it is difficult to understand the assertion that the Federal Government lacks the authority, much less the responsibility, for correcting injustice which it has done so much to create and perpetuate.

The assumption of authority to guarantee to all citizens free access to housing within their means is, we believe, essential to the fulfillment of other rights. It has been suggested that access to housing is in large measure an economic matter and there is a good measure of truth in this assertion. But jobs are increasingly being dispersed from the central city into smaller cities and suburban areas. Negroes barred from obtaining housing in these areas are often effectively excluded from access to better paying jobs. They are also hindered in their efforts to obtain better education and are increasingly relegated to segregated and inferior schools. So, in establishing a right to nondiscriminatory access to housing, this bill will also help open the doors to economic and educational opportunity.

While we support the major provisions of the administration's bill, we believe that the bill should be amended to make the remedies more effective. Title IV as presently written relies exclusively upon the initiation of lawsuits by the aggrieved party or the Attorney General. We have learned from the necessity for revision of the Civil Rights Act of 1957 and the amendments to title VII of the Civil Rights Act of 1964, recently passed by the House, that reliance upon individual lawsuits is not an efficacious way of guaranteeing civil rights. Securing the right to equal opportunity in housing is at least as complex as guaranteeing the right to vote or the right to a job and surely much more difficult than guaranteeing equal access to public accommodations.

The power of the Attorney General to bring suits in cases involving a pattern of violation of the law suffers from the same deficiencies which have led to the provision of administrative machinery to implement the rights guaranteed in other fields.

Our already overburdened courts provide little hope for prompt enforcement, and the Attorney General's office already has major responsibility for suits in other important areas. Thus, we propose that Congress vest in a Federal agency administrative authority to investigate and make prompt determinations of fact in cases involving violations of title IV, and to issue cease-and-desist orders which would be enforceable in the courts.

We also believe that the bill should be amended to make more effective use of another sanction, the conditioning of Federal financial assistance upon action to afford equal housing opportunity.

Several years ago, the Commission examined in some detail the role of the Federal Government in relation to housing finance. We concluded then, and we believe it is equally true today, that "the Federal Government is the Atlas of the Nation's home finance community, supporting the entire structure with its resources, its prestige, and its blessings." Through programs of FHA mortgage insurance and VA loan guarantees, the Federal Government insures private lending institutions against loss and facilitates the entire housing market. The Federal Government also grants charters and insures accounts of lending institutions that are responsible for a major portion of the Nation's home financing.

It has been estimated that the combination of federally underwritten loans and conventional loans made by federally supervised lending institutions accounts for more than 80 percent of all home loans. Surely this massive Federal involvement in the housing market should be brought into play in making equal housing opportunity a fact of American life.

To some extent, of course, the sanction of fund withdrawal is already provided by law. Title VI of the Civil Rights Act of 1964 and Executive Order 11063, issued by President Kennedy, both address themselves to preventing housing discrimination by means of the leverage of Federal assistance. Both title VI and the Executive order, however, are limited in terms of their coverage.

Title VII excludes FHA and VA insurance and guarantee programs from the ambit of coverage. The Executive order, while it covers new housing provided through FHA and VA assistance, does not deal meaningfully with housing provided under assistance agreements executed prior to the date of the order.

Thus, for example, there are well over 300,000 multifamily units built prior to the order, but still assisted by FHA mortgage insurance, which are not subject to any Federal requirement of nondiscrimination. Moreover, neither title VI nor the Executive order relates at all to Federal assistance by way of Federal chartering or insurance of accounts in federally supervised lending institutions.

The CHAIRMAN. Before you leave that point, you would withdraw the federal charters of banks and savings and loan associations and the benefits of the FDIC when such institutions discriminate on the basis of race or color?

Would you not thereby visit harm on a great many innocent people? Would it be worth the while in the interest of civil rights to withdraw those charters?

Mr. TAYLOR. I would doubt very seriously, Mr. Chairman, that it would ever become necessary to actually lift the charter of an insured institution.

The CHAIRMAN. But you will give the power to do it?

Mr. TAYLOR. Yes, sir; that power, of course, exists now and is exercised by the appropriate Federal regulatory agencies to assure that the banks that they regulate are operated in a sound and effective manner, and we would simply add to the list of things that are presently regulated a policy of nondiscrimination.

The CHAIRMAN. Would this involve, say, a national bank, for example?

Mr. TAYLOR. Yes, sir; it would.

The CHAIRMAN. Do you know of any instance where a national bank charter has been canceled because of any of its activities other than fraud or things of that sort?

Mr. SLOANE. Mr. Chairman, I do not believe so. Of course, national bank charters have, in the past, been withdrawn for failure to comply with existing laws and regulations and the point here would be that this would be an additional requirement that the banks would have to comply with.

The CHAIRMAN. What would happen if you withdraw a national bank's charter? You would disrupt a whole community, would you not, if it couldn't supply the financial needs of the community?

Aside from your helping, of course, in the civil rights movement, I am wondering if whether or not you are using a battering ram here instead of using something that is not so lethal a weapon.

Mr. TAYLOR. The major point I would make, Mr. Chairman, is that the use of Federal regulatory policy for purposes which are fair and just and are intended to protect all potential customers and depositors has been exercised in many cases in the past and because the weapon is so strong, because the sanction is so strong, you rarely ever get to that point, because the banks and the regulated savings and loan associations are careful and scrupulous to carry out Federal policy once it is clearly understood.

I think once this policy was set down, it would be followed by the banks and the regulated savings and loan associations.

Mr. ROGERS. Mr. Chairman, would you yield for a question?

The CHAIRMAN. Yes.

Mr. ROGERS. Now, do I understand that what you have in mind, what you set forth on page 12 of your statement, is that Congress amend section 1983 of title 42 to permit suits by private persons for injunctive relief against persons seeking to interfere with the rights set forth in title V of the administration bill.

Do you intend by the suggested language that you have given to the chairman that private individuals may sue a bank and say, your charter should be cancelled because you have denied rights under the civil rights law; is that what you have in mind?

Mr. TAYLOR. No, Mr. Rogers, that dealt with a point under title V. Under title IV now individuals would have the right to sue to enjoin housing discrimination; under a provision that we propose, individuals would have rights to sue to enjoin violation of any Federal right, but we are not talking here about suits by individuals against banks to compel the lifting of their charters. Just as you do not have successful suits right now under title VI by individuals against the Federal Government to compel the withdrawal of funds.

I think that the more effective remedy by an individual is to sue to stop the discrimination and not to sue indirectly to lift the charter of a bank, because it does not stop the discrimination.

What we are talking about here is establishing Federal policy under which the regulatory agencies, the FDIC and the Home Loan Bank Board, would themselves police this policy and require banks to adopt a nondiscrimination policy and to include in their agreements which are executed with builders a provision that the builder will not dis-

criminate on the basis of race, religion or national origin in the sale or rental of homes for which the financing is provided. This would be enforced by the Federal agencies involved.

They would police it, and they would begin proceedings if proceedings ever became necessary, to lift the issuance of the charter. But I would seriously doubt that it would ever become necessary to lift a charter.

Mr. ROGERS. You say you have serious doubts that it would become necessary. The question is: Should we give the authority in this legislation to permit it to be lifted, if they do discriminate?

Mr. TAYLOR. Well, we would recommend that such authority be given, because we think that this would be a fair and equitable way to achieve national policy just as national policy is now being implemented in the funding in this field.

Mr. ROGERS. But you would confine it to the Federal agencies themselves?

Mr. TAYLOR. Yes, sir; we would not——

Mr. ROGERS. You would not expand it to permit individuals to institute these suits in their individual capacity under a Federal statute that we would pass?

Mr. TAYLOR. That is correct. We are not proposing any individual suit to accomplish the same purpose. The individual suit would be to get somebody to stop discriminating, not to lift the charter of a bank.

Mr. ROGERS. Thank you.

The CHAIRMAN. You provide on page 19 the following: That the banks would see to it that the builder will not discriminate on the basis of race, religion, national origin in sale or rental of houses for which the financing is provided.

Do you mean to imply by that that the bank or financial institution would have to police this matter? That they would have to go into the highways and byways of all these real estate operations to see whether or not there is discrimination?

Mr. TAYLOR. No; the first thing they would have to do would be to include in their agreements a nondiscrimination clause.

The CHAIRMAN. Let's assume that. Now what then?

Mr. TAYLOR. It would be the responsibility of the Federal agency to either respond to complaints or itself to police. I do not think that what we propose here is placing an obligation on banks to hire their own investigatory——

The CHAIRMAN. That is what you say, do you not?

Mr. TAYLOR. I do not think so.

The CHAIRMAN. Whenever such institutions either discriminate in their practice or fail to require loan agreements, executed with the builders, that the builder will not discriminate on the basis of race, religion, or national origin.

Why put it in there if they do not follow it up? That is a part of the contract. Either side sees to it that the terms of the contract are complied with.

Mr. TAYLOR. Well, this would——

The CHAIRMAN. Why do you put it in if nobody follows it up?

Mr. TAYLOR. Because we think that by putting it in, that builders would tend to honor their obligations. In other words, we think the provision would be in large measure self-executing, but beyond that,

it is an agreement really for the benefit of third persons and I am sure that if it is violated, it will be brought to the attention of the bank and of the appropriate Federal agencies by the injured parties and once it is, then there would be an effective means for following up. But we do not propose to put the obligation on the bank.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a question here. Mr. Taylor you just said that this would be a contract for the benefit of a third party. Would the nondiscrimination clause give him authority to sue the bank or building and loan association where they were party to and perhaps even actively warned against discrimination that later was practiced by the builder?

Mr. TAYLOR. No; I think this would give him the authority to bring suit against the builder as title IV does anyway, to get the builder to honor his part of the contract. But I do not think that it would give any authority against the bank, compelling the invocation of sanctions against the bank.

At least that is not what we had in mind.

Mr. McCULLOCH. I am wondering if whether this provision does not have the same effect upon people, in requiring them to say, "I have not sinned and I do not intend to sin," as was visited upon the people who protested so loudly against taking a non-Communist oath, or making a non-Communist declaration?

I think there is a great similarity in the two provisions.

Mr. TAYLOR. Mr. McCulloch, I really do not think so. I think this is much more similar to the agreement that the Federal Government asks for in hundreds of defense contracts that we make every day, that a person shall not discriminate, an employer shall not discriminate because of race.

Mr. McCULLOCH. I think there is only a difference in degree. That is my present opinion.

The CHAIRMAN. It might interest you to know on the question of policing, the Attorney General had this to say in his testimony:

I think the policing of this nondiscrimination in housing should be left to either the people discriminated against or the Government, but I have a good deal of problems in terms of making the banks police the real estate industry, police the building industry, police all the apartment rentals and everything else within the community.

He said that before this committee on May 10. I imagine you agree with him on that score?

Mr. TAYLOR. Yes. We do not believe that the proposal that we are making would require the banks to police the building industry or the real estate industry, but we do think that it is appropriate for the banks themselves to live up to a policy of nondiscrimination, which is very important, because regardless of the progress we have made there are still banks which refuse to extend credit to people because they are Negroes, or to builders who propose to build open occupancy projects. And we also think it is appropriate for them to include in their agreements with the real estate industry or with the builders, a nondiscrimination provision.

That does not mean that they have to hire a force to police this, but it should be in the agreements when they examine them.

The CHAIRMAN. All you do in the agreement is restate the law. The law is that they cannot discriminate if we pass this bill. All they do is restate what the law is.

Mr. TAYLOR. And we would also bring into play other administrative procedures that could be invoked by the Federal regulatory agencies.

These agencies, I think, do have a responsibility to administer the law and to see that the lending institutions with which they deal are not discriminating and are not permitting discrimination by refusing to include these provisions in their agreements.

The CHAIRMAN. Proceed with your statement.

Mr. MCCULLOCH. I should like to ask a question or two, I think.

Do I correctly conclude that this part of your testimony would result in the creation of a new Federal regulatory agency?

Mr. TAYLOR. Not necessarily, Mr. McCulloch. You mean our proposal that there be an agency which has power to issue cease-and-desist orders?

Mr. MCCULLOCH. The licenses, yes.

Mr. TAYLOR. These would be the existing Federal agencies which presently regulate banks and have the power to revoke licenses or charters.

Mr. MCCULLOCH. Do they have authority to revoke charters now by pure Executive order and without judicial process?

Mr. TAYLOR. Well, it is my understanding that they have the power to take administrative action to revoke charters, which I would believe would be subject to judicial review in all cases.

Mr. MCCULLOCH. Would they make their orders without any public hearings or testimony on the alleged violation?

Mr. TAYLOR. I am not familiar with all of the procedures of the agencies involved, but I would believe that in most cases, if not all cases they hold public hearings. And the other thing I would point——

Mr. MCCULLOCH. Would that be under the Administrative Procedure Act?

Mr. TAYLOR. In most cases I believe that is correct.

Mr. MCCULLOCH. What would be the rule of evidence on judicial review on that kind of proceeding?

Mr. TAYLOR. Well, I do not know that it would be judicial review—completely de novo——

Mr. MCCULLOCH. Well, you say you think it would be completely de novo?

Mr. TAYLOR. I say I do not know that it would be. I think the evidence would be entitled to some——

Mr. MCCULLOCH. It is my opinion that it is not de novo and it is only upon the evidence that is submitted to the reviewing court. Is that not right, Mr. Counsel?

Mr. FOLEY. Yes, sir.

Mr. TAYLOR. That evidence would certainly be entitled to great weight.

One of the things I would point out with respect to our proposal is that we are proposing that the legislation be amended by amending title VI of the Civil Rights Act of 1964, and therefore we would provide that all of the procedures, all of the due process that was built into the 1964 law for protecting a person who is charged with discrimination be built into anything we do right here.

Mr. McCULLOCH. I am very glad to hear you say that. Of course, you know this is an emotional field, the like of which banks and building and loan associations have never been in before. If there is an order for revocation of charter, it could mean disaster in the financial community under conditions which we have experienced in this country and which are not impossible now.

I think your proposal demands a great deal of study.

Mr. TAYLOR. Well, the only thing I would add here to what I have already said, Mr. McCulloch, is that we have had similar experience with contracts, Federal contracts for defense purposes, and I would suggest that if we were to revoke one of those contracts with a key defense plant, we would similarly be faced with a situation which would create difficulty——

Mr. McCULLOCH. Well, of course, fortunately counsel reminds me that the Government is a party to those contracts.

Mr. TAYLOR. Well, I would suggest that if our proposal is enacted, there would be many more institutions, and I would think the great preponderance of institutions, with very few exceptions, that would adopt and follow a policy such as those that are followed in your community, Mr. McCulloch.

Mr. McCULLOCH. Thank you.

Mr. TAYLOR. So, what we are proposing here, and I do not want to neglect the other aspect of it is that the breadth of coverage that is now in title IV should be supported by legislation requiring the withdrawal of FHA mortgage insurance and VA loan guarantees from builders or apartment house owners who discriminate on the basis of race, religion, or national origin in the sale or rental of any property covered by an FHA or VA mortgage or loan.

This legislation would reach discrimination not presently covered by the Executive order. We also recommend legislation requiring federally chartered or insured banks and savings and loan associations, as a condition to continued chartering or insurance, to follow nondiscrimination policies in mortgage lending and to include in loan agreements executed with builders, a provision that the builder will not discriminate on the basis of race, religion, or national origin, in the sale or rental of the homes for which the financing is provided. As we say, we would do this by a proposed amendment of title VI.

Finally, we think it important to recognize that even if this legislation is enacted and is effectively implemented, it will be of benefit primarily to those who have the means to afford middle-income housing. Adequate housing within the reach of people with low incomes is available only in limited quantity outside the central city. The problem is compounded by the unavailability of land for low-income housing outside the central city and the refusal of suburban authorities to permit within their jurisdictions the construction of federally subsidized low-income housing. It will be interesting to see what happens with the rent supplement bill in this regard.

The Department of Housing and Urban Development, if it is to make a contribution to solving the problems of our large cities, must address itself to the preparation of policy measures designed to provide better housing opportunities for citizens of all incomes throughout our metropolitan areas.

Mr. McCULLOCH. Mr. Chairman, I would like to ask a couple of questions in this field.

Were you one of the group that was in Cleveland, Ohio, within the last month or two for hearings by the Civil Rights Commission?

Mr. TAYLOR. Yes, sir.

Mr. McCULLOCH. Did you find from the evidence up there that suburban housing or rural land was unavailable to people who could pay the price for it? Now, I am asking a very particular question: Did you find from the evidence submitted to you that there had been attempts by responsible people to acquire rural building property in Cuyahoga or Geauga or Lake Counties, and found it was not available?

Mr. TAYLOR. We found that over the course of the last 4 or 5 years some 4,000 or so people, Negroes, had moved from the central city into the suburban areas and had found—had been able to locate middle-income housing. This was primarily in Shaker Heights and in Cleveland Heights.

Mr. McCULLOCH. Which are, of course, two of the best residential sections in the entire State of Ohio? Certainly for middle-class people, and many upper-class people?

Mr. TAYLOR. Yes, sir; there has been this movement. Now, I have to say that we did not conduct an investigation of barriers against people who have the means to find housing in the suburbs because of racial discrimination. We were concerned particularly with the question of the availability of housing to low-income people outside the central city and that is the point I am dealing with here.

Mr. McCULLOCH. Yes, but I want to particularly pinpoint this question: If such housing is unavailable, then the next question is, Did you find that vacant land was unavailable for such housing?

Mr. TAYLOR. For low-income housing?

Mr. McCULLOCH. Yes.

Mr. TAYLOR. Well, it is unavailable in some degree in the sense that zoning restrictions and minimum-sized lots make it so.

Mr. McCULLOCH. In the rural areas? Does that show in your hearing record?

Mr. TAYLOR. I cannot say that we have a complete——

Mr. McCULLOCH. I want to be very persistant about this, because I do not think your hearing record will show that. I am guessing now because I know in many places in Ohio rural vacant land is available for low-income housing for those who can buy the vacant land. I would call housing that costs from $10,000 to $15,000 low-income housing, would you not?

Mr. TAYLOR. I would guess I would.

Mr. McCULLOCH. That is what I am trying to develop for the record. I want to find out if there is dependable evidence which justifies the conclusions that you have reached.

Mr. TAYLOR. Well, one piece of evidence which I think tends to justify this conclusion is the fact that, as you know, sir, Cleveland has a metropolitan housing authority. It is one of the areas in the country where the housing authority jurisdiction extends throughout the suburbs as wells as the central city, and it has as its head a pioneer in public housing, Mr. Bohn.

Mr. McCULLOCH. Yes, may I interrupt. He is a great and good friend of mine and when I was a young State legislator, it was my pleasure to work with him in establishing that code.

Mr. TAYLOR. It has a broad grant of authority. My point about it is that in all of its years of existence it has never been able to locate one low-income public housing project outside the corporate limits of the city of Cleveland, which would indicate to me, and we heard some testimony on this, that there is great resistance in the suburban areas in accepting low-income people into their corporate limits.

Mr. McCULLOCH. Of course, you know, we are having difficulty with words, because "suburban areas" may not mean the same thing to you as it means to me. Cleveland, of course, is fortunate in having a rapid transit system, so that a suburb 5 or 10 miles away is only a few minutes from downtown Cleveland. But there are rural areas in Lake County and in Geauga County and the surrounding counties that are as close to the suburbs as in the Washington area where the people come to work from what, 15 or 45 miles every day by automobile transport.

I was trying to establish whether or not it was a fact from your hearings up there that you found that responsible people were unable to acquire that rural vacant land for housing projects.

Mr. TAYLOR. Well, I do not know of efforts by low-income people—or efforts by limited profit corporations to acquire land in rural areas for the purposes of building low-income housing, but I do feel that it is some evidence of this problem that in all of the years that it has been in existence, the Public Housing Authority in Cleveland has not been able to locate projects in areas outside the city of Cleveland. I think this does indicate that there is a problem.

Mr. McCULLOCH. Did you make any study of the Dayton, Ohio, public housing?

Mr. TAYLOR. No, sir; we only dealt with Cuyahoga County and the Cleveland area.

Mr. McCULLOCH. Did you have any evidence of much discrimination since Ohio's open housing legislation was passed?

Mr. TAYLOR. Yes, sir; we did have testimony of discrimination.

Mr. McCULLOCH. It was minimal, was it not?

Mr. TAYLOR. Yes.

Mr. McCULLOCH. Less than 40 complaints since Ohio's open housing legislation has been in effect?

Mr. TAYLOR. That is correct, but I think it is very important here to add that we heard testimony from witness after witness who was thwarted in his search for housing by racial discrimination, who said, "We don't think we are going to be able to get effective relief from the Ohio Civil Rights Commission, and we have not even brought a complaint before the Ohio Civil Rights Commission because we are interested in finding a house and we do not want to get mixed up in proceedings that may take years and years."

Mr. McCULLOCH. I must say that procedures in Ohio, in any field that I know, are not that dilatory.

Mr. TAYLOR. All I can say——

Mr. McCULLOCH. We have a great government in Ohio.

Mr. TAYLOR. I certainly would not dispute that, sir. All I am really saying is that the absence of a great number of complaints in

the year since this law has been on the books, I am afraid, does not indicate that the problems are over. I think there was enough evidence to suggest to us that there is a good deal of discrimination, that the law is not yet effective in preventing discrimination.

Mr. McCULLOCH. Yes, I did not mean by these questions that discrimination has ended. Discrimination has not ended anyplace in the United States, in many fields, although there has been legislation of from 5 to 75 or 85 years. But I asked the question purely to find out the intensity of the immediate problem and how we should best attack it under our system, so as to get legislation that may be acceptable to the people.

Mr. TAYLOR. Well, the problem—I do not want to belabor the point, but the problem that I am addressing myself to here is evident right here in the District of Columbia. We have long waiting lists for public housing here and we have no public housing or low-income housing. There are low-income areas of Montgomery and Prince Georges Counties and the Virginia suburbs, but there is not housing of any quality available for the people who are on the waiting lists right here in the District of Columbia, and that is a problem which I am saying this legislation does not particularly address itself to, so we ought to recognize the limitations.

Mr. McCULLOCH. That problem is more an economic problem, though, and a hard, legal constitutional problem, is it not?

Mr. TAYLOR. Yes, I think so. It is a problem of income and race compounded.

Finally, Mr. Chairman, this committee and the Congress have spent long and arduous hours in 1964 and 1965 fashioning strong and potentially effective legislation to guarantee the civil rights of citizens. The passage of these laws has led some people to ask whether there should not soon be an end to the process of attempting to achieve equal opportunity through legislation.

The answer, it seems to me, is that we are striving, and must strive, to close within a very short period of time the gap between our professions and our practices.

These gaps have widened during a century of neglect after the passage of the 13th, 14th, and 15th amendments. It is not realistic to believe that the consequences of discrimination and deprivation can be dealt with easily or in a single step. The challenge to Congress, to all officials of Government, and to the Nation is to find means within the orderly processes of law to secure in fact the opportunity we have so long pledged.

The legislation before you represents an effort to remedy some of the our most basic problems, the denial of the right to physical security—a right fundamental to the exercise of all other rights, continued obstacles to equal educational opportunity—and the obstacles to obtaining decent housing faced by citizens because of their race.

The legislation does not in all of these areas provide final or complete solutions. But, we think it is an important beginning and we urge its prompt enactment.

The CHAIRMAN. Thank you.

You propose the bill be amended so as to require that data concerning race, color, religion, sex, and national origin be recorded.

Now, would not the recording of such data aid in circumventing the purpose of this legislation? I would like to get your views on it.

Mr. TAYLOR. You are referring now—I did not get the page reference, title II on page 4?

The CHAIRMAN. Yes; title II. On the top of page 4 of your statement you recommend amendment to section 204 and section 205: a further provision should be added requiring the reporting of racial data.

Mr. TAYLOR. First, I point out this is done in title I of the legislation, so this would make title II consonant with title I.

Secondly, the discrimination that is going on right now in jury selection is going on without the recording of racial data. I think that——

The CHAIRMAN. I would just like to get your views, since an argument has been made against our tabulating these facts.

Now, what are your views as to whether or not that data would aid in balking or circumventing the purposes of this legislation?

Mr. TAYLOR. I believe that it would not and that it would not help in circumventing the legislation, and that instead, the recording of racial data would ease the burden of proof on somebody who wanted to show racial discrimination. Without that racial data he is going to have a very difficult time in being able to make an analysis of the large numbers of people who have been called for jury service.

This will be an aid to the person who believes he has been discriminated against, rather than an aid to the person who wants to discriminate.

The CHAIRMAN. Because of the past history of discrimination in the selection of State juries, would the recording of data that you propose have an intimidating effect on the State or local level?

Mr. TAYLOR. No, sir; I do not believe it would have that effect.

The CHAIRMAN. Why?

Mr. TAYLOR. The trouble right now is that Negroes are not called for jury service. I believe that if under this bill a system is established for selecting jurors that is nondiscriminatory and Negro citizens are called down and somebody makes a notation of their race, that that will not have any intimidating effect, that in many cases people are glad to serve and will not be intimidated by the fact that they are called down and asked to fill out a form.

The CHAIRMAN. I have your reaction.

On page 12 of your statement——

Mr. MCCULLOCH. Mr. Chairman, could I interrupt to ask one question in view of the series of penetrating questions that you have asked?

In view of the chairman's questions and your answers on the general questions of the chairman, would your answer be the same in States that have unlimited challenges of witnesses, peremptory challenges of witnesses?

Mr. TAYLOR. Yes, I think so, if I get the purport of the question.

You do not need the recording of racial data, Mr. McCulloch, to peremptorily challenge somebody, because you do not like his race or religion. He is there before you and you can make such a challenge right now.

Mr. MCCULLOCH. And your answer would be the same if there was no limitation on peremptory challenge?

Mr. TAYLOR. Yes, sir; I think that unlimited peremptory challenges are a problem which are not dealt with, but I do not see the relevance of recording racial data to that problem.

Mr. MCCULLOCH. That is in my opinion a built-in basis for discrimination by reason of race.

Mr. TAYLOR. I think the basis is there right now, and I would come back to the——

Mr. MCCULLOCH. Well, it may not be known.

Mr. TAYLOR. Well, in most cases where we are dealing with race, which is the primary problem here, when the individual is before you, then you can make your determination. You can make the judgment about race without having a piece of paper before you. I think whatever problem there is here——

Mr. MCCULLOCH. Not necessarily.

Mr. TAYLOR. Not in all cases, but this is true in most cases. But I think that whatever small problem may be here is far outweighed by the assistance this will be to somebody who believes he has been the victim of discrimination, and I would point out again that this is in title I of the bill.

The CHAIRMAN. On page 12 of your statement——

Mr. DONOHUE. Mr. Chairman, carrying Mr. McCulloch's thought further, are you in favor of doing away with the peremptory challenge?

Mr. TAYLOR. No, Mr. Donohue, I do not think I am prepared to say that. I think peremptory challenges are an important part to the judicial system.

Mr. DONOHUE. Well, having in mind that when one makes such a challenge, he does not have to assign any reason, and if we have an unlimited number of peremptory challenges, would that not have the effect of bringing about discrimination in the selection of jurors?

Mr. TAYLOR. It can be used for that purpose. Now, I do not know how many States have unlimited numbers of peremptory challenges. Perhaps we could look into that. I would think that limitations on the numbers of peremptory challenges would be some safeguard.

Mr. DONOHUE. Not in certain States where discrimination has prevailed. It has been practiced, but would it prevent those States from enacting legislation that would grant both parties to an action, the State and also the defendant, unlimited number of peremptory challenges to accomplish the same thing that they have been practicing down through the years?

Mr. TAYLOR. Well, I think that you are correct, that there is nothing in this legislation, or nothing that I know of in this legislation which would effectively deter a State which wanted to use this as a device to get around this, except that perhaps if that were clearly a practice that resulted in discrimination, and the Attorney General brought a suit, perhaps this could be dealt with in fashioning objective criteria.

Mr. DONOHUE. Going back to the thought that I have expressed, when you make your peremptory challenge, you do not have to assign any reason.

Mr. TAYLOR. That is right.

Mr. DONOHUE. Now, how are you going to determine that your challenging is because of a person's race, color, or religion?

Mr. TAYLOR. There would be no way to determine it except in practice, if it were used by a prosecutor in a particular county, for example, to strike all Negroes. Over a long period of time you could say this particular prosecutor has used it for racial purposes.

But there is no way to do this in any individual challenge. And, as I say, I do not know what the answer is to this one.

Mr. MCCULLOCH. Could I ask one more question, Mr. Chairman and make one more statement?

This provision presents very many difficult questions. You know, if the names of these prospective jurors list their religion, their national origins and their color, I repeat I much fear that we are giving to lawyers who try cases—not only in criminal cases but in civil cases as well—the very instruments of discrimination which we all dislike so much.

I would be glad to have you think further on this and we may want to talk with you as a committee.

Mr. TAYLOR. Yes, I would be glad to discuss this one further. The only general observation, I think, Mr. McCulloch, is that for years many of us have believed that the recording of racial data on employment forms, on all kinds of forms, was perhaps a way to facilitate discrimination, but I think we are coming to a realization that discrimination goes on with or without the record of racial data on forms and that now we need to know this information to be able to deal with discrimination.

U.S. COMMISSION ON CIVIL RIGHTS.
Washington, D.C., May 25, 1966.

Hon. EMANUEL CELLER,
Chairman,
House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN CELLER: In my testimony before your Subcommittee I proposed that H.R. 14765 be amended to include a provision requiring the state to record the race, color, religion, sex and national origin of all prospective jurors, whenver a prospective juror is called to demonstrate his qualifications for jury service. It was noted that H.R. 14765 imposes a similar requirement on Federal jury procedures. Section 1865(a) of that Bill requires the juror qualification form to elicit the prospective jurors' sex, race, religion, and citizenship.

Several questions were raised by members of your Subcommittee regarding this proposed amendment, which I would like to answer in this letter.

It was suggested that the listing of sex, race, religion or national origin would only increase rather than eliminate discrimination against such groups in the selection of juries. The answer is that the county or its officials who wish to discriminate against such groups do not need to inquire of such a person whether he is male, Negro or Puerto Rican. In many cases one need only look at the individual to ascertain this fact and in many others the local officials know the individual and whether he is a member of such a group.

The Supreme Court of North Carolina and the United States District Court for the Eastern District of Virginia have both recognized the importance of keeping such records. The Supreme Court of North Carolina in reversing a conviction because of systematic exclusion of Negroes from juries said:

> Of course, the designation of race, just as sex or religious denomination, may in certain records serve a useful and necessary purpose, and the compilation of such information cannot be outlawed per se. But the promotion of a distinction purely on the basis of race is not justified. *Hamm* v. *Virginia State Board of Elections*, 230 F. Supp. 156 (ED. Va. 1964), affd. 85 S.Ct. 157. It would be well for county commissioners and clerks of superior court to maintain for reference purposes statistical data with respect to the racial and sex composition of jury lists and juries which

serve in the courts, so that the information may be readily available when motions such as the one under consideration are interposed. *North Carolina* v. *Lowry*, 139, S.E. 2nd 870 (1965).

The U.S. District Court for the eastern District of Virginia, in holding unconstitutional certain Virginia statutes requiring designation of persons by race, said:

> Of course, the designation of race, just as sex or religious denomination, may in certain records serve a useful purpose, and the procurement and compilation of such information by State authorities cannot be outlawed per se. For example, the securing and chronicling of racial data for identification or statistical use violates no constitutional privilege. If the purpose is legitimate, the reason justifiable, then no infringement results. *Hamm* v. *Virginia State Board of Elections*, 230 F. Supp. 156 (E.D. Va., 1964), affd. 85 S.Ct. 157.

The recognition of the necessity for keeping such records was shown by the recent reversal by Secretary of Labor W. Willard Wirtz of his department's practice of prohibiting racial identification on employment records. The racial records, Mr. Witz said, would be used as a "statistical tool" to show where "concentrated action" was required. (N.Y. Times, May 19, 1966). The Commission, in order to fulfill its statutory mandate to appraise Federal laws and policies and the operations of the Federal Government in the civil rights area, long has had to request Federal departments and agencies to collect and maintain racial data. It is frequently impossible to determine whether the program is operating in a nondiscriminatory manner without such data.

Finally, a question was raised as to whether a record keeping requirement such as the one proposed would encourage state legislatures to amend their statutes to increase the number of peremptory challenges which the state might use. But a requirement that states keep records of race, sex, religion, and national origin would not materially aid the county or its officials in using peremptory challenges to disqualify particular classes of people if they were so inclined. The absence of a record keeping requirement would not prevent a county or its court officials from discriminating against individuals whose race and sex is apparent. The existence of such a requirement would, on the other hand, greatly facilitate the proof of such discrimination.

The difficulty of proving such discrimination was illustrated in a recent Supreme Court case in which a prosecutor in an Alabama County had stricken all six Negroes on the venire list in the process of selecting the jury. Evidence also showed that in 15 years no Negro had ever served on a jury, that 26% of the population of the county in question was Negro, and that there were many Negroes in the county who were qualified to serve on juries. The court held that no denial of equal protection of the laws had been shown. *Swain* v. *Alabama*, 13 L ed 759 (1965). The court did suggest that proof of an abuse of the challenge to exclude all Negroes from juries would be a violation of the 14th amendment. But the court indicated that the defendant had a heavy burden. The court said 13 L ed 2d at 774–776):

> [W]hen the prosecutor in a county, in case after case, whatever the circumstances, whatever the crime and whoever the defendant or the victim may be, is responsible for the removal of Negroes who have been selected as qualified jurors by the jury commissioners and who have survived challenges for cause, with the result that no Negroes ever serve on petit juries, the 14th amendment claim takes on added significance. . . . If the state has not seen fit to leave a single Negro on any jury in a criminal case, the presumption protecting the prosecutor may well be overcome. . . . [E]ven if a State's systematic striking of Negroes in the selection of petit juries raises a prima facie case under the 14th amendment, we think it is readily apparent that the record in this case is not sufficient to demonstrate that the rule has been violated by the peremptory system. . . . [T]*he defendant must, to pose the issue, show the prosecutor's systematic use of peremptory challenges against Negroes over a period of time.* (Emphasis added)

A requirement that the race of prosective jurors be recorded would make it possible to determine whether challenges over a period of time constitute a pattern of discrimination. To facilitate this determination, the State should be required also to record the names of those challenged peremptorily and whether they were challenged by the defense or the prosecution.

Sincerely yours,

WILLIAM L. TAYLOR, *Staff Director.*

The CHAIRMAN. There is a controversy now raging within the ranks of the Civil Service Commission on equal job opportunities and lists are now being made, as I understand it. Objections are made on the score that this recording of racial data could be used as a handle with which to whip people on the basis of discrimination.

Mr. TAYLOR. I know that that is a position that is maintained by some, but in juries, as I say, discrimination has gone on for a long period of time, without the keeping of racial data, I do believe that that is not the problem and that absent racial data provisions in title II (as in title I), it would be very difficult to meet the burden of proof upon a private individual in a particular county who would want to bring a lawsuit. His lawyer is going to have a difficult time showing what the practices have been over the course of the last 2 or 3 years unless he has access to such data.

The CHAIRMAN. I just have one more question: On page 12 of your statement, just a little below the middle of the page you say, section 1983 as presently written is applicable only with reference to title V rights when such interference is under color of law.

We think this section should be available to prevent interference with advocacy of racial equality prevailing against interference and advocacy of racial equality.

What do you mean by advocacy of racial equality?

Mr. TAYLOR. What I am talking about here, Mr. Chairman, is where there is a lawful, peaceful demonstration in favor of, for example, employing Negroes in a downtown department store. And this is carried out, this is fully within the bounds of the first amendment. We think that such demonstrations should be protected and the Attorney General should have the power to bring a lawsuit against local authorities if they are attempting to interfere with such exercises of free speech.

That is what we are talking about in that section.

Mr. MCCULLOCH. Mr. Chairman, are you finished?

The CHAIRMAN. Go ahead.

Mr. MCCULLOCH. I should like to inquire if a more direct example is not protection from interference of northerners who go south to help inform the people of their rights under the Constitution and under the laws?

Mr. TAYLOR. Yes; this would protect the civil rights worker as well as the Negro.

Mr. MCCULLOCH. The missionaries wherever they would be?

Mr. TAYLOR. That is correct.

Mr. MCCULLOCH. Excuse me, I will not interrupt any more.

The CHAIRMAN. I think that is all covered by title V, section 501. That section is written very broadly and I think it would cover that.

Mr. TAYLOR. Yes, sir; we believe that that section is, but that is a criminal remedy provided there and what we are talking about here is the need for corresponding civil remedies, the possibility of going in before there is any violence and getting an injunction against interference.

The CHAIRMAN. I think in 1963 you made a study as to discrimination in housing with reference to the Armed Forces.

Mr. TAYLOR. Yes, sir.

The CHAIRMAN. Would you mind submitting that for the file?

Mr. TAYLOR. Yes; I have that study here and I will submit it for the file.

(The 1963 staff report is retained in the committee's file.)

The CHAIRMAN. Thank you very much, sir. We appreciate your appearance.

Mr. MCCULLOCH. Mr. Chairman, would you permit one further comment? I look back with satisfaction on that successful fight that you led in the House in 1957 to secure enactment of title III of the 1957 bill. Inadvertently or purposely, it did not become the law: the other body refused it at that time.

Mr. TAYLOR. I fully share those views, Mr. McCulloch. There are a number of members here who were far in advance of their time.

Thank you.

The CHAIRMAN. If there is anything else you want to put in the record, the record will be held open for that purpose.

Mr. Roy Wilkins is here representing the Leadership Conference on Civil Rights.

Mr. Wilkins, I understand that you are not going to take very long, are you?

Mr. WILKINS. I am going to condense my statement, Mr. Chairman, as much as possible.

The CHAIRMAN. Right. Thank you. We have a number of Members of the House waiting to appear.

You speak for over 50 organizations, do you not, Mr. Wilkins?

STATEMENT OF ROY WILKINS, CHAIRMAN, LEADERSHIP CONFERENCE ON CIVIL RIGHTS, EXECUTIVE DIRECTOR, NAACP

Mr. WILKINS. Mr. Chairman, I speak for the Leadership Conference on Civil Rights which has about 100 national organizations, and I would like to say for clarification, that more than 60 of these to date since our meeting on May 5 have adopted officially the statement that I am about to give.

The CHAIRMAN. I have a paper which includes those names. If you wish, that will be inserted in the record.

Mr. WILKINS. There are a few additions that came in yesterday. They were given to the clerk.

The CHAIRMAN. You will make the appropriate changes and it will be inserted in the record.

(List follows:)

As of May 16, the following organizations in the Leadership Conference on Civil Rights have given specific endorsement to this statement of Mr. Wilkins:
Alpha Kappa Alpha Sorority
Amalgamated Clothing Workers of America
Amalgamated Meat Cutters & Butcher Workmen
American Civil Liberties Union
American Federation of State, County, and Municipal Employees
American Federation of Teachers
American Jewish Committee
American Jewish Congress
American Newspaper Guild
American Veterans Committee
Americans for Democratic Action
Anti-Defamation League of B'nai B'rith

Delta Sigma Theta Sorority
Episcopal Society for Cultural & Racial Unity
Frontiers International
Improved Benevolent & Protective Order of Elks of the World
Industrial Union Department—AFL–CIO
Internal Union of Electrical, Radio & Machine Workers
Iota Phi Lambda, Inc.
Japanese American Citizens League
National Alliance of Postal & Federal Employees
National Assn. for the Advancement of Colored People
National Association of College Women
National Association of Colored Women's Clubs, Inc.
National Association of Negro Business & Professional Women's Clubs, Inc.
National Beauty Culturists League, Inc.
National Catholic Social Action Conference
National Catholic Conference for Interracial Justice
National Council of Catholic Women
National Council of Jewish Women
National Council of Negro Women
National Council of Senior Citizens, Inc.
National Dental Association
National Federation of Settlements and Neighborhood Centers
National Federation of Temple Sisterhoods
National Student Christian Federation
Negro American Labor Council
Northern Student Movement
Omega Psi Phi Fraternity, Inc.
Pioneer Women
Protestant Episcopal Church—Division of Christian Citizenship
Retail, Wholesale & Department Store Un.
Southern Christian Leadership Conference
Transport Workers of America
Union of American Hebrew Congregations
Unitarian Universalist Association—Commission on Religion & Race
United Automobile Workers of America
United Church of Christ, Committee for Racial Justice Now
United Church of Christ, Council for Christian Social Action
United Hebrew Trades
United Rubber Workers
United States National Student Association
United States Youth Council
United Steelworkers of America
Women's International League for Peace and Freedom
Young Women's Christian Association of the U.S.A.
Zeta Phi Beta Sorority
B'nai B'rith Women
Christian Family Movement
Other Organizations:
Executive Committe of the Division of Human Relations & Economic Affairs, General Board of Christian Social Concern of the Methodist Church
Citizens Crusade Against Poverty

Mr. WILKINS. Mr. Chairman, we support H.R. 14765 and urge certain vital strengthening amendments.

I think I ought to say, as a preliminary, the need for me and others to return to testify on another major civil rights bill so soon after passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 is occasioned by the cumulative effect of nearly a century of neglect of section 5 of the 14th and section 2 of the 15th amendments. These sections, which authorize Congress to enact appropriate legislation to enforce the amendments, were a dead letter from the 1870's until passage of the Civil Rights Act of 1957.

This long period of congressional inaction spawned problems which could not be resolved in any one or even a number of congressional

enactments, in the light of the existing political realities. As Congress responded to pressing needs by passage of civil rights legislation in 1957, 1960, 1964, and 1965, experience under this legislation and reaction and resistence to it have indicated the need for further legislative action to refine and protect the rights encompassed by these laws.

The first two titles of H.R. 14765 concern themselves with reform of the jury selection system, both Federal and State. The conditions that make this reform necessary are a prime example of a situation created by the Nation's neglect to which I have previously referred.

Despite the adoption of the 14th amendment 98 years ago and despite the Supreme Court's upholding, in *Ex parte Virginia* in 1880, the statute making jury discrimination a criminal act, the practice of exclusion of Negroes from juries still exists. It exists not on an accidental or limited basis, but as part of widespread, systematic, and concentrated State action practiced in contempt of the Constitution and in total disregard of the civil rights of millions of American citizens whose skin happens to be colored.

I need not elaborate on the details on where or how this racial exclusion is practiced. I am sure the subcommittee has been well briefed on this point. I cannot, however, refrain from citing once again the case of Lowndes County, Ala., which the Attorney General has already brought to your attention. In this county a Federal court found that no Negro had ever served on a jury, despite the fact that Negroes comprised 72 percent of the population from which juries were selected.

Through the years jury exclusion has been a matter of continuing concern to civil rights organizations, and a substantial number of cases have been handled by lawyers of the NAACP and the NAACP legal defense fund, including such landmark ones as *Hale* v. *Kentucky*, *Hill* v. *Texas*, and *Shepherd* v. *Florida*, to mention only a few.

This experience in the courts has led the leadership conference to the conclusion that while case-by-case litigation may secure justice in specific instances, it is not an effective means of combating the problem of jury exclusion with all of its ramifications. We therefore welcome efforts to reform the system itself to eliminate the curse of racial discrimination. That the President's program is concerned with the total jury selection system inspires hope that Congress will meet the crying need for a complete overhaul of jury selection procedures.

We are pleased that the bill offered to carry out this program attacks all types of discrimination—on the basis of sex and economic status as well as race, color, religion, or national origin.

It is significant to us that in those States where women are barred from jury service—Alabama, Mississippi, and South Carolina—harsh treatment of Negroes in judicial procedures is often the rule rather than the exception. We would hope that the inclusion of ladies in the jury system would add elements of both mercy and justice. This hope is inspired by our memory of the valiant work that women—and especially southern churchwomen—performed in the long and ultimately rewarding fight against the evil of lynching.

The prohibition of discrimination because of economic status is a necessary complement to that barring racial discrimination. It would be of little moment to Negro litigants in areas such as the Mississippi

Delta if prospective Negro jurors, having overcome the factor of race, were struck from the list because of a means test.

The unfortunate historical and socioeconomic factors that have relegated masses of Negroes to lower economic classifications would then become as effective a barrier to jury service as the jury commissioner's deliberate policy of handpicking "white only" venires.

We are likewise pleased that the provisions of H.R. 14765 apply universally—to Federal as well as State juries, to practices in the North as well as those in the South. While our experience in Federal courts in the South is generally better than in most local courts, we see in the Federal system many of the deficiencies in jury selection that prevail in the State system.

In the North, the private prejudices of the persons selecting jurymen may be more subtle—in some cases even unconscious—but the ultimate result is often the same: Juries that conform to the selector's concept of what a jury should be, rather than one composed of a representative cross-section of the community.

In some cases—such as my own State of New York—these prejudices are reinforced by statutory standards requiring ownership of property or payment of specified taxes as qualifications. That the bill before the subcommittee seeks to eliminate these practices indicates it is not regionally oriented.

Suffice to say, Mr. Chairman, conditions that exist nationwide require that there be a new, speedy, nondiscriminatory jury selection system, under which the authority of the individual selector or selectors is replaced by an automatic system of choosing those who serve.

Closely associated with the jury system is the prosecution of crimes against Negroes and against civil rights workers, Negro and white, because of their pursuit of racial justice. Too often have we seen such crimes go unpunished, either because of failure of local authorities to act, or because juries, selected under the conditions noted above, are more sympathetic to the criminals than to their obligation to see that justice is done.

The murders of Medgar Evers, William Moore, James Chaney, Michael Schwerner and Andrew Goodman, the four young girls in Birmingham bombed to death in a church, Jimmie Lee Jackson, Col. Lemuel Penn, Rev. James Reeb, Jonathan Daniels, Vernon Dahmer and others, all as yet unpunished, cry out for removing the trial of racial killers from the control of local courts and juries which, as President Johnson has said, may tip the scales of justice one way for whites and another way for Negroes, and placing it in a forum more likely to mete out impartial justice.

So long as such crimes go unpunished, none of us, white or colored, can be assured of the rights guaranteed by the Constitution and by the great congressional enactments of recent years. Rights exercised in fear are not rights at all. To us it is both fitting and logical that Federal rights should as far as possible be protected in Federal courts.

We were therefore gratified to see the response of the Attorney General, set out in title V of the bill, to the invitation that the Supreme Court extended in the *Guest* and *Price* cases. It is a matter of the most urgent national policy that we protect in full the basic civil

rights that have far too often been jeopardized by unruly mobs, by the Klan, by terrorists who strike in the dark, and by other unlawful elements, some, unfortunately, who wear the badges of officers of the law.

We are most hopeful that vigorous enforcement of these provisions when enacted will serve as a deterrent to those who have often relied on their locally administered brand of "justice" to protect them from just punishment for their deeds. We look forward to the day when constitutional rights may be exercised without fear of reprisal.

Having skipped to the last substantive title of the bill, I will now return in regular sequence to title III, dealing with desegregation of public facilities and public schools and authorizing the Attorney General to file suit to require that schools and other facilities be operated free from discrimination.

Mr. Chairman, it happens that today, May 17, it is 12 years to the day since the Supreme Court handed down its decision in *Brown* v. *Board of Education* in which it held racial segregation in the public schools to be inherently unequal and hence unconstitutional.

It is a matter of sadness and regret that next month thousands of colored schoolchildren who entered first grade after that great decision was rendered by the Supreme Court will graduate from high school without having benefited from that ruling. Their entire elementary-secondary school life will have been spent in a condition of inherent inequality.

Unless significant changes occur in the immediate future, additional thousands of children will be totally denied the benefits of the *Brown* decision. For, as the President has pointed out in his message to Congress on this leigslation, only 1 in 13 colored children in the South attends school with white children. And I must say that many informed sources consider this estimate to be on the optimistic side.

In the North thousands more colored students spend their entire school careers in de facto segreation. In other words, Mr. Chairman, 12 years later we are not getting on very well with the job.

We have always felt that the executive branch of Government had a special obligation to implement the principles enunciated in the Court's school desegration opinion. For this reason we supported titles III, IV, and VI of the Civil Rights Act of 1964. But unfortunately the resistance to the right to enjoy equally the use of public schools and facilities has been so great that these provisions of law, while helpful, have not been able to secure the free exercise of constitutional rights.

Discharge from employment, denial of credit, refusal to renew farm tenancy agreements and other economic pressures have been exerted against those seeking rights for themselves or their children. Where these tactics have proved ineffective intimidations subtle and overt have been used.

Freedom of choice, for example, has been the battle cry of those who seek to cling to the status quo. But they have refused to allow the choice to be free. Studies and reports published and complaints filed by civil rights organizations, including American Friends Service Committee, SNCC, the Urban League, Southern Regional Council, the NAACP, the NAACP Legal Defense Fund, and others, show

that time and time again the choice of parents has been thwarted by the organized opposition.

Principals and teachers have been used to influence the selection of schools.

The CHAIRMAN. The last report was that in some cases the Negro teachers might lose their jobs, is that not, so?

Mr. WILKINS. That is part of it, Mr. Chairman. I think probably that is the determining factor, but there is another factor. A parent in Paducah, Ky., said to me that the colored principal called her and said, "You went to my school and now your little girl wants to go over to the white school. Why don't you send your little girl to the school where you went?"

There is a personal prestige involved here as well as the matter of the loss of the job.

Threats of failures, of nonparticipation in athletic events and other extracurricular activities, have been utilized. Discharges of colored teachers, as you mentioned here, Mr. Chairman, has been widespread. Transportation has been refused to colored children attending desegregated schools. They have been psychologically and physically harassed inside and outside of school while the authorities have done nothing.

I might mention here our own organization guaranteed the farm mortgage of two families in a Southern State who sent their children to a school under a court order and promptly their mortgage was foreclosed, or called, and they appealed for help and we guaranteed this mortgage, because the parents said, "We were carrying out desegregation procedure and this is the penalty that we have been called upon to pay, and we do not think it is fair."

This is only one illustration of the type of threats.

There have been many threats, and I could go on and on for pages citing those threats in various counties as they have arisen. The school authority, for example—the chairman of the school board can exercise great personal prestige and persuasion simply by writing a note to the parents, no matter what the Federal Government says, "I, the chairman of the school board"—or "I, the superintendent of schools, I tell you to send your children to the same school so we will not have any unheaval in our county or school district."

This has great persuasion on detached Negro families who have no recourse to better advice.

In Wilcox County, Ala., the school superintendent has written to the parents of the Negro students advising the children to return to their segregated schools, regardless of what the Federal Government does. In Coosa County, Ala., the loss of welfare benefits were threatened if requests for school transfers were not withdrawn. In Mitchell County, Ga., a parent was severely beaten; in Burke County in the same State, the home of a child attending a desegregated school was shot into. In a Maryland community a cross was burned on the lawn of a home where a student lived. These represent only a sampling of the coercive tactics used. The cumulative effect of intimidation and threats has been to discourage many parents from applying for transfer for their children; many more have withdrawn their children after their transfer to a "desegregated" school.

The authority of the Attorney General under the 1964 act to file school desegregation suits is inadequate. It requires a written com-

plaint to invoke its use. The same conditions that discourage school transfer applications discourage complaints.

It does little good to say that such complaints are confidential. The Negro leaders and parents in the community are well known to those who resort to terror. A new approach is needed under which the initiative for filing desegregation suits is placed in the Attorney General.

There is another compelling reason why the Attorney General should be granted this authority. Title VI of the 1964 act reaches only those programs and communities that accept Federal funds. The 14th amendment reaches all public schools and facilities.

Some political leaders see the refusal of Federal funds—that is, local political leaders—as a method of both avoiding desegregation and grabbing racist political headlines. To attain these objectives they are willing to compromise the future of their State's students, both white and colored, by denying them the Federal assistance needed to bring their school system into the 20th century.

Already over 200 school districts have failed to even file plans under the relatively mild guidelines—I would like to underscore that, because the guidelines issued by HEW which have aroused such a furor in some sections of this country are really actually relatively mild guidelines and the objection to them seems to stem not so much from the vigor of their wording or the all-inclusiveness (which they lack, of course) of their provisions, but simply resolves itself into a resistance against any suggestion from the Federal Government as to what ought to be done by the local schools.

Those who defy the Constitution and jeopardize the future of thousands of young people must be convinced by the Federal Government that equal educational opportunity is the national policy, whether or not Federal funds are involved. This can only be done on a scale large enough to make it convincing by the Federal Government, acting through its chief law officer.

We welcome the inclusion in the pending bill of the provisions in title IV aimed at the ghetto system that disfigures residential areas in all parts of the country. That is the housing section. The whole housing market is dominated by practices of discrimination—and this needs to be underscored. Just the other day in Framingham, Mass., in the shadow of Faneuil Hall, in 1966—not 1961, not 1951—a Negro came, a man, an instructor in a college, went through the old rigmarole of being turned down and then sending a white couple to apply for the same apartment and finding that apartment to be available to them, but not to him. This happened in Massachusetts. This discrimination runs all through the housing picture, and it does not matter whether it is in North Carolina or whether it is in Minnesota, my old home State, or in our State, Mr. Chairman, New York.

We find all over the country the pattern of the central city with ever-increasing ghettos surrounded by a ring of completely segregated suburbs. Because of their confinement to limited areas, minority group families are forced into doubling up and other expedients that breed slum conditions, with resulting increases in delinquency, fire losses, depressed health conditions, and other evils.

No less important is the fact that continued bias in housing is nullifying gains made elsewhere in the fight against inequality. Residen-

tial segregation means segregation in schools, playgrounds, health facilities, and all other aspects of our daily lives. It is primarily responsible for the widespread segregation in Northern urban and suburban public schools. It has even impaired the job opportunities opened up by fair employment laws.

Finally, it is the most potent source of the intergroup tension that too often explodes in violence—a fact attested by a long list of names like Cicero, Levittown and, most recently, Watts.

In connection with Watts, Mr. Chairman, I only want to underscore one thing for the attention of this subcommittee. That is not the familiar warning or threat that if we do not do so and so we will have another Watts—not that. I call the subcommittee's attention to the McCone report on the Watts riot and to one phrase of the McCone report which I would hope that the subcommittee might transmit to the full committee and the full committee to the full Congress, the full House.

The McCone committee observed that if a Watts situation were to be avoided in the future, corrective measures must be undertaken with a revolutionary attitude, with a revolutionary attitude—this does not mean business as usual. This does not mean the usual excuses; this doesn't mean saying, well, that will disturb some of our institutions. Revolutionary means disturb the institutions, and it means that in the case of housing and slum conditions and the urban sores we have been breeding in this country, that we must approach them with a revolutionary attitude.

Nobody could accuse McCone or the McCone commission of being radical and wild eyed and far out, because Mr. McCone was the head of a respected Government agency which many people, despite the present publicity, might call conservative, conservative in the sense that it was set up for the purpose of conserving the values that we hold good.

Title IV of the present bill is designed to come to grips with this problem. It would bar discrimination not only by the owners of housing, but also by their agents and by those who provide necessary financing. Most important, it would apply to all housing. That is as it should be.

Recent proposals—for example, and the Attorney General's agreement to exclude "Mrs. Murphy's boarding house"—would make unnecessary compromises with principle. Once Congress recognizes that housing bias works a harm to the national interest that it has power to prevent, it should do the job that needs to be done. It should not leave pockets of bias in the housing market.

Now, Mr. Chairman, there are some who say that this is of no concern of Government, that the sale of housing is a private matter to be left to the whims and prejudices of the parties involved. This ignores, I submit, the realities of recent years.

Suburbia as it now exists was made possible largely by FHA and VA-insured financing. Its residents are served by facilities constructed with Federal assistance, commute to work over highways and are treated in hospitals built with Federal funds. Their children attend schools receiving the benefits of Federal programs. To say that it is no concern of the Federal Government that Negroes are denied

the right to live in these communities that would not exist except for this massive Federal assistance is to us bordering on an absurdity.

The time has come to break the vicious circle that confines Negroes to second-class housing status. This can be done only by a total Federal program, legislative and executive. The legislative aspect will commence with the adoption of title V. It will not only be effective in its own right; it will stimulate action by the executive branch to make housing desegregation a prime a goal of Federal action.

Mr. Chairman, I could not complete my comments on the President's program without reference to his request that the bill sponsored by Congressman Hawkins (H.R. 10065) be included as part of the administration's program.

It goes without saying that we support this, as we have already gone on record by testifying and working for its passage by the House. Since the House of Representatives has already passed this measure, our full comments will be more properly directed to the Senate. I could not, however, miss this opportunity to assure you that we will continue to work for this legislation.

The CHAIRMAN. Mr. Wilkins, is it not rather unusual for Congress to pass a bill twice? We have already passed the Hawkins bill. You ask it be included in this bill——

Mr. WILKINS. I said parenthetically, I am sorry, Mr. Chairman, that since the House has passed the bill, our remarks in this matter should be addressed to the Senate.

For all the reasons I have noted, we will work for the passage of H.R. 14765. For the same reasons, however, we will support with all our resources efforts to make this bill an even better vehicle for the protection of the rights of those persons who are represented by our combined organizations, by addition of reasonable, constructive amendments.

At the May 5, meeting of the leadership conference, to which I have previously referred, there was general agreement that four proposals met this criterion and should be specifically brought to the attention of the Congress.

It is our belief that the jury selection procedures, particularly as they relate to State juries, should be strengthened to better assure that that prohibitions against discrimination will be enforced. We are all only too well familiar with the failure of reliance on case-by-case judicial procedures to assure the right vote.

Accordingly the Congress last year adopted an "automatic trigger" to suspend State literacy requirements and to appoint Federal examiners for the election processes. We propose that a similar trigger, based on statistical evidence of nonparticipation of Negroes in jury service, be included in the bill, for the purpose of suspending discriminatory State qualifications and appointing a Federal official to select State juries where discrimination exists.

I will not attempt to spell out the details of such a provision. One possible approach is the presumptive method contained in Congressman Diggs' bill (H.R. 12807) and other House bills, and in S. 2923, sponsored in the Senate by Senator Douglas, Senator Case, and 19 bipartisan colleagues.

Another would be a certification by the Attorney General that a given statistical formula of nonparticipation of Negroes in jury service

had been met. We are confident we can work out with the staff of your committee, Mr. Chairman, a more expeditious and effective method of enforcement than is contained in the present administration proposal.

One of the aberrations of the present system of the administration of justice in many areas is its all-white-personnel policy. As commentators have pointed out, it is possible for a colored defendant to be arrested, jailed, arraigned, indicted, tried, convicted, and confined, without seeing anything but white faces in the whole process of the judicial procedures. To at least begin to break down this obstacle to equal justice, we proposed that the equal employment law (that is, title VII of the 1964 act), either as now constituted or as amended by the Hawkins bill, be amended to cover State and local public employment practices.

Next, we would urge the Congress to give most serious consideration to establishing a program of indemnification for persons injured because of their race or their efforts to establish racial justice, along the lines of the Diggs and Douglas-Case bills.

There are those who say that such a program should not be considered unless applied to all victims of crime. We believe, however, that there are valid reasons for beginning this program with indemnification for victims of the civil rights struggle.

This is a civil rights bill, one of the principal purposes of which is to deter violence against Negroes and civil rights workers. It is our belief that the klan, and other nightriders and perpetrators of violence, would be deterred if they knew their victims could receive an award of indemnification and that they, in turn, would be sued by the U.S. Government for the amount of that award.

The rights here protected are Federal rights, rooted in the Constitution. Therefore, their denial or abridgment by violence is a matter of Federal concern, unlike the usual crime, which is primarily within the jurisdiction of local government.

Another reason for Federal interest is that the victims of these crimes are engaged in activities that further the national policy of equality of opportunity. They are not victimized, as are most persons subjected to criminal assaults, by chance, but are specifically chosen because of their efforts to make the Constitution a living reality. Medgar Evers, the Chaney-Schwerner-Goodman trio, Mrs. Liuzzo, Reverend Reeb, and others can properly be compared to those who lose their lives in the service of their country in war, in that they died to protect and advance our American ideals.

Finally, we feel there is an obligation to compensate the victims of racial violence or their kin because the violence to which they are subjected results from governmental action or inaction—as you choose—in the true sense.

This violence stems from 100 years of official State action, action suppressing the constitutional rights of Negro citizens, and from nearly the same length of Federal indifference to this systematic denial of rights. Surely if ever an institution were a creature of government, it is that of racially-motivated violence to suppress legitimate aspirations of millions of Negro citizens and their white advocates. That the Government should now indemnify for this suppression is certainly not too much to ask.

The other major change we ask in the bill is that administrative enforcement be included in title IV. This is consistent with our long-

established policy of supporting administrative enforcement of civil rights statutes. It is also consistent with the action of the House of Representatives in adopting the Hawkins bill, providing for administrative enforcement of the equal employment opportunity law.

I cite only briefly a few of the advantages of the administrative procedure may be mentioned. First, it neutralizes the well-known fact that victims of discrimination are rarely in a position to initiate and carry through lengthy court proceedings. Under the administrative process, the burden is largely lifted from the complainant once he invokes the statutory procedure. From that point on, the administrative agency takes over responsibility for carrying out the public purpose of preventing and remedying violations of the law.

Second, the administrative process assures expert treatment in dealing with a difficult and frequently technical area. Expertise is needed both in evaluating the facts and in shaping the appropriate remedy. It is needed also in the vital task of continuing supervision of past offenders.

Third, an administrative agency can deal with whole sectors of a problem in a unitary fashion. This is difficult for courts acting on a case-by-case basis, for example. Moreover, the agency can concentrate its forces at the points most in need of corrective action.

Fourth, the administrative process protects persons against unwarranted charges. The agency can quickly screen out those charges of bias that arise out of pique, misunderstanding, or vindictiveness. It is a well-known fact that litigation has been kept at a very low level under all administrative civil rights laws.

These considerations, fully buttressed by experience, have been persuasive with the State legislatures. In State after State, antibias laws of the old-fashioned type have been amended to provide for administrative enforcement and most new State laws contain that feature.

At present, of the 18 fair-housing laws in 17 States and the District of Columbia, all but one are enforced administratively. The corresponding figures for employment are 30 out of 35; for public accommodations, 23 out of 36.

It should be noted that none of the evils so freely predicted for this type of law have eventuated. Neither hotel owners, employers, nor housing developers have been harassed by over-zealous bureaucrats. They have not been put out of business by being forced to defend themselves against floods of complaints. On the other hand, steady, though unfortunately inadequate, gains have been made toward practical equality of opportunity.

Administrative enforcement of title IV should supplement rather than replace the present enforcement features of the bill. In many States, parties aggrieved by discriminatory practices may make an election between filing a complaint with the State antibias agency or bringing their own suit in court. Although experience shows that the latter alternative is rarely used, its availability is a valuable counter to the ever-present danger of bureaucratic sluggishness.

Mr. Chairman, in a conference coordinating the legislative interests of over 100 separate organizations, there are many opinions as to other changes that would improve the proposed legislation; and each organization retains the right to suggest additional amendments

to the Congress. But the four changes I have urged represent a firm consensus within the leadership conference as to what civil rights groups should support as a minimum.

These suggestions, I emphasize, do not represent a criticism of the administration's program, nor are they offered in derogation of it. We believe it would be a national tragedy if Congress failed to enact the administration bill. Our changes are advanced as a supplement, in the same manner that the leadership conference in 1964 and 1965 offered suggestions that were adopted by the Congress—suggestions that went beyond the original bill as introduced.

It is our hope that, just as in 1964 and 1965, the voice of public opinion let Congress know that what we sought was reasonable, just, and practical. It will again convey to the Congress the sense of necessity and urgency for the strengthening changes we advocate. We shall dedicate our efforts to seeing that this message is relayed to the members of your subcommittee, committee, and the full Congress.

And, Mr. Chairman, in conclusion I would like to say that all this legislation seeks to achieve is a brand of American justice. Several members of the subcommittee have mentioned at this occasion and on many previous occasions, and our President in a speech at Howard University last June, in his conclusion, touched upon this precious matter of American justice, and I would like to close by quoting briefly from that speech.

He asked: "For what is justice? It is to fulfill the fair expectations of man. American justice," he said, "is a very special thing. We have pursued it faithfully to the edge of our imperfections and we have failed to find it for the American Negro."

Our organizations ask this committee and the Congress to adopt this bill as a step toward finding justice for the American Negro.

Thank you.

The CHAIRMAN. I want to say, Mr. Wilkins, that you and your colleagues in the Leadership Conference have been of immeasurable benefit to the members of this committee on prior occasions and we look forward to your cooperation again, and I am sure we will have that cooperation.

Mr. WILKINS. You will, sir.

The CHAIRMAN. I want to ask the following, Mr. Wilkins: You refer to the so-called Diggs bill and in that bill, I believe, title V has established within the U.S. Commission on Civil Rights an indemnification board, the purpose of which would be to determine damages for indemnification for those whose civil rights have been infringed upon.

Would that mean that the Federal Government would be solely responsible for the infringement of civil rights and for those who suffer physical injury as a consequence?

Mr. WILKINS. Mr. Chairman, I think in my testimony I merely suggested—in fact, I stated, that I was not prepared to go into detail on the indemnification matter nor how it should be brought about, and merely suggested that one approach had been made in the Diggs' bill.

I do not interpret my testimony, and I hope the members of the subcommittee will not interpret it, as being an all-out endorsement of

the Diggs' formula, but merely a suggestion of one way of getting at this problem.

I realize the difficulties involved and I would like to say for the members of the committee who are all lawyers, I assume, that I am not a lawyer, and so I am not able to go into these technical matters nor answer questions on them, but Joseph Rauh, who is the counsel for the leadership conference will be testifying before this subcommittee later this week and I am sure he will be able to deal with this question. In fact, I know he will; he is to deal with it in his testimony.

We are suggesting indemnification. Now the method of going about it, whether it is the Diggs formula or some variation thereof, or a wholly new formula, is not a matter I can discuss at this time.

The CHAIRMAN. Mr. Kastenmeier?

Mr. KASTENMEIER. Mr. Wilkins, on page 2 you refer to the Congress having responded to the needs and having passed legislation in 1957, 1960, 1964, 1965, and presumably now in 1966. You may not be a lawyer, Mr. Wilkins, but you are very skilled in legislative matters.

I would ask you, do you not feel that the Congress might well consider what we have done in terms of the legislation and whether this committee ought to merely respond to administrative requests to consider a piece of legislation or whether we have a broader responsibility as far as oversight is concerned, to see whether, as a matter of fact, the legislation—all this legislation you have referred to and the legislation we are now considering today—might—whether we might see whether this has been implemented by the executive branch, because we had, in fact, had we not, created a tremendous bureaucracy, and you raised some of the questions of whether this passed legislation has been implemented by the administration and how, in fact, it has operated in the field as far as reality is concerned?

Mr. WILKINS. I think the question is one that must occur to a good many persons, but I ask you to remember that it was not until the enactment of the civil rights bill of 1964 where any noticeable compliance, voluntary compliance in contrast to the studied lack of compliance with both Executive orders and judicial orders of the past.

It was not until the Congress took legislative action that we had not only an increase in voluntary compliance and rather noticeable change in the attitude of the people themselves, who felt that in conforming to a law of the Congress they were doing the right things, where in defying a Supreme Court order or Supreme Court expression of interpretation of the Constitution they were not committing such a crime.

And I further suggest not only the efficacy of the legislative approach upon the people at large and their concept of what is the law and what they must do, but I suggest also that the Congress has a duty upon observing, and it is there to be observed, the violations of the law and the loopholes and to devise and to respond to requests for further legislation, not to wait for the implementation of laws already on the books, many of which have been demonstrated to have loopholes in them which no amount of executive diligence could correct.

I submit that this applies to most of the legislation we have here under consideration. For example, the title in the 1964 act on school desegregation specifically restrains the Attorney General, namely, the executive branch of Government—specifically restrains him from

acting in school cases without the filing of complaints by a requisite number of parents.

Now, no matter how long the Congress left this provision there and hoped for, prayed for or otherwise tried to persuade the enforcement of it, this is the loophole that can only be closed through legislation.

I think it is well to consider whether legislation in certain instances is the answer or whether further attempts to implementation is the answer, but we found out very quickly in 1960 that the 1957 Voting Rights Act was only a sliver and we found out in 1960 that the amendment thereto did not reach the problem.

We found out in 1964, almost immediately with the passage of that act, that title I, which dealt with voting rights, was wholly inadequate. As a matter of fact, it was right after the election of November 1964 that plans were made and language drawn for the Voting Rights Act of 1965: the deficiencies of the previous legislation were glaring.

Mr. KASTENMEIER. Yes; most particularly I would think it would be of concern to you and certainly to the Leadership Conference whether, for example, there is a gap between paper compliance in Washington, title VI, and actual compliance in the field.

The point is, does not the Congress, in fact this committee, have a responsibility to make inquiries with respect to this condition?

Mr. WILKINS. I think, sir, it would be helpful for this committee or any appropriate body of the Congress which enacted this legislation to make inquiry of the agencies concerned about the degree of implementation, the difficulties of enforcement.

I think that since the President has asked this bill, I assume that he drafted it or had it drafted after consultation with the agency heads and they had outlined to him the difficulties and loopholes and so forth, but it would be immensely helpful if the Congress were to call the heads of appropriate agencies here and ask them point blank what about the enforcement of this provision? What are you finding? What kind of, for example, in title VI—what kind of requests are you getting? What kind of compliance? How many people have sent in their blanks? What does compliance consist of?

How much investigation have you done of these? Have you validated the fact that school boards in a certain county in a certain State are actually in compliance or do you merely have their assertion that they are in compliance?

This information might be—we are armed with some of it, but obviously ours is unofficial. Yours would be official.

Mr. KASTENMEIER. I appreciate your comments, Mr. Wilkins. It was not my intent to go far afield here, but because we are concerned—ought to be, whether when this legislation is enacted whether the Congress is then continuing responsibility for it in terms of what happens to it.

I submit that it does. That we have a continuing responsibility for past legislation enacted and while at the present time a proposal in the subcommittee is being held up on that question, I hope it can be resolved satisfactorily. I appreciate your comments.

Mr. WILKINS. Thank you, Mr. Kastenmeier. I am sure you are as well aware, as I am, that there is a difference of opinion in the Congress as to whether it should follow up legislation or not, but I am on your side.

Mr. DONOHUE (presiding). Any questions?

Mr. MCCULLOCH. No questions.

Mr. DONOHUE. Are there any further questions of Mr. Wilkins?

Mr. MCCLORY. Mr. Chairman, as you know, I am not a member of this subcommittee. I wonder if I might make one inquiry since Mr. Wilkins has made a suggestion with regard to administrative procedure here which is not in the legislation. I would like to ask a question along the line of better and quicker enforcement. I would like to ask your opinion with regard to a continuing committee or subcommittee of this Judiciary Committee to consider the effectiveness of enforcement of existing legislation or the need for additional legislation. As you indicate and as we realize from the legislation which has been enacted session after session, it is not just new laws which are vital but it is a continuing problem which we have, both of considering new legislation and enforcing of existing legislation.

How would you feel about a continuing committee of the Congress to study and consider and recommend with regard to this broad area?

Mr. WILKINS. Well, Mr. Chairman, my response to that would be that within the traditional practices of the Congress, if this is not setting a precedent, and I suppose even if it did set a precedent, I can see no harm in continual interest by this subcommittee or a specially appointed subcommittee of the Judiciary Committee, continuing the sort of supervision or inspection of the legislation.

Now, this may set a precedent. I am not sure that Congress does this, and I am not sure even that there is a necessity for this special machinery, because theoretically the Congress or a committee has the right to call a hearing and investigate a matter at any time it feels it has such cause.

If it did have what it deemed to be sufficient cause for implementation of existing legislation, it could call witnesses and go into the matter.

Now, whether it does it through a special continuing committee, sir, or whether it does it on its own, I think it would be helpful for at least the power for it to do it or the threat for it to do it or its promise to do it, a little kinder word, might have a salutary effect.

Mr. KASTENMEIER. Mr. Chairman, if the gentleman from Illinois will yield, I think there is adequate precedent for this. For example, recently the poverty program—heavens knows that the Labor and Education Committee, that is a poverty committee which conducts literally oversights in this area, and it is not uncommon in the Congress.

Mr. WILKINS. I know also that the Armed Services Committee of the Senate is now busy defending its jurisdiction over CIA.

Mr. MCCLORY. Well, the reason I asked the question is that there are many of us who feel that there has not been adequate diligence with regard to enforcement of existing civil rights legislation, and we would like to encourage better enforcement and perhaps a committee of this Congress or a subcommittee of this committee could inquire into that to encourage better enforcement and at the same time to consider the need for supplemental legislation to see that more equal rights in these various areas are accomplished.

Mr. WILKINS. I would assume that such a committee or such an inquiry would reveal derelictions in enforcement, not only in the

executive branch but wherever it might occur, because since these complaints radiate from many hundreds of communities and come, I might say, with proper delicacy, I hope, from a great many congressional districts.

There might be some elements there that would warrant the attention of the committee.

Mr. McCLORY. Thank you. I do not want to prolong this, but I just do want to add that there is no magic in these laws particularly if nothing is done about them after we enact them.

Mr. WILKINS. That is right.

Mr. DONOHUE. Thank you very much, Mr. Wilkins.

Our next witness we will hear from is Congressman Frank J. Horton from the great State of New York.

STATEMENT OF HON. FRANK HORTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. HORTON. Thank you, Mr. Chairman and members of the committee. I greatly appreciate the courtesy you have shown in inviting me to appear here this morning to testify in behalf of H.R. 13340, the comprehensive civil rights law enforcement bill, which I introduced together with some 22 other Republican members.

Unfortunately one of the Members who has done a yeoman's part of the effort in this bill, Congressman Mathias, a member of your committee, has been ill and is not able to testify, but I have been informed that it is at least hoped that he will be able to appear before the committee before the hearings are concluded.

Also included among these Members that have introduced this bill, the Honorable Ogden Reid, who will testify later this morning before the committee.

I want to compliment the committe for scheduling these hearings so soon after the introduction of this legislation. I am pleased to appear in support of a forceful, direct legislative proposal to safeguard the integrity of the administration of justice throughout the length and breadth of our land.

For 2 years or more this distinguished committee under the able direction and leadership of Mr. Celler, your chairman, and Mr. McCulloch, has labored long and hard in this cause of civil rights. During this time the Nation has gone a long way toward the goals of equal justice under law and equal opportunity for all Americans. Despite this tremendous outpouring of legislation, events particularly in the area of administration of justice, demonstrate that neither this committee nor the Congress can relax its grip on the oars.

While it was not entirely unreasonable to anticipate that the epochal measures enacted in 1957, 1960, 1964, and 1965 might prompt State and local officials to labor in the vineyard, it was not completely worked out that way. As a consequence, we are duty bound to reaffirm and reassert by appropriate legislation that our "Constitution is color blind."

The bill, H.R. 13340, which I have introduced would put meaning and muscle behind countless court opinions deploring discrimination in jury selection and reaffirming the right of all qualified persons

under the 14th amendment to serve on juries. The Civil Rights Law Enforcement Act of 1966, establishes reasonable standards for determining whether, in a particular court's jurisdiction, systematic exclusion from juries on arbitrary grounds is being practiced, and provides a remedy where such discrimination is found, commensurate with the dictates of the 14th amendment.

This bill represents a moderate, but realistic, program for strengthening civil rights in the areas I have mentioned. It is a comprehensive bill which avoids extremes; it seeks to advance the cause of equal justice in a reasonable, constructive and constitutional fashion. I believe its provisions have broad support throughout the Nation and deserve the support of Congress.

Generally, my bill will establish an objective and equitable standard for the selection of juries in Federal and State courts. It will protect Negroes and civil rights workers from acts of violence perpetrated by public officials and private individuals. It will strengthen Federal criminal penalties for those who deprive individuals of federally protected rights. It will make States and political units jointly liable for damages resulting from unlawful violence by public officers.

Let me describe the provisions of H.R. 13340 in somewhat greater detail.

Title I deals with jury selection in the Federal and State courts. The existing Federal law establishing juror qualifications allows ample opportunity for the exercise of discretion in obtaining persons for jury service. The existence of such discretion obviously affords for unlawful discrimination.

Title I of my bill provides an objective standard that not only closes the existing loopholes, but insures that Federal juries will be drawn from a truly representative cross section of the population. The standard embraced by the bill is the list of qualified voters in the judicial district.

In brief, it provides that anyone qualified to vote within the judicial district is competent to serve as a Federal juror. The administration bill, I am pleased to note, adopts the same standard. The principal merits of this source of potential jurors are several and fairly apparent. In addition to eliminating the opportunity for subject judgment, it employs a pool of potentially responsible citizens to serve as jurors. Further, and I think equally important, it should furnish added inducement to register to vote.

In case after case, there is ample evidence of discrimination in the selection of juries in many State and local courts on the grounds of race, color, and sex. In order to prevent this sham on due process and equal protection of the laws, my bill would establish a presumption of discrimination where State and local procedures are radically out of line with this Federal scheme that I have mentioned.

It would permit a defendant in a State court who alleges discrimination in the selection of either a grand or petit jury, to petition the Federal court for review of jury selection procedures. If the courts find that the selection scheme is discriminatory, the case may be tried in the Federal courts.

The Attornel General would be authorized to intervene in such proceedings for purposes of presenting evidence and oral argument. This

essential right of a defendant to seek removal to a Federal court in civil rights actions where the result would be prejudiced by jury discrimination in the State court is, unhappily, absent from the administration bill.

In both bills the Attorney General is authorized to initiate lawsuits to enjoin discriminatory State selection procedures. While I have no doubt that the Attorney General will use the power given him—in both bills—to seek injunctive relief wherever he finds discrimination in jury selection, this method of enforcement is not enough.

The Justice Department cannot and cannot be expected to observe each and every case in each and every court where jury discrimination may lurk. The defendant's right to removal is a broader and more important source of legal initiative against these unconstitutional practices.

Another title of the bill, title II, is designed to correct the crippling limitations of existing civil rights criminal statutes, specifically sections 241 and 242 of title 18, United States Code.

Section 241, relating to private conspiracies to interfere with civil rights, requires Federal prosecutors to prove that it was the specific purpose of the alleged act to prevent the free exercise of a federally protected right. My bill would amend section 241 in two vital particulars:

First, it would extend section 241 to cover acts of public officials as well as those of private individuals. Second, it would eliminate the present insurmountable burden of proof by denying the necessity to prove that the specific intent of the alleged act was to deny the free exercise of a federally protected right. The burden required by the bill is satisfied by showing that the act was for the purpose, or with the reasonably foreseeable effect of inhibiting the free exercise of a federally protected right.

The administration bill does not alter the degree of proof of intent required in sections 241 and 242, United States Code.

Section 242 proscribes acts of official violence. By virtue of the ruling in the *Screws* case, prosecution under this act is at a virtual standstill, because of the requirement that the Government must prove that the official knowingly acted to deprive another of his rights on account of his race or color.

Under the bill, this onerous burden would be modified so that it would be necessary only to show that the official had reasonable grounds to believe that he was depriving another of a federally protected right. As amended, this section would apply to both Negroes and civil rights workers.

Finally, title II would add a new section to the Federal criminal code authorizing a graduated scale of penalties to provide a punishment commensurate with the seriousness of the crime.

Title III of the bill, Mr. Chairman, is an old friend. It adopts the provisions of part III originally proposed in connection with consideration of what eventually became the Civil Rights Act of 1957.

Briefly, it permits either a private person or the Attorney General to bring lawsuits against those who interfere with federally protected rights, including the right to speak freely in support of racial equality. The necessity for enactment of this proposal has, if anything, been reinforced since it was compromised out of the 1957 act.

Under the administration bill the Attorney General, but not an intended victim, may bring such an action. Again, Mr. Chairman, I feel that limiting the field of initiative to the Attorney General's office in key civil rights issues would unnecessarily limit the effectiveness of any new law in this field.

Finally, title IV contains a provision not found in the administration bill, namely, a provision for civil indemnification of persons injured in the exercise of their civil rights. This title supplements existing law authorizing civil suits for damages against a public official who deprives an individual of federally protected rights. The bill would make this a meaningful remedy by holding State and local governments jointly liable with their employees for the payment of such damages.

The jury, Mr. Chairman, is the cornerstone of our system of justice that the jury be a body truly representative of the community. This tradition was already long recognized in England at the time the Constitution was adopted.

Blackstone, in his Commentaries, says:

> The right of trial by jury, or the country, is a trial by the peers of every Englishman, and it is the grand bulwark of his liberties * * *."

This grand bulwark of liberty, as Blackstone so aptly described it, was secured to every American citizen in the Bill of Rights and was further reinforced by the 14th amendment's prohibitions against denials of due process and the equal protection of the laws.

For these reasons I am supporting a bill to give vitality to the sixth amendment's requirement of an impartial jury. This bill would insure not only the accused's right to trial by a jury selected without regard to race, but also the right of all persons regardless of race to sit on juries.

The jury is too fundamental to our system of justice to countenance its continued perversion. A jury selected by discriminatory procedures is a sham; its judgment, a fraud.

The venerable code of equity commands "for every wrong, a remedy."

Mr. Chairman, I urge the necessity of affirmative action on the Civil Rights Law Enforcement Act upon my colleagues who serve as members of this committee. The standards it espouses, and the guarantees it contains have been owed by the Congress to the American people for a full century.

Thank you.

Mr. DONOHUE. Thank you very much, Mr. Horton.

Any questions?

Mr. HORTON. Thank you, Mr. Chairman.

Mr. DONOHUE. We will now hear from Congressman Ogden Reid of the State of New York.

STATEMENT OF HON. OGDEN R. REID, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. REID. Thank you very much, Mr. Chairman, for giving me the opportunity to testify with regard both to the administration bill, H.R. 14765, the Civil Rights Law Enforcement Act, H.R. 13341, and the Civil Rights Procedure Act that I have introduced, H.R. 14775.

First, permit me to say that Mac Mathias extends his compliments and is planning to submit a statement this week, and he is hoping to testify at the pleasure of the committee next week.

Mr. Chairman, I am in strong support of the administration's civil rights bill. But I believe there are some omissions in this legislation, and I believe it is important to add to this legislation in three areas: First, with regard to liberalizing and strengthening the law regarding removal to Federal courts of State proceedings.

Second, the establishment of joint liability of States and municipalities with their public officials for damages for injuries resulting from violation of civil rights; and third, enlarging the authority of the Attorney General to institute actions for injunctive relief to prevent denials of civil rights.

First, Mr. Chairman, I would urge that section 106 of the bill I introduced along with a number of my colleagues, H.R. 13341, be added to sections 202, 203, and 204 of the administration bill. Simply, this would broaden the removal powers to insure fair selection of State court juries.

Specifically, removal would be authorized if the recordkeeping requirements of section 107 of our bill were not complied with, or, if the State court juror selection system does not prevent discrimination or is not in conformity with procedures for selecting Federal juries.

Not only will equal justice be furthered in those States whose jury selection systems do not afford the full protection required by this legislation. Equally, those States may be encouraged to reform their jury systems to guarantee nondiscrimination.

The Federal courts to which these cases would be removed will be insured of nondiscriminatory juries through other provisions of this legislation. Further, the Federal jury provisions spelled out in this legislation are a major safeguard for the States in that they clearly set forth the standards to which the States must conform.

State juries must have as broad a nondiscriminatory selection system as Federal courts and removal is the most effective means, I believe, to insure that they will. Therefore, this would be an addition to the provisions presently in the administration bill.

Second, Mr. Chairman, there is, as I understand it, in the administration bill, no provision for joint liability of States or municipalities for damages resulting from violation of civil rights.

I would urge that the committee in its wisdom give consideration to title IV of H.R. 13341, which provides that if, as a result of deprivation of civil rights, "a person is injured in his person or property or deprived of his life and an award of damages is made which results in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken shall be jointly and severally liable with the person or persons responsible for such injury or loss of life."

At present, Mr. Chairman, as you know, there is no meaningful way for injured parties to collect damages in full from public officials of States or municipalities. The low salaries of these officials often makes it impossible for them to pay the injured party fully and under existing law the State or political subdivision is not jointly liable.

Third, Mr. Chairman, I would urge consideration of broader injunctive relief, and I refer specificaly to section 301 of H.R. 13341, the

old title III, to permit the Attorney General to bring suit to prevent "any practice which would deprive another of any right, privilege, or immunity granted, secured, or protected by the Constitution or laws of the United States, on account of such other's race or color."

It would also permit the Attorney General to bring suit to prevent a "practice which would deny or hinder another in the exercise of such other's right to speak, assemble, petition, or otherwise express himself for the purpose of securing recognition of or protection for equal enjoyment of rights, privileges, and opportunities free from discrimination of race or color."

Our bill, as you know, Mr. Chairman, incorporates the old title III that has been proposed for every civil rights act since 1957. The administration bill, while providing injunctive relief, does so on narrower grounds and I believe it is important, indeed essential, that the injunctive power of the Attorney General be more broadly incorporated in the bill.

Finally, Mr. Chairman, I would call to your attention the report of the Special Committee on Civil Rights Under Law. The Association of the Bar of the City of New York, under the distinguished chairmanship of Judge Francis E. Rivers, and I would urge consideration be given to the committee's proposed Civil Rights Procedure Act which provides for broader removal powers and enlargement of the powers of the Federal courts to enjoin unconstitutional State proceedings.

The report with regard to this matter is quite clear and indicates that the committee studied events in a number of recent cases These reports told of repeated instances in many communities in which the efforts of Negroes to exercise civil rights claimed—and in many cases well established—under the Constitution and Federal laws were being frustrated by the use against them of the process of local and State law enforcement.

These processes included arrest, physical coercion by the police, denial of or onerous conditions on bail, rejection of Federal claims at trial and on appeal, and delays or harrassment at various stages of the proceeding.

It was also apparent—the committee report makes plain—from such decisions that the ability of those defendants to have their Federal claims passed upon by a Federal court promptly and decisively was severely restricted by the out-of-date wording of the applicable Federal remedial statutes, some of which have come down unchanged from reconstruction legislation, and in particular by the narrowing interpretations that have been given these statutes by the Supreme Court in the last decades of the 19th century in civil rights and in other cases.

Specifically, therefore, I would urge the adoption of provisions which would (1) enlarge the removal jurisdiction of the Federal courts to permit the removal of State court civil actions or criminal prosecutions involving any exercise or attempted exercise of rights granted or secured by the Civil Rights Act of 1964, or of by the Constitution with regard to equal protection of the laws or of the rights of freedom of the press, freedom of speech or freedom peaceably to assemble when exercised in furtherance of the Civil Rights Act of 1964 or equal protection rights, and (2) permit Federal district courts to stay proceedings in a State court action where the prosecution involved such rights and where the moving party's contention has been upheld in

another proceeding arising out of a like factual situation, the statute, ordinance or other authority involved has been declared unconstitutional in a final decision in another proceeding, the statute is on its face an unconstitutional bridgement of freedom of speech, freedom peaceably to assemble, or freedom of the press or the reason for the proceeding was to discourage the party or others from exercising such rights.

The basic reason for these revisions, Mr. Chairman, is that the present removal law has been so interpreted as to be limited to those cases in which the State constitutional or legislative provision involved was unconstitutional on its face. This has made these Federal provisions almost valueless in the context of the present civil rights movement, since it requires great time and much money to contest such cases and the usual result of a motion for removal is an order remanding the case to the State courts.

Therefore, Mr. Chairman, in summation, I intend to strongly support the administration bill, the Civil Rights Act of 1966, as amended, and I believe that now is the time to include new sections in the bill with regard to the areas I have mentioned: broader removal powers with regard to State court juries, indemnification provisions establishing joint State or local liability, broader injunctive powers for the Attorney General to prevent denials of constitutional or other protected civil rights and a special section consistent with the proposal of the Association of the Bar of the City of New York on broader removal powers and enlarged power of Federal courts to enjoin unconstitional State proceedings.

I thank you very much for the privilege of being present.

Mr. DONOHUE. Thank you, Mr. Reid.

Are there any questions?

(No response.)

Mr. DONOHUE. Thank you very much, Mr. Reid.

Mr. REID. Thank you very much, Mr. Donohue.

Mr. DONOHUE. We have before us the statement by Representative Patsy Mink, and if there is no objection it will be incorporated into the record at this point; and the statement from Congressman Jonathan Bingham of New York will also be incorporated into the record. There is also a letter from the Southern Christian Leadership Conference; a statement from the General Board of Christian Social Concerns of the Methodist Church; one from the Dalhart Board of Realtors; one from the Council for Christian Social Action of the United Church of Christ, and these all will be incorporated into the record.

(Statements and letters follow:)

GENERAL BOARD OF CHRISTIAN SOCIAL CONCERNS OF THE METHODIST CHURCH,
DIVISION OF HUMAN RELATIONS AND ECONOMIC AFFAIRS,
Washington, D.C., May 6, 1966.

In re Title IV H.R. 14765.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: This is to invite you to bring to the attention of the Judiciary Committee and the House of Representatives, the official position of The Methodist Church concerning the matter of fair housing.

The General Conference of The Methodist Church, which alone speaks officially for the denomination, said in 1964:

"The right to choose a home, * * * should be guaranteed to all regardless of race, culture, national origin, social class, or religion."

This statement occurs in a section of The Methodist Social Creed entitled "D. Human Rights.—1. Freedom from Discrimination." The entire paragraph reads as follows:

"We stand for equal rights for all racial, cultural, and religious groups, and insist that the principles set forth in this creed apply to all alike. The right to choose a home, enter a school, secure employment, vote, and have access to public accommodations should be guaranteed to all regardless of race, culture, national origin, social class, or religion. Neither should any person be denied political, economic, or legal rights or opportunities because of sex." (See *Doctrines and Discipline of the Methodist Church, 1964*. Nashville, Tenn.: The Methodist Publishing House. Paragraph 1820.)

This same General Conference in 1964 had these further words to say about fair housing:

"The minimum requirements for justice in the social order include the recognition of equal rights and opportunities for all races in * * * housing * * *"

This statement is found in a section of a special resolution entitled "The Methodist Church and Race," which reads as follows:

"The fact that Methodist churches and churchmen have often failed to work for racial justice in the past does not relieve us from a present obligation to end racial injustice in society as well as in the Church. The minimum requirements for justice in the social order include the recognition of equal rights and opportunities for all races in voting, law enforcement, education, employment, housing, public accommodations, and cultural advantages. We support the passage and enforcement of laws appropriate to every level of government for the establishment and maintenance of equal rights in each of these areas of our common life." (See *Ibid.*, Paragraph 1824).

In this same resolution, just quoted, The General Conference of The Methodist Church further stated as its official position the following:

"Christians must insist that all people have the freedom to reside wherever their economic means and their personal wishes permit. The local church should prepare its members to live in integrated neighborhoods and challenge them to help in creating fully inclusive communities." (See *ibid.*)

In line with these official declarations of The Methodist Church, the social education and action agency of the denomination, the General Board of Christian Social Concerns, meeting in October 1965, adopted the following statement entitled "Fair Housing Legislation":

"The harsh facts of racial discrimination in the housing market are notorious in the United States. Many studies and surveys reveal that minority group members are barred from many housing areas and are forced to pay more for less when they can buy or rent.

"Without question, racial discrimination in housing represents a fundamental violation of Christian convictions and of democratic principles. Race discrimination in housing represents a denial of justice and of equal opportunity. It is morally wrong.

"Therefore, the General Conference of The Methodist Church has issued strong statements concerning housing discrimination and its cure:

'Christians must insist that all people have the freedom to reside wherever their economic means and their personal wishes permit.'

'The right to choose a home * * * should be guaranteed to all regardless of race, culture, national origin, social class, or religion.'

"Note the word 'guaranteed' in the foregoing statement. No rights are guaranteed in a constitutional democracy except by law.

"We, therefore, call upon Methodist people in every state and territory to work for the passage of State and Federal laws which will bring an end to racial discrimination in the sale and rental of housing. The police power of the States, in support of the general welfare, provide broad authority for State fair housing statutes.

"It has long been established that private property rights are limited by the larger demands of the general welfare when there is conflict between them. This well-established governmental principle cannot properly be denied application to the housing market. As of June 1965, nineteen states had already made this application.

"The Biblical principle of neighbor-love destroys any attempt to absolutize the freedom of the housing seller, for this amounts to destroying the freedom of the housing buyer. Here, equal opportunity and neighbor-love coincide. Fair housing legislation, balancing the rights of buyers and sellers, appropriate to all levels of government, should be enacted speedily as part of the long, painful struggle of the people of the United States to bring to fuller reality the clear meaning and purpose of our fundamental laws and principles." (See "Statements 65," published by the General Board of Christian Social Concerns.)

You will note that many more provisions of the civil rights legislation currently before your committee find general support in the official policy statements of The Methodist Church here referred to. I have highlighted the housing issue for the particular reason that it appears to be the most controversial portion of the bill.

Sincerely yours,

GROVER C. BAGBY,
Associate General Secretary.

STATEMENTS 65

(Adopted by the General Board of Christian Social Concerns of The Methodist Church at the 1965 Annual Meeting, Louisville, Kentucky, October 18–20)

FAIR HOUSING LEGISLATION

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[1] Par. 1824, 1964 Discipline.
[2] Par. 1820, 1964 Discipline.
[3] See *Fair Housing Laws*, Housing and Home Finance Agency, September 1964. U.S. Government Printing Office, Washington, D.C. (Add the state of Maine to those listed.) "Through June (1965) new fair housing laws reaching the private market were enacted in Indiana, Maine, and Rhode Island . . ." See in *The Journal of Intergroup Relations*. Volume IV, No. 4, Autumn 1965. Page 221. Published quarterly by the National Association of Intergroup Relations.

THE METHODIST CHURCH AND RACE*

A. PRINCIPLES

16. Christians must insist that all people have the *freedom to reside* wherever their economic means and their personal wishes permit. The local church should prepare its members to live in integrated neighborhoods and challenge them to help in creating fully inclusive communities.

THE SOCIAL CREED—THE METHODIST CHURCH

OUR HERITAGE

The interest of The Methodist Church in social welfare springs from the Gospel and from the labors of John Wesley, who ministered to the physical, intellectual and social needs of the people to whom he preached the gospel of personal redemption.

In our historic position we have sought to follow Christ in bringing the whole of life, with its activities, possessions, and relationships, into conformity with the will of God.

As Methodists we have an obligation to affirm our position on social and economic questions.

OUR THEOLOGICAL BASIS

The Methodist Church must view the perplexing times and problems which we face today in the light of the life and teachings of Jesus taught us to love our neighbors, and seek justice for them as well as for ourselves. To be silent in the face of need, injustice, and exploitation is to deny Him.

We believe that God is Father of all peoples and races, that Jesus Christ is His Son, that all men are brothers, and that each person is of infinite worth as a child of God.

We believe that "the earth is the Lord's and the fulness thereof." Our own capacities and all we possess are gifts of the Creator, and should be held and used in stewardship to Him.

We believe that God in Christ is seeking to redeem all men and also society. This redemption is a continuing necessity.

We believe that the grace of God in Christ is available for redemption from individual and social sin as we seek in penitence and obedience to do His holy will.

We believe that all persons have supreme value in the sight of God, and ought to be so regarded by us. We test all institutions and practices by their effect upon persons. Since Jesus died for the redemption of all men, we believe we should live to help save man from sin and from every influence which would harm or destroy him.

OUR DECLARATION OF SOCIAL CONCERN

Applying the foregoing principles, The Methodist Church declares itself as follows:

A. The family

We see equal rights and justice for all persons; protection of the individual and the family by high standards morality; Christian education for marriage, parenthood, and the home; adequate housing; improved marriage and divorce laws.

We believe that the church must be vitally concerned with the health and welfare needs of all people, first within the family, and where necessary, through institutional care with high standards of scientific service and Christian dedication.

We believe that planned parenthood, practiced with respect for human life fulfills rather than violates the will of God. It is the duty of each married couple prayerfully and responsibly to seek parenthood, avert it, or defer it, in accordance with the best expression of their Christian love. Families in all parts of the world should have available to them necessary information and medical

*A statement adopted by the General Conference of The Methodist Church, May 1964.

assistance for birth control through public and private programs. This issue must be seen in reference to the pressing population problem now before the whole world.

We believe it is the plain responsibility of the family, as it is also the deep concern of the community, that the welfare of children whose mothers are employed outside the home be safeguarded. This responsibility includes provision for the protection, education, spiritual nurture, and wholesome recreation of every child; and for religious and educational programs which will secure these ends.

B. Economic life

1. *Christianity and the economic order.*—With full acknowledgment of stewardship under God and accountability to Him, we stand for the acquisition of property by moral processes and the right to private ownership thereof. We refuse to identify Christianity with any economic system. We are under obligation to test each aspect of every economic order by the commands of Christ and judge its practices by the Christian gospel. We believe that it is our duty not only to bring Christ to the individual, but also to bring the increasingly technological society within which we live more nearly into conformity with the teachings of Christ. We believe that a free democratic way of life, influenced by Christian principles, can bring to mankind a society in which liberty is preserved, justice established, and brotherhood achieved.

We believe in the use of such opportunities for political action as are consistent with Christian principles. We urge Christians to view political responsibilities as an opportunity for Christian witness and service.

2. *Responsible use of power.*—The Christian point of view demands that concentration of power in government, labor, business, and religious organizations be used responsibly. The task of the Church in this regard is to help people in positions of power and the organizations which they serve to achieve and exercise a high level of social responsibility.

3. *Poverty and unemployment.*—We believe that the economic development which makes possible material plenty for all imposes upon us great moral responsibility in that the physical and spiritual development of millions of persons throughout the world is hindered by poverty. We therefore stand for the eradication of poverty everywhere.

We believe it is our Christian duty to provide opportunities for education and training for people to earn a living for themselves and their dependents so they may take advantage of new technology.

Lack of significant employment tends to destroy human self-respect. We believe that employable workers must be safeguarded from enforced unemployment.

4. *Wealth.*—We recognize the perils of prosperity. Our Lord has told us that we cannot serve God and mammon. As Christians we must examine earnestly before God our personal and business practices, lest we adopt the standards and assumptions of a materialistic society. Churches and their institutions as well as individuals own property, invest funds, and employ labor. In these areas practices and relationships must conform to the highest Christian standards.

5. *Working conditions.*—We oppose all forms of social, economic, and moral waste. We urge the protection of the worker from dangerous and unsanitary working conditions, and from occupational diseases.

We stand for reasonable hours of labor for just wages, for a fair day's work for a fair day's wages, for just working conditions, for periods of leisure and for the equitable division of the product of industry.

We believe special protection should be provided for women and children as well as migrant workers and others especially vulnerable to exploitation.

6. *Social benefits for workers.*—We stand for public and private programs of economic security for old age, for adequate insurance covering sickness and injury to the worker, and for increased protection against those preventable conditions which produce want.

7. *The right to organize for collective bargaining.*—We stand for the right of employees and employers alike to organize for collective bargaining; protection of both in the exercise of their rights: the responsibility of both to bargain in good faith; the obligation of both to work for the public good.

8. *Town and country life.*—We recognize the basic significance of town and country areas in relation to population supply, natural resources, community life and Christian culture. We believe farmers, other agricultural workers, and those displaced by mechanization should have opportunity to earn a fair income.

Methodism, because of its large town and country membership and world-wide impact, must lead in developing an adequate Christian program in rural areas everywhere. This should pertain to people in their relationship to God, to the stewardship of the soil, to the conservation of all natural resources, to family, church, and community welfare.

9. *Urban life.*—We believe the inner city to be a mission field crying out for bold new creative ways of witness. Here is emerging a pagan generation committed to values that run counter to those of the Christ. Therefore we call our urban congregations to a deeper involvement in neighborhood life. We call the Church to come into the city for Christ's sake, there to touch all forgotten persons with his compassion.

10. *Christian vocation.*—We believe that every employable person so far as possible should be engaged in some vocation productive of common good. Every such vocation should be viewed as a Christian calling by those who pursue it as well as by those who receive its benefits and our daily work should be regarded as a sphere of service to God. The creative use of leisure is also a major responsibility for the Christian.

C. The church and general welfare

The Church is called to be a redeeming community of discerning Christian love; a fellowship of those who confess their sin, who rejoice in the love of God freely given, and who commit themselves continually to spiritual excellence in every facet of life.

1. *Alcohol problems.*—We believe that the Christian principle of love for God and neighbor calls us to abstain from the use of alcoholic beverages and to minister to those victimized by their use. The use of beverage alcohol imperils the abundant life to which Christ calls us. This is especially true in an organized and mechanized society. Individuals and families are destroyed by its use. We join with men of good conscience who seek to overcome the social, economic, and moral waste which this indulgence has created. The Church must become a healing and redemptive fellowship for those who suffer because of beverage alcohol.

2. *Crime and rehabilitation.*—We stand for the application of the redemptive principle in treating law offenders and for study and action directed toward the improvement of laws, correctional facilities, services, and court procedures in order to facilitate rehabilitation. For this reason we deplore capital punishment.

We do not believe an individual should be excused from his personal responsibility to society, but we recognize that crime, and in particular juvenile delinquency on the basis of need. Every individual should provide for his own needs and share responsibility for the needs of others to the full extent of his ability, but we believe that no person in an affluent society should be demoralized because of unmet need.

D. Human rights.

1. *Freedom from discrimination.*—We stand for equal rights for all racial, cultural, and religious groups and insist that the principles set forth in this creed apply to all alike. *The right to choose a home,* enter a school, secure employment, vote, and have access to public accommodations *should be guaranteed to all regardless of race, culture, national origin, social class, or religion.* Neither should any person be denied equal political, economic, or legal rights or opportunities because of sex.

That the Church should ever refuse access to worship, or membership in its fellowship to any person because of race, color, or national origin is contrary to our fundamental Christian convictions.

2. *Civil liberties and civil rights.*—We stand for freedom of speech, assembly, and press and broadcasting. The fundamental responsibility in the use of these freedoms and the justification of their exercise is adherence to the truth.

We stand for the right of all individuals and groups to advocate any peaceful and constitutional method for the solution of the problems that confront society.

The Extension and Protection of Civil Rights

(Adopted by the Council for Christian Social Action of the United Church of Christ, April 1, 1966)

The record of the Council for Christian Social Action in support of the struggle for racial justice is well established. The time has come, therefore, for it to work toward the solution of certain problems which are of current interest in

the field of civil rights: (1) the need to fill the gaps in federal civil rights legislation made apparent by the failures of Southern state and local officials to fulfill their oaths of office to uphold the constitutional rights of all persons residing within their jurisdictions and (2) the need to find means, through new legislation if necessary and/or pressure on the federal administration where possible, to overcome the reluctance of the U.S. Department of Justice to enforce more vigorously and effectively the civil rights statutes already in existence.

DISCRIMINATION PERSISTS

The 1965 report of the United States Commission on Civil Rights, "Law Enforcement: A Report on Equal Protection in the South," made clear that throughout most of the South the substantive and procedural rights of Negroes and those who work in their behalf are largely ignored or actively violated by state and local officials within all three branches of government. In some cases the laws discriminate against Negroes, in others state and local officials administer even valid laws in a discriminatory manner, and on still other occasions the elements of the judicial process deal unfairly with the Negro and his defenders. With Negroes and civil rights workers being victims of widespread injustice by the makers, the enforcers, and the interpreters of the laws, the time is long overdue for an expansion of federal legislation to eliminate this wholesale corruption of the American principle of equal justice under law incorporated in the Constitution of the United States through the Bill of Rights and the Post-Civil War Amendments (13th, 14th, and 15th).

INADEQUATE ENFORCEMENT

The failure of the Justice Department to follow through on the enforcement of existing civil rights legislation in every possible way is not due, we believe, to opposition to the goals these statutes are designed to achieve. The reason for this failure may be a result of any one or more of the following:

1. Reluctance to increase federal power at the expense of traditional state responsibility (or rights) in this area;
2. A belief that, if left to themselves, the state and local authorities will meet their responsibilities to provide equal protection of the law for all citizens;
3. A belief that the statutes do not give the Department the authority to do more than it has done; and/or
4. Fear of political repercussions from the South.

FILLING THE GAPS

Regardless of whether the Justice Department cannot or will not provide the degree of enforcement power that is necessary, there is little doubt that there are still serious gaps in the existing statutes which need to be filled if the power of the federal government is to be exercised to guarantee equal protection of the law against those state and local officials who deny it to Negroes and others working in their behalf.

1. It should be made a federal crime to threaten, intimidate, or punish any person who is engaged in the lawful exercise of any rights provided in the civil rights laws or in any peaceful or orderly activity protected by the First Amendment when undertaken to obtain equality for individuals of a particular race or color.
2. Prosecution should be permitted in federal courts of all cases of racial violence in which participants are arrested and where local officials either fail to act or otherwise deny equal protection in the enforcement of laws or in the administration of justice.
3. The federal courts should be permitted to remove cases from state courts into federal courts at any stage of the process of litigation where there is unlawful prosecution of civil rights defendants.
4. There should be federal legislation which would make the government of any state or political subdivision thereof jointly liable with its officers to victims of unlawful official conduct which deprives persons of rights protected by federal civil rights statutes.
5. The right provided in the Civil Rights Act of 1964, whereby the Attorney General may intervene in any federal case involving proceedings for relief against denial of equal protection of the laws, should be expanded to include

the right of the Attorney General to *initiate* such proceedings and to do so in cases involving protection of First Amendment rights being exercised to obtain equal treatment for all persons.

6. Title VII of the Civil Rights Act of 1964 (equal employment opportunities provision) should be expanded to include public employment and should be amended to strengthen the enforcement powers of the Equal Employment Opportunity Commission by giving it the authority to issue cease-and-desist orders.

7. Federal legislation should be enacted to eliminate the discrimination which exists in regard to selection of jurors by providing that persons called for federal jury duty be chosen from a random sample of all eligible adults in a judicial district without regard to race, color, sex, political, or religious affiliation and that similar standards shall apply in state and local courts where a pattern of discrimination is shown to exist.

8. The President should expand the executive order of 1962 on open-occupancy housing to cover all sales of housing in which any federal loans are involved.

9. Congress should pass a law to guarantee the sale and rental of housing without regard to race, color, creed, or national origin.

For effective enforcement of existing statutes the Council for Christian Social Action also recommends that action be taken by the President of the United States to direct the stationing of federal law enforcement officers in sufficient numbers in areas where violence has occurred or is likely to occur and that he also direct these officers not only to increase their investigative activities but also to make on-the-scene arrests of any persons violating federal laws.

RESOLUTION PASSED BY THE DALHART, TEXAS, BOARD OF REALTORS ON MAY 9, 1966

Whereas it has been called to the attention of the Dalhart Board of Realtors that House Resolution No. 14765 (also known as S. 3296) has been introduced into the Congress of the United States, and that Section IV of the bill deals with the matter of a forced housing law, and

Whereas it is the opinion of the members of this Board, that this legislation if enacted would seriously impair the right of a person to dispose of his private property, and would impair any progress being made in the area of civil rights, and

Whereas it is the opinion of the Dalhart Board of Realtors that the right of the Federal government to force the element of compulsion or of legal coercion, in the relationship between a property owner and the person with whom he may do business, is an unfair, and un-constitutional encroachment by the Federal government upon the rights of the people, and is not in the public interest, and would seriously impair our system of freedom of investment, appraisal, and ownership of real property: Now, therefore, be it

Resolved by all the members of the Dalhart Board of Realtors, That they go on record as being opposed to this Resolution and Senate bill, and that a copy of this resolution be sent to the members of the House and Senate from Texas, urging their support of our position to kill this legislation and to do everything in their power to prevent its enactment.

Passed in official meeting of the Dalhart Board of Realtors in Dalhart, Texas May 9, 1966.

Attested by:

JIMMIE PIGMAN,
Secretary.

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE,
Washington, D.C., May 12, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CELLER: Mr. Chairman and members of the House Judiciary Committee, this is to appraise you of the support of the Southern Christian Leadership Conference for the proposed Civil Rights Act of 1966, as introduced by the Administration.

Also, it is our opinion that the four amendments to be introduced by Mr. Roy Wilkins, Chairman, The Leadership Conference on Civil Rights—of which we are a member—on May 17, 1966 are vital necessities for the creation of an effective bill.

These amendments deal with the need for an Indemnification Board, which would award damages to victims of civil rights violence; the creation of an administrative agency to enforce the fair housing provision of the proposed Civil Rights Act of 1966; a more automatic way of instituting procedures for ending jury discrimination that the Bill now calls for, and finally, extended coverage of Title VII of the Civil Rights Act of 1964 so that prospective employees and employees of state and local governments would be protected from discrimination.

We also urge the granting of more power to the Equal Employment Opportunity Commission for enforcement of Title VII, in the form of issuance of cease-and-desist orders, and more vigorous enforcement of existing laws.

I would appreciate it very much if this letter is included in the record of testimony introduced before the Committee.

Sincerely,

The Reverend WALTER E. FAUNTROY.

STATEMENT SUBMITTED BY REPRESENTATIVE PATSY T. MINK

Mr. Chairman, I appreciate having the opportunity to appear before the Committee today to press for the passage of needed civil rights legislation. Though the Congress has in recent years passed landmark bills aimed at the heart of discrimination in educational opportunity, use of public accommodations, and voting rights, there still remains in practice a broad spectrum of subtle and overt denials of basic rights guaranteed to all our citizens by the Constitution.

On March 10, I introduced H.R. 13500, the Civil Rights Protection Act of 1966, designed primarily to eliminate discrimination in the selection of juries and to protect advocates of civil rights who are all too often harassed and imprisoned for such advocacy. We have read with dismay of recent cases in the South were convictions could not be obtained in the most flagrant cases of assault and homicide, leading many of us to the inescapable conclusion that the right to trial by jury composed of one's peers is still being denied by many Americans. It is manifest that due process cannot be operative where jury selection rolls eliminate whole segments of the population from consideration. That such heinous crimes as the killing of civil rights workers can go unpunished is an immediate and accurate reflection of the failure of our juridical system in certain parts of the country, and I believe that it is now time to secure basic American rights for all our citizens.

The 6th Amendment to the Constitution specifically provides for trial by an impartial jury, and this right is reinforced by the 14th Amendment's guarantees of due process and equal protection of the laws of the nation. The jury selection procedures in some parts of America make a mockery of these guarantees, and I feel that it is now incumbent upon the Congress to add enforcement and penalty provisions to see that these rights are secured. Indeed, the 5th Section of the 14th Amendment directs Congress to adopt appropriate legislation to enforce its provisions, and such action must now be taken.

The Supreme Court has consistently, since late in the 19th century, re-affirmed the right to trial by an impartial jury in all cases brought before it, yet specific legislation seems necessary to preclude the high costs to the individual taking such a case through the courts. The legislation that is needed must require full record-keeping of the names, race, and sex of those persons whose names are placed on the selection lists and the names of those individuals actually performing such service. This requirement is basic to the right to bring suit for discrimination, for without such proof there is little chance of successful litigation. This principle is embodied in my bill, as well as in other civil rights legislation introduced during this session.

Lest there be some question as to the inclusion of sex as a condition for proving exclusion, I must point out that there are still several states which statutorily exclude women from jury service and many others which allow women to claim exemption on grounds of sex alone. There are, in fact, only 21 states with jury laws that apply equally to men and women. This type of discrimination was noted by the President in his State of the Union message, which was followed by the President's May 2 recommendation that legislation be passed to guarantee the right to serve on grand and petit juries regardless of race, color, religion, sex, national origin, or economic status. This right is guaranteed in the Adminis-

tration's proposed civil rights legislation, H.R. 14765 and S. 3296, as well as in my bill.

Another area of reform noted is the necessity for providing the Attorney General the right to initiate suit in cases of discriminatory jury selection, since the Civil Rights Act of 1964 permitted him only to join a jury discrimination suit brought by private persons. This is a needed change and puts broader enforcement power in the Attorney General's office where it is needed.

Mr. Chairman, at this time I would like to summarize briefly each of the major titles in my bill, H.R. 13500. Title I deals with selection of juries for Federal courts, and provides that this function be performed by a duly constituted jury commission in each judicial district. The jury commission is required to work out a selection procedure that will not discriminate against any person on grounds of race, color, sex, political or religious affiliation, or economic or social status. The state plan for obtaining names must be approved by the Director of the Administrative Office of the United States Courts, who is also directed to assist the various states in drawing up their plans. The Director of the Bureau of the Census is also required to offer assistance where needed.

The state plan must provide for at least 300 names, drawn by chance, to be placed in the jury box or wheel for selection for service on grand and petit juries, and the final selection also be made by chance. The jury commission is then required to keep all records on the procedures, names, dates of service, and other relevant information on file for at least four years. If charges are successfully prosecuted against the impartiality of the selection or for violation of this record-keeping requirement, the United States Court of Appeals shall take over the responsibility for jury selection and record-keeping in that district.

In selecting jurors for State and local courts, officials are also charged with keeping all relevant records—including name, race, and sex—for at least four years. Any resident of a particular judicial district, or a litigant, or the Attorney General may bring charges on the basis of systematic exclusion or failure to keep records, upon receiving proof of which the Director of the Administrative Office of the U.S. Courts will assume responsibility for selection and administration of juries in that state or local court. The Director will be guided strictly by Federal law in such assumption of administration.

Since it is necessary to have some yardstick by which to gauge whether discrimination in jury selection actually occurs, H.R. 13500 provides that when the ratio of persons of any racial group to the total population exceeds by ⅓ or more the ratio of such persons serving on juries, this shall be considered proof of systematic exclusion over a two-year span of time. Similarly, when in any given two years less than ⅓ of the jurors in any court are of a given sex, this shall be deemed systematic exclusions unless the district can show proof that many individuals of one sex have been excused for cause.

When any judicial district has been placed under Federal administration, the State or local court invovled may apply to the United States District Court for the District of Columbia for reinstatement of its responsibility when it can advance proof that it will meet the requirements of this legislation.

My bill also provides for the Attorney General to bring action in a Federal district court if any state or local court changes qualifications for jury service, operating procedures for its jury system, or methods of selection and challenges from existing practice as of January 1, 1966. This is a safeguard obviously aimed at those districts which will maneuver to avoid compliance with the mandate of new civil rights legislation.

And finally, H.R. 13500 provides for fine and/or imprisonment for failure of any official or district to maintain the records as required and for the length of time indicated.

Title II of my bill provides for the United States district courts to assume original jurisdiction when so requested by a person charged with an offense in a district where the operation of the local courts is such that the defendant will not be assured equal protection of the law. This removal will apply not only in districts where individuals are excluded for racial reasons from actual jury service, but also where they are denied the franchise in any elections at which prosecuting officials or judges, or any official who appoints such officials, are chosen; or are systematically discriminated against in any manner in the use or services of facilities related to the administration of justice; systematically subjected to harsher punishment than people of other races after conviction for a crime; and subjected to heavier conditions of bail or release than other members

of the community. Such inclusive qualifications for removal are aimed at discriminatory practices wherever they occur in our judicial system and contravene the equal protection of the laws for any citizen.

Furthermore, Title II authorizes the United States Commission on Civil Rights to investigate jury selection procedures in any locale where disparate treatment of different racial or color groups is suspected, and the Commission shall be empowered to conduct hearings on the same subject. The courts are directed to accept the Commission's findings and data, unless any party controverting those facts, and all parties to these cases will be given the opportunity to be heard, brings forth proof that the Commission's findings are not accurate. Here again the ratio of racial groups to total population need only exceed the ratio of those serving on juries by ⅓ to establish systematic exclusion.

Very importantly, Title II of my bill establishes categories of Federal offenses and is designed to protect those citizens seeking their Constitutional rights as well as those individuals enlisted in the cause of helping such citizens. One year of imprisonment and/or a $1,000 fine are provided for any person who willfully injuries, threatens, or intimidates any person in the exercise of Constitutional rights or privileges; for any person who commits assault upon any person exercising such right or advocating such constitutional right against discrimination on the grounds of race or color; and for any person who interferes with another in the use of the facilities of interstate commerce on the grounds of race or color or advocacy of such rights. The penalties for infliction of serious injury or death in any of these acts is a fine of not more than $10,000 and imprisonment up to twenty years. I sincerely believe that such penalties are needed to deal adequately with the climate of unrestrained and unpunished violence in some communities of this country.

Title III of H.R. 13500 provides for civil preventive relief for any individual when there are reasonable grounds to believe that he shall be deprived of his Constitutional and legal rights because of race or color. The Attorney General or any interested individual may bring civil action for injunction or other preventive relief in such cases, and also when any citizen is hindered in his right to speak, assemble, petition, or express himself in any way for the purpose of advocating racial equality. In any proceedings brought under this section, the United States shall be liable for costs.

Title IV allows a defendant in criminal or contempt action to have his case removed to a U.S. district court if such person is a member of a racial or other group systematically excluded from participation in the jury system in his district. A defendant may also request removal when the proceedings against him are based on his advocacy or exercise of freedom of speech, press, assembly or petition in supporting racial equality or protesting the denial of same.

A final important feature of my bill is the establishment under Title V of an Indemnification Board within the United States Commission on Civil Rights. Such a Board shall be empowered to hold hearings on cases deemed by the Commission to indicate the denial to any citizen of Constitutionally-guaranteed rights with resulting injury to person or property in the course of such denial. The Board shall recommend an award of indemnification if such injury is proved to have occurred because of the race of color of the injured party, or because of his advocacy of racial equality. The Title provides for the liability of political subdivisions in cases where injury has occurred from action taken under color of law, where a knowing refusal or failure to act on the part of responsible officials allows any preventable injury to take place

The Indemnification Board would be granted the same investigative and subpena powers as the National Labor Relations Board, and it would be comprised of three persons from the higher ranks of the judiciary appointed by the president for five-year terms.

Mr. Chairman, in this summary I hope I have covered some of the major points I feel are needed in the area of civil rights legislation. The time for extension of the protection of our laws to all our citizens is long overdue. Such basic rights as free speech, free assembly, and trial by jury are deeply imbedded in the traditions and jurisprudence of our nation. The promises of our Bill of Rights must be kept, and without the voluntary compliance of states and local jurisdictions, then we have no choice but to legislate in this area until all citizens have secured the legal protections and privileges which are their birthright as Americans. No longer can we countenance the systematic withholding of basic

rights, nor the unreasoning violence that is visited upon those who peaceably advocate racial equality or carry out lawful activities to promote such equality. We are obligated to act upon our deep American commitment to due process of the law for all.

STATEMENT OF JONATHAN B. BINGHAM, MEMBER OF CONGRESS, 23D DISTRICT NEW YORK

I am grateful for the opportunity to present my views on pending civil rights legislation. As the Members of this Committee know, I am deeply concerned about the problem of protecting and advancing individual rights. This interest predated my membership in the House and has continued unabated. I was a member of the New York City Bar Association Committee on the Bill of Rights and Chairman of the Bronx Bar Association Committee on Civil Rights. Upon taking my seat in the 89th Congress I was privileged to be appointed to the Democratic Study Group Steering Committee on Civil Rights. I was most honored when an amendment to the proposed Voting Rights Act of 1965 that I offered was included in the final legislation.

I was one of the Congressmen who went to Selma, Alabama last year at my own expense to get a first-hand view of the situation. What I saw there and learned from conversations with a wide variety of people convinced me that my prior impressions were accurate. Subsequent events in the Deep South have further convinced me that although legislative protection of legal rights has been extremely useful, we still have much more to do to achieve realization of these rights.

The Congress has achieved a great deal in the past ten years to redress long-standing ills. The landmark legislation of the past decade has no parallel in our history and its effects are profound and irreversible. Public places once integrated do not fall back into segregated patterns. Negro voters placed on the election rolls have changed the campaign dialogue in the South. I am told that the presence of Negro voters has caused local governments to supply municipal services to Negro residential areas which previously were provided only to the whites. President Kennedy's judgment that the right of franchise for Negroes would provide the maximum leverage for change has been borne out by the facts.

We all recognize that we cannot legislate prejudice away; that the reach of the Congress and the courts is no further than discriminatory action or inaction. However, as we break down the patterns of discrimination we destroy the breeding grounds of prejudice. The youngster who attends school with youngsters of other races is less likely to accept the sterotype characterizations.

We can, and should, pass legislation to guarantee rights against invasion or deprivation. However, implementation of these rights is crucial and this means private initiatives. We can make certain that registrars will not discriminate against eligible Negro voters but we cannot, nor should we, use government employees to simulate and guide voters. We cannot hope to reach those who are skeptical about the promise of statutory protection of these rights and the burden of this effort falls on the civil rights workers in the South. We can assure that places of public accommodation will not lawfully turn away would-be patrons because of the color of their skin but we cannot, by law or other government action, induce Negroes to avail themselves of these opportunities. We can, by law, protect the right freely to assemble for redress of grievances but we cannot, nor should we, pass laws or take other governmental action to bring people together for these purposes. This, again, is the function of private groups and individuals.

With this in mind, the violence in the South which has been directed against private individuals who are trying to help others exercise their rights and make use of their new opportunities takes on special significance. Translation of abstract rights into concrete patterns of behavior depends on private and personal actions. If the civil rights workers and the Negroes are inhibited from acting in accordance with what this government says they may do, then the rights do not exist. It makes no difference in practice whether the Negro doesn't vote because State law forbids it or because mob action, sanctioned by State officials, prevent it. The result is the same and it is intolerable.

On November 4, 1965, I wrote to the Attorney General advising him of my conclusion that federal legislation was needed to protect civil rights workers in the South where local governmental units have demonstrated an unwillingness or inability to provide protection. I wrote that "if corrective steps are not taken,

the haters, who use any means to try to stop the progress towards equal rights, will be encouraged." I told him, in my judgment, the critical area of legislative need was in the field of criminal justice, or the lack thereof. The mockeries of criminal trials that were calculated to prevent convictions of those accused of crimes against civil rights workers served to embolden the racists. A possible trial in federal court, which cannot result in any punishment commensurate with the gravity of offenses against Negroes or civil rights workers, is no real deterrent to such crimes. Existing federal laws restrict federal prosecution to the offense of denying some one his or her civil rights and the penalties are very limited. Even if we were to assume that there would be some minor inhibition from even these penalties, it would be hard to convince the oppressed Negro in Alabama or Mississippi that nobody would attack him, dynamite his home or shoot him on a city street because the assailant would expose himself to a possible jail sentence of a few years duration.

When Mrs. Liuzzo was brutally slain, the gravamen of the offense was homicide. The denial of her civil rights was incidental. Nonetheless, her assailants could anticipate that state court procedures made them immune to real trial for that offense. The only real trial was the one in federal court for a more minor offense. The bill I introduced would make it possible to try the offenders for the grave crime they committed and would have the trial in a formum which is not designed and operated to prevent convictions of racists. A trial in federal court for murder not only inhibits the would-be assailant but it also serves to reassure Negroes and civil rights workers that an operative deterrent to violence against them does exist.

It was my announced intention to formulate my own proposals in this area. However, when the Leadership Conference on Civil Rights prepared a proposed law to deal with this problem and those related to it, I found it exceptional and was glad to sponsor it. I find very desirable the provision to make criminal offenses proclaimed under state law triable in federal forums where state courts are not capable of meting out impartial justice. I also strongly favor the provisions which would tend to prevent biased juries from being convened. I can think of fewer offenses against our entire concept of government which are more heinous than deliberately or recklessly convening a jury which is designed to frustrate justice.

I support, too, the provisions for indemnification of victims of crimes where the injury is inflicted because of the race or color of the victim or his efforts to help others exercise their rights. I believe that such compensation should be afforded all victims of crimes but I can see valid reasons for extending it to victims of racism even if we cannot simultaneously extend such protections in other areas, namely that it is especially important to encouage activities in the area of civil rights in view of the patterns of violence and intimidation. Failure to indemnify the victim of arson generally will not deter people from home ownership but arson against the home of a civil rights supporter or the Negro who goes to vote in the Deep South may well serve to coerce not only the victims but others who we are trying to make the right to vote a reality after centuries of denial.

I have deliberately refrained from discussing th Administration proposal or comparing it to H.R. 12891 before this Committee. I do this because, at the time this is writtn, the Attorney General was still not through testifying.

I would not suggest that either is perfect and could not benefit from revision by this Committee after hearing testimony. I urge this Committee to focus on the need to protect the processes of justice, particularly where the failure to do so frustrates a basic policy of this nation, and to provide necessary relief as quickly as possible.

Mr. DONOHUE. This hearing is now adjourned, to meet tomorrow morning at 9 o'clock.

(Whereupon, at 11:50 the hearing was adjourned, to reconvene at 9 a.m., the following day, Wednesday, May 18, 1966.)

CIVIL RIGHTS, 1966

WEDNESDAY, MAY 18, 1966

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

The subcommittee met at 9:15 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Kastenmeier, McCulloch, and Cramer.

Also present: Representatives Hungate, Tenzer, and McClory; William R. Foley, general counsel; Benjamin L. Zelenko, counsel; John W. Dean III, associate counsel.

The CHAIRMAN. The committee will come to order.

We have with us a very distinguished group of gentlemen this morning representing the Interfaith Group; namely, the National Council of Churches, the Synagogue Council of America, and the National Catholic Welfare Conference.

The distinguished gentlemen are Dr. Benjamin F. Payton, executive director, Commission on Religion and Race, of the National Council of Churches; Rabbi Richard G. Hirsch, director, Religious Action Center, Union of American Hebrew Congregations, the Synagogue Council of America; and Father John F. Cronin, association director, Social Action Department, National Catholic Welfare Conference.

I might say to you we welcome you and are very happy to have you make your contribution to this very important problem at hand.

Father, do you want to be the spokesman for these gentlemen?

Father CRONIN. Yes, I will, Mr. Chairman.

STATEMENT OF INTERFAITH GROUP, REPRESENTED BY DR. BENJAMIN F. PAYTON, EXECUTIVE DIRECTOR, COMMISSION ON RELIGION AND RACE, NATIONAL COUNCIL OF CHURCHES; RABBI RICHARD G. HIRSCH, DIRECTOR, RELIGIOUS ACTION CENTER, UNION OF AMERICAN HEBREW CONGREGATIONS, THE SYNAGOGUE COUNCIL OF AMERICA; AND FATHER JOHN F. CRONIN, ASSISTANT DIRECTOR, SOCIAL ACTION DEPARTMENT, NATIONAL CATHOLIC WELFARE CONFERENCE

Father CRONIN. Mr. Chairman and members of the committee, we are the Reverend John F. Cronin, Dr. Benjamin Payton, and Rabbi Richard Hirsch. We represent the Social Action Department, Na-

tional Catholic Welfare Conference; the Commission on Religion and Race, the National Council of Churches; and the Commission on Religion and Race, Synagogue Council of America. In addition, we have listed in the appendix to this testimony constituent or member agencies of these national bodies and related religious organizations which wish to associate themselves with our testimony.

This is only the third time that representatives of the major religious faiths of the United States have presented joint testimony before Congress. The other two instances were in support of the of the Civil Rights Act of 1964 and the Voting Rights Act of 1965. Our unified action on each occasion manifests our profound commitment to the eradication of every vestige of racial discrimination from American society. We view such discrimination as corrosive of public morality and as a grievous impediment to the fulfillment of our national aspirations.

We therefore come before you with the simple conviction that legislation such as that before this committee is morally right. It is an act of justice, aiming more fully to implement our democratic ideal that all men are equal before the law and our religious conviction that we are all children of one Eternal Father.

Justice demands that law safeguard the person and property of all citizens. It is a sad fact that some State and local officials do not protect the rights of many Negro citizens and many workers in the civil rights field, nor is any serious effort made in these areas to apprehend and convict those guilty of crimes against person and property of Negroes and civil rights workers. Unpunished assault against a defenseless minority, and those seeking to vindicate their rights, is an assault against the principles of American democracy. In default of local responsible enforcement of law, it is necessary to seek justice from a higher source, the Federal Government.

For this reason, we must perfect and extend present Federal laws which give limited protection for the victims of injustice. In our judgment, the detailed provisions of title V of H.R. 14765 do, in fact, offer a substantial remedy for the evils which distress all fair-minded Americans.

Equally important in the administration of justice is the jury system. There is no need to remind this distinguished committee of the cardinal place of jury trials in our jurisprudence. When the jury system is seriously weakened, we run the risk of substituting force and violence for law, and thus turning our backs upon an essential feature of civilized life.

We believe that the systematic exclusion of Negroes from Federal and State juries in some parts of our Nation does weaken and corrupt the jury system. A member of a minority group can scarcely feel that he will secure justice, if his peers are regularly denied the right to jury service. The bill before this committee represents a serious and sound effort to correct this evil.

We have a suggestion to perfect titles I and II of this bill. As presently written, the proposed law would burden the Attorney General with tedious and lengthy judicial procedures in each individual case. We feel that the administration of the act would be simplified if certain standards for fair selection of juries were to be established, as was done for voting in the Voting Rights Act of 1965. Where a

jurisdiction falls below these standards, the remedies proposed in this bill would then automatically go into effect.

The law of our land, based on court decisions and statutes, forbids racial discrimination in tax-supported schools and other public facilities. Title III and IV of the Civil Rights Act of 1964 ouline procedures for the enforcement of these rights.

Experience has shown that these procedures are limited in that the aggrieved parties often do not know how to make the necessary complaints. They are at times subject to intimidation and even violence if they seek to secure compliance with the act. Moreover, the requirement that the Attorney General, in each case, may take action only if the litigants cannot themselves bear the burden of prosecuting their case is time consuming and difficult.

In order to make such public facilities truly available to all citizens, more effective procedures are needed. In our judgment, the remedies offered in title II of the instant bill, and the criminal penalties contained in title V of the same, would lead to more effective procedures.

Next, we come to title IV, the housing provision of this bill. There have been statements in the public press that this section poses serious political and legislative difficulties. Undoubtedly this is so, since all of our religious bodies can testify from experience that it has been far from easy to promote successfully either voluntary programs for fair housing or State or local legislation in this area. We mention these facts, not in any way to weaken our support for title IV, but rather to indicate that we do not approach this problem lightly nor do we lack awareness of the problems that it entails.

We ask for a law as a declaration of an American standard of equal justice. We shall continue to urge upon the executive branch of our Government the full and diligent use of its power through Executive order and through the issuance by relevant agencies of regulations designed to enforce title VI of the Civil Rights Act of 1964 in programs affecting housing. We on our part pledge ourselves to continue to intensify the educational efforts for fair housing which religious groups, along with other concerned citizens, have been promoting for many years.

In reality, law, executive action, and moral persuasion are part of a common pattern. We believe that once every builder, every lending institution, every renter, and every homeowner confronts a common standard in the sale and rental of dwellings, the great majority will strive to conform to a law seeking to implement the ideal that all men are truly equal.

Such was our expericene under the public accommodations provisions of the Civil Rights Act of 1964. Law is not merely an instrument to coerce the few who would do evil; it is also a support for the many who would do good. They can follow their more generous instincts, unhindered by the fear that the competition of the less scrupulous will cost them their lifetime investment in property.

Granted there are fears based on a misunderstanding of the effects of this bill and lack of knowledge of the process of orderly housing integration in a community. Yet there are times in the history of any nation when it rises to true greatness, putting aside petty differences in the effort to promote justice and high morality. Such was the case in 1963, when this very committee wrote a civil rights bill which many

persons said was too sweeping to pass Congress. Yet Congress did give overwhelming approval to the Civil Rights Act of 1964. It should likewise give its assent to the present bill.

The CHAIRMAN. In the beginning, Father, I though you were against title IV, but I gather you are for title IV?

Father CRONIN. Rather we were starting, Mr. Chairman, we are just leading up to it.

The CHAIRMAN. You are sort of like fitting it into a tight glove, is that it?

Father CRONIN. Just that way.

In our judgment, housing discrimination is a pernicious form of racial injustice. So longe as it persists, it will be extremely difficult to reap the full fruits of our struggle against discrimination in the areas of education and employment.

Ghettoized housing in the slum perpetuates poverty and ignorance. It is the costliest possible type of housing: costly in the crushing financial burden which it places on those who pay so much for so little; and costly to the community in the overwhelming burden of social services, police protection, and wasted human resources. Nor is it socially healthy that those who rise from poverty and who can rent or purchase better housing must still live in isolated ghettoes merely because of race.

Neither white nor Negro citizens profit from the artificial compartmentation of our society imposed by segregated homes and schools. Inevitable barriers of misunderstanding and prejudice must arise when such arbitrary divisions are enforced.

The proposed law should be the beginning of a much larger process that we hope will wipe out slums and remove the barriers that lead to housig ghettoes. In our judgment, the terms of this bill constitute a good start. We would desire one amendment, however, to strengthen its enforcement procedures.

We believe that enforcement should be undertaken by a Federal administrative agency, upon complaint and investigation, in addition to civil suit by the aggrieved party. Most of those who suffer from housing discriminations cannot afford the expense, time, and efforts for court action.

Appended to this document are statements by leaders in our religious bodies dealing with housing discrimination from a moral perspective. Before this committee we urge that what is right and just is likewise sound public policy.

America wears a badge of shame before the world, when it is known that discreet efforts must be made to secure housing for diplomats in Washington and at the United Nations, simply because they are persons of color. We urge upon formerly colonial nations the virtues of democracy. Yet in every part of our Nation men are refused housing because of race. This is an infamy which a nation professing our ideals, and burdened with our worldwide responsibilities, can ill afford to bear.

We cannot write finis to our new emancipation proclamation until the slums of America have been replaced by housing fit for our families. Nor can we say that we have achieved our ideals of equality until any American can feel free to purchase or rent property in any available location, regardless of his color.

I would like to interpolate here, Mr. Chairman, to illustrate this point from a local situation; the picketing going on in Baltimore at the moment illustrates the potentialities for serious trouble where we have housing discrimination.

In Baltimore, as you know, Cardinal Sheehan testified before the city council in favor of a law that would outlaw housing discrimination, and was booed for his efforts. But I think the cardinal was realistic in recognizing potentialities for serious danger that can arise when we have housing discrimination.

Now, I return to my formal testimony.

Before concluding this testimony, we wish to offer two more suggestions improving this proposed legislation. First, we believe that title VII of the Civil Rights Act of 1964, dealing with equal employment, should be broadened to include the employees of State and local governments. There should be no discrimination in any field of employment supported by tax funds.

We do not want one standard of justice for Federal employees and for industry and a lesser standard, or no standard, for our States, counties, and cities.

Secondly, we believe that there should be civil indemnification for the victims of civil rights violence and for those persons injured because of their race or color while trying to exercise their rights. Likewise, those who suffer while trying to help others secure their rights should be granted this measure of assistance. Such wrongs indicate a grave failure in our society, and society should at the least compensate those who are victims of its own shortcomings.

Some persons feel that we need a pause in civil rights legislation and that advances in three successive years are too much. Yet the more we are sensitized to the complexities of the problem, the more we realize what needs to be done.

What is worth doing, is worth doing well. As we move forward in our quest for full racial equality, we are bound to discover deficiencies and imperfections in our earlier laws. These should be corrected when they are found, precisely because race relations involve momentous moral issues of worldwide significance.

We do not consider this legislation in and of itself to e the panacea for all the civil rights prolems confronting our Nation. There is much work yet to be done by Government, by religious groups, and by other private citizens. Democracy must end discrimination, or discrimination may well spell the end of our democracy.

Mr. Chairman, I would like your permission to insert the relatively brief material which we have appended to this paper.

The CHAIRMAN. We will be glad to receive it.

(Appendixes follow:)

APPENDIX I

OFFICIAL CATHOLIC STATEMENTS ON CIVIL RIGHTS

Vatican Council II, *The Church in the Modern World*, No. 29.

"Every type of discrimination, whether social or cultural, whether based on sex, race, color, social condition, language or religion, is to be overcome and eradicated as contrary to God's intent."

Vatican Council II, *Decree on non-Christian Religions*, No. 5.

"The Church reproves, as foreign to the mind of Christ, any discrimination against men or harassment of them because of their race, color, condition of life, or religion."

Catholic Bishops of the United States, November, 1958.

"Discrimination based on the accidental fact of race or color * * * cannot be reconciled with the truth that God has created all men with equal rights and equal dignity." Referring to discrimination in jobs, education, and housing, the bishops said: "Flowing from these areas of neglect and discrimination are problems of health and the sordid train of evils so often associated with the consequent slum conditions."

Catholic Bishops of the United States, August, 1963.

"No Catholic with a good Christian conscience can fail to recognize the right of all citizens to vote. Moreover, we must provide for all, equal opportunity for employment, full participation in our public and private educational facilities, proper housing, and adequate welfare assistance where needed."

Catholic Bishops of Michigan, March, 1966.

"The property owner who wishes to sell in the open market, and yet wishes to exclude members of a certain race, religion, or national origin from the opportunity to buy, is using his property to the detriment of society. Human dignity and equality demand the right to change residence and opportunity to buy according to the same reasonable standards for all. Color or creed is not a reasonable tsnadard for discrimination or exclusion."

EXCERPTS FROM POSITIONS OF SYNAGOGUE COUNCIL OF AMERICA AGENCIES

"We join in accepting as our own responsibility and as our couse, as if we in fact were the harassed, the need for active participation in the crucial nationwide campaign for full civil rights and equal opportunities for Negroes. * * * We urge that leadership be exercised in removing hidden racial barriers, such as restrictions in housing, ghettoizing public schools, and restrictions in employment opportunities, so that all Americans may enjoy equal justice."—United Synagogue of America resolution, adopted at convention November, 1963.

"Shocking incidents of racial conflict in American cities have demonstrated again that the racial ghetto is the key to the pattern of segregated living which pervades and vitiates almost every part of Negro life and Negro-white relationships. Jewish history has a special sensitivity to the horror of the ghetto, and Judaism is an affirmation of the God-given right of every man to equality and justice. * * * We urge our congregants to refrain from imposing any qualifications about race, color, religion or national origin in the sale, leasing or mortgaging of housing. * * * We endorse all efforts to obtain fair housing legislation and open occupancy all over our nation and we urge our congregations and our congregants to lend their support and encouragement to such efforts in their own community."—Union of American Hebrew Congregations resolution, adopted at 48th General Assembly, November, 1965.

"We are convinced that every aspect of discrimination is linked with every other aspect; that there is an 'inseparability of issues' involved here, and that a piecemeal confrontation of the various details of prejudice and discrimination does not satisfy the moral requirements of the crisis confronting our country. Anything but a total and maximum program contains elements of immorality in the phases it neglects. We pledge you our wholehearted support for a total program involving voting rights and equal protection of the law; accessibility of public facilities and private ones serving a public purpose; equal availability for educational and cultural opportunities; hiring and promotion, medical and hospital care, and open occupancy in housing."—Rabbi Uri Miller, past president of Synagogue Council of America, in message at meeting of religious leaders at the White House, June 17, 1963.

ADDITIONAL STATEMENT OF COMMISSION ON RELIGION AND RACE OF THE NATIONAL COUNCIL OF CHURCHES OF CHRIST IN THE U.S.A.

More than seven years ago the General Board of the National Council of Churches dealt with the problem of racial discrimination in the housing market. At that time it committed itself to work through moral suasion and social action "for the enactment of appropriate housing legislation to achieve the right of every person to acquire housing which permits (in the words of the Universal Declaration of Human Rights) 'a standard of living adequate for the health

and well being of himself and his family' on the basis of personal preference and financial ability without regard to race, national origin, or religion." (Resolution on Non-Segregated Housing, adopted by the General Board of the National Council of Churches, February 26, 1959).

With this as precedent, the Commission on Religion and Race of the National Council of Churches at its April 26, 1966, meeting, declared its support of federal legislation to bar racial discrimination in housing and called upon the President of the United States immediately to use his administrative powers to further this end. Specifically the Commission referred to "extension of the executive order banning discrimination in housing that received federal aid and * * * implementation of Title VI of the Civil Rights Act of 1964 to deny federal programs to communities which do not make positive efforts to insure that housing in such communities is available without regard to race, national origin, or religion." (Resolution of Federal Housing Legislation, adopted by the Commission on Religion and Race of the National Council of Churches, April 26, 1966).

In June, 1961, the General Board of the National Council of Churches declared that "every Christian citizen can and should demand that law enforcement officials * * * protect all people in the peaceful exercise of constitutional rights." (Resolution, An Appeal to Christian Conscience, approved by the General Board, June 8–9, 1961). Since that time many people in this country have lost their lives attempting to secure those rights for themselves and their fellow men, because of the misuse of local and state law enforcement processes, including rank discrimination in the selection of juries. On April 26, 1966, the Commission on Religion and Race of the National Council of Churches, therefore, endorsed proposed federal legislation which attempts to correct some of these inequities.

APPENDIX II

CONSTITUENT AND RELATED ORGANIZATIONS

The Synagogue Council of America represents:
The Central Conference of American Rabbis
The Rabbinical Assembly of America
The Rabbinical Council of America
The Union of Orthodox Jewish Congregations
The Union of American Hebrew Congregations
The United Synagogue of America

Race Relations Agencies in the National Catholic Welfare Conference include:
The Social Action Department
The National Council of Catholic Men
The National Council of Catholic Women
The National Council of Catholic Youth
The National Federation of Catholic College Students
The National Newman Apostolate
The National CYO Federation

Associated for purposes of this testimony are:
The National Catholic Conference for Interracial Justice
The National Catholic Social Action Conference
The Christian Family Movement

The National Council of Churches of Christ represents thirty major religious bodies from the Protestant and Orthodox communities.

Father CRONIN. Thank you, Mr. Chairman, and this concludes our formal testimony.

The CHAIRMAN. Father, you speak of indemnification for victims of civil rights violence and for persons injured because of their race or color while trying to exercise their rights.

From whom would that indemnification be extracted? From the individual who was guilty of the wrong or from the State or from the Federal Government, or from all?

Father CRONIN. Well, I am not a lawyer. But my own top-of-the-head suggestion would be that the Federal Government in the first

instance provide the indemnification, but then in its turn sue the guilty party, whether that be the State, the local community, or an individual, and thereby the burden of suit would not be placed on the injured individual.

The CHAIRMAN. There is a question whether or not the State could be saddled with a burden and whether or not we could pass a statute making a State liable for what was known as a tort for an action of the type which you have indicated. That is a very difficult constitutional question to answer.

Father CRONIN. Well, to be very frank with you, none of us here is a constitutional lawyer, so we offer that as something we think is fair and reasonable. If in the judgment of this committe it is constitutionally doubtful, we certainly would defer to your judgment.

The CHAIRMAN. Why would you just pick out civil rights? If the principle is sound that the State should be made responsible for injuries to anybody, why should it not apply to all crimes, not merely a civil rights crime?

Father CRONIN. There is talk of that. I understand in the State of California they are beginning to pioneer along that line, and I would favor consideration, not for all crimes necessarily, but for certain gross crimes.

What is unique here, however, is that to a degree, more than in other cases, these crimes frequently result from deliberate default of responsibility on the part of local and State governments. That is not so common in the ordinary crime. Therefore, I feel there is a special situation here.

In fact, in some cases the individuals act under color of law, and as happened in the case of the Reverend Mr. Reeb, it was done by a man who was a deputy.

In those cases there is a differentiation that would make these somewhat unique in contrast to ordinary crimes that may happen in the States.

Rabbi HIRSCH. May I supplement that?

The CHAIRMAN. Certainly.

Rabbi HIRSCH. It appears to me that we have be cognizant of the fact that much of the civil rights problem which we have today is a result of neglect on the part of both the Federal Government and local and State officials, the failure to pass legislation over a period of almost a hundred years, until 1957, and the failure following that time to enforce adequately the legislation which was passed, so that in a very real sense, more so than in other crimes, the responsibility for creating the conditions in society conducive to assault against individuals because of race, is the responsibility of society.

It seems to me that what has happened in our society in the last 10 years, or 12 years since yesterday, when the Supreme Court handed down its school decision, is that we have been trying to rectify not only the evils which are currently extant in our society, but the evils which were generated over a hundred years of failure to act. That is why, agreeing with Father Cronin that society in a way is responsible for all crimes, I think we should start assuming society's responsibility in this area of civil rights.

The CHAIRMAN. Well, take, for example, the noble experiment of prohibition. You are probably too young to have lived through the

experience of prohibition, but many crimes were committed in the name of prohibition, much damage was done to individuals by the action of the State, and if we had had civil statutes that the State would be responsible, we then are confronted with the fact that a constitutional amendment was adopted wiping out prohibition, then the State would have been responsible for actions in a retroactive sense that they should have not been responsible for.

So, you see, it is not only the question of the importance of civil rights, that should prompt us to provide for indemnification here, it is a general aspect that we Members of the Congress must always keep in mind. It is not only civil rights, but we have many other types of legislation which we are confronted with, and it would be a very serious proposition to just single out one type of criminal law and say the State should be responsible for excesses in regard to that law, and then disregard all the other criminal statutes.

We are embarking upon a sea of trouble in this direction if we did that.

Rabbi HIRSCH. I speak for myself, maybe Dr. Payton would like to respond, or Father Cronin. But I think our position is not that we would be opposed to indemnification in other areas, but that we believe there is a unique moral issue here which was not true, for example, in the case of prohibition.

The CHAIRMAN. There are many who thought there was a deep moral issue in prohibition.

Rabbi HIRSCH. I think there were many who thought so, but I think the very fact that the legislation was repealed is an indication of the fact that there was not the consensus——

The CHAIRMAN. Yes; but meanwhile if you had the law that you have now advocated, then the State would have been made responsible for a great many dollars in damages which, after a while as a result of the repeal of prohibition, indicated that they should not have been responsible for.

Rabbi HIRSCH. Well, I will ask Dr. Payton to respond. My own feeling, just to summarize, is that we are not constitutional lawyers. If we have any expertise at all, it is supposedly in the moral field, and we do believe that the issue of civil rights is the moral issue confronting American society today, and that we must try to resolve this issue not only by preachments, but by every legislative means necessary, and it is for that reason that I think we would support some such measure as indemnification. We would preach to you and let you put into practice what we are suggesting.

The CHAIRMAN. Father, and other members of the cloth before me, those who represent real estate interests in countering title IV, make the following statement:

> It is a stark sociological fact that people of a given racial group tend to cleave unto themselves and this is exhibited in private residential living by the manifest tendency of our white population to seek out racially homogeneous surroundings.

And for that reason they offer opposition to this fair housing provision that we have in title IV.

Would you care to comment on that?

Dr. PAYTON. I think I would like to, Mr. Chairman.

I don't think, first, that is historically an accurate statement. Housing ghettos do not just grow up automatically as a result of persons

exercising a free choice; free choice is, of course, involved. But the Federal Government itself, for example, for almost 15 years was involved in the setting of racially segregated patterns of housing by its refusal, for example, for many years to underwrite mortgage loans through its FHA office unless those loans were applied in the development of housing that would be in racially and socially homogeneous communities.

So, here you have an act of Government which went a long way in setting some of the more rigid patterns of segregation that we have today.

It was certain groups of persons in our society who benefited from this while others were injured. Now, we do not ask, we do not suggest that we go to the other extreme and force them to live where they do not want to live. What we ask is that the conditions in which freedom of choice, real freedom of choice, can be exercised, that these conditions be created.

We do not think that you have such conditions when it is clear that persons of certain races can only live in one segment of the community rather than in others.

To be sure, after the law, then persons will begin to exercise some real choice in the matter—that is, after the law has been passed and if it is implemented properly, but it is the necessity now to create the conditions in which choice can be exercised that I think we are supporting here.

The CHAIRMAN. In other words, the Negro is compelled to live within the pale of settlement, he has no choice to live outside the pale of settlement in most instances. That is your contention?

Dr. PAYTON. I think this is right. One has to live within communities and there are certain limits on our ability to choose. In the setting of those limits Government has been involved and in a way that has been injurious to some groups of our society.

At this point we are asking that Government now be involved in a way that creates more freedom of movement for our citizens.

Father CRONIN. Mr. Chairman, may I comment, too?

The statement they are making that the people choose racially segregated communities, I do not think is historically justified in a good deal of the South, where allegedly we have a lot of racial discrimination, you do not have that much housing discrimination.

Georgetown in Washington was an integrated community and it became one of the most fashionable areas of Washington. I have lived in two areas of Washington in recent years, on upper 16th Street, presently in Brookland. Both of them integrated without the slightest difficulty. I was born in upstate New York and we have never any thought about housing segregation there.

I suspect that this is a relatively new pattern, frequently associated with poverty and the fact that a large percentage of Negro people are poor. I suspect a good deal of integration has been agitated and that left to their own choice people do not particularly care.

The CHAIRMAN. There is another statement we often hear from the real estate interests. It is as follows:

He knows that by selling his home to one not of his own race, he may visit insecurity and apprehension on those who remain behind. Confronted with a

choice of visiting a hurt upon his erstwhile neighbors and friends and acceding to the colored prospect, he will typically choose the former.

Now, what is your comment on that?

Dr. PAYTON. I think, again, Mr. Chairman, this is an effort to put the blame where it really does not lie. Namely, on the private citizen who buys and who sells.

Now, to some extent it can be put there, but I think the real estate people are neglecting to point out here the extent to which their organization, in collaboration with other agencies and at some points in history in collaboration with Government, have been at work making it necessary for these same private citizens to make that kind of choice.

I would agree very much with Father Cronin that in many instances citizens would really like to be free, that is, to be free to make a choice based on factors other than racial considerations; to be free, for example, to sell their homes or to rent their property to persons who, for example, may be of another race than they, but who may share some of the same interests that they share, who may want to live in that community because of some of the same reasons they want to live there.

Now, I think that the real estate people talk about freedom, but they really are not supporting freedom. They are supporting a severe restriction on the choice of Americans by refusing to open housing up so that persons can really choose on the basis of factors other than race.

The CHAIRMAN. Gentlemen, what is your position regarding the application of title IV to denominational homes for aged persons or for orphans who may be of a certain religion or faith?

Father CRONIN. Well, I would think the answer to that would be somewhat like the answer to the employment feature, title VII of the Civil Rights Act of 1964, if there is a legitimate reason for a religious group to live together as a community, well, then, I think they could have their own type of housing. But beyond that, I do not see any particular reason why a religious group would want to exclude other people from a community or if they did, whether that would be sound public policy.

The CHAIRMAN. Counsel wishes to ask a question?

Mr. FOLEY. Father, on that point, I do not think Mr. Celler was referring particularly to a house for a Jesuit order, but referring perhaps to a home run for the aged, or a pool. The word is defined in title IV very broad.

The CHAIRMAN. On my block we have a Madonna Home, which is a home for the aged, and it is supported by the Brooklyn diocese. If a Protestant old man or old woman wants to get in, I don't think she would be able to get in because of the restrictions levied against her.

Now, what are we going to do under those circumstances with reference to title IV?

Father CRONIN. I would doubt very much in this ecumenical age that any religious group would be asking for a special exemption from that. Realistically, I suppose that the diocese subsidizing it, they might assume that the people who contributed most get the first preference, but——

The CHAIRMAN. Under New York State law there are exemptions in that regard.

Father CRONIN. Yes, I know they put those in.

The CHAIRMAN. In the Fair Housing Act of New York, there can be homes for Catholics or homes for Protestants or Jews. They need not take any other denomination; that is the law of the State of New York.

I don't know what the laws of the other States are.

Father CRONIN. I don't know what our legal department would say, but I personally feel that the day of asking special exemptions for religious groups is gone. We are certainly——

The CHAIRMAN. You better be careful there, Father. Have you consulted——

Rabbi HIRSCH. May I comment on that, Mr. Chairman?

The CHAIRMAN. You better be careful on that. You don't know what you are going into on that.

What do you say, Rabbi?

Rabbi HIRSCH. I was not aware of this being a problem in this particular legislation. This is the first time that I have heard of it. I have heard of Mrs. Murphy being a problem.

The CHAIRMAN. Leave out Mrs. Murphy. She has nothing to do with it.

Rabbi HIRSCH. But I have not heard of Mrs. Cohen or Mrs. O'Donnell being a problem in terms of the old-age home. But I do think there are special reasons for considering these old-age homes run by denominations to be in a special category.

I know in the instance of Jewish homes, for example, there is a necessity for having a Jewish home in order to have the dietary laws observed.

The CHAIRMAN. There are some Jewish homes that are not orthodox.

Rabbi HIRSCH. There are some, but in that instance, also, the purpose of having a Jewish home for the aged is to create a Jewish environment which will be in consonance with the religious values of these people who are entering their last years of life, and I am not aware of the fact that those homes were set up for any negative discriminatory purpose.

There is a separation along the lines that we separate males from females on certain occasions in our society in order to perform certain activities which are characteristic of male and female. I think the same thing would apply in a way to religious groups.

In contrast, the legislation with which we are concerned pertains to areas of residence throughout the community which should be available to all citizens regardless of their race, color, or religion, and in those instances I think the legislation ought to apply to religion.

In terms of the suburbs, where the problem is the most severe, there are instances in the greater metropolitan area of Washington, where Jews are prohibited from purchasing a home and, incidentally, some Members of our Congress live in some of those sections.

Now, it seems to me that that is the situation, and the type of discrimination that this legislation would prohibit.

Mr. MCCULLOCH. Mr. Chairman, before you leave this question.

First of all, Mr. Chairman, I am pleased that this matter has been brought up for discussion because it is one of the problems with which this subcommittee will, of course, be faced, not only in the field which the chairman has so ably described, but we get into fraternal housing

which limit occupants there of members of certain fraternal orders, the Masonic Order, the K of C Order, the IOOF, and the like.

They are commonplace in the State of Ohio. We also will get into the field of college fraternities and sororities, and I find it of help that you have no quick, absolute answer to the problem that the chairman has presented. It is a most difficult problem and it will finally come back to the committee under consideration of our own legal talent and from the best outside counsel that we can have come before the committee.

But I think you are to be commended for bringing this up.

The CHAIRMAN. The Father and the Rabbi apparently do not agree on this.

Let us have Dr. Payton's views.

Dr. PAYTON. Mr. Chairman, admittedly this is a very difficult topic, but I think in the area of civil rights we are dealing with the question of how to structure laws that make it difficult, if not impossible, for exclusions to be based simply and entirely on racial considerations.

Now, when you get into complex areas such as the one we are discussing now, it poses many kinds of difficulties.

The difficulties, however, must not deter us from, I think, applying the law when we can find a clear instance of such discrimination, and in this instance the law includes not only racial discrimination, but discrimination based on religion and national origin and so forth, and rightfully so.

The fact of the matter is, religion, just like race, has been used as a mask behind which to discriminate illegitimately. So has national origin. Many of these things have been used in a way that has been very unfair and very unjust.

I think in the case of the Protestant church, certainly it is clear that our history is a dark and stained one. We come now not only in order to push you gentlemen; we also come in witness to our own faults and also in the promise that we would rectify those conditions in our own house which are wrong.

I think it is clear that with respect to many of our constituencies who support my being here, we need the law in order to prod Protestant Christians, and we would hope that even though it is a difficult thing here that you gentlemen would give it the kind of consideration—and that I am sure you will give it—and that ways will be found such that discrimination based on race and religion and national origin will no longer be a part of this country.

The CHAIRMAN. Well, here you have a case where the principle of equality, which we all accept, breaks down. I do not think that in a Jewish home, Rabbi, the inmates would tolerate the entrance of a Protestant or a Catholic. Vice versa, I think that in a Catholic home the inmates would not want a Jewish person or Protestant person in there, or a Protestant home to have somebody who is not a Protestant come in.

I think those are the practicalities we have to face.

Mr. CRAMER. Mr. Chairman, on that same point. This is a very interesting area and I, too, am glad we are getting something on the record and some information from those who are experts in this field.

Do I understand, then, that it is the position of those testifying that there would be justification for exclusion from this such homes as are run by religious organizations, such as a Methodist home which exists

in my district, a retiree home, similar to the homes the New York law eliminates from nondiscrimination statutes?

The committee should have some kind of guidance and reasoning as to why some should be in and some should be out.

Now, Mrs. Murphy was out; I would like to put her back in. I want to know what you think about these homes run by different religious denominations, that are obviously set up by the church and for the Methodists, for instance, or Jewish people, or what-have-you.

How do you distinguish between these homes and the right of an individual in his own home to select the person with whom the individual wants to live in that home, so far as renting rooms is concerned?

Rabbi HIRSCH. I think we better give our individual positions. My own position would be that I think there is a definite difference here between a religious order in the case of Protestants or Catholics or a Jewish community in the case of the Jewish community which sets up a home for positive purposes, which in order to create a uniquely religious atmosphere which cannot otherwise be created and to which these people are entitled.

There is a difference between that type of a situation and a situation where a person wishes to discriminate. In other words, a negative motivation on the basis of religious or racial factors which are contrary both to the moral and, we would hope, after this legislation, to the health standard of justice which America expresses.

Mr. CRAMER. How would you go? Would you apply a similar principle to the ethnic groups? There are German-American homes, and so forth. They, too, have reasons for setting up retiree homes or communities for the purpose of settling on an ethnic basis. Do you see reasoning behind that of equal strength to religious settlements?

Rabbi HIRSCH. I am not familiar with the totality of the problem. I recognize the implications of what you are saying, Congressman, namely, that there is a possibility that if we exempt some, then this exemption will be used as a dodge by the others to establish——

Mr. CRAMER. I am not saying that. I am saying if you use this reasoning to suggest that religious homes, retiree homes, for instances, should be exempt, does not the same reasoning apply, this special consideration trying to accomplish a special objective, apply to the ethnic groups that want to establish retirees homes?

We have a tremendous Latin population, for instance, used to have in one section of my district, that have these Spanish clubs in which no one except Cubans are permitted to attend.

The CHAIRMAN. Excuse me, with all due respect—this is off the record.

(Discussion off the record.)

The CHAIRMAN. Back on the record.

Mr. CRAMER. This is the question of how you can rationally exclude on a religious basis from antidiscrimination proscriptions and thus permit religious discrimination in some instances and what reasoning you can use to do that but not affect other groups, such as mentoned by the distinguished gentleman from Ohio.

Rabbi HIRSCH. I understand that. What I am familiar with is the home for the aged on a religious basis. I think there is definite exception in that instance; it may be, and I am not familiar with the motiva-

tions, the programs, the environment that is created by these ethnic groups, it may be that there are other groups than religious groups.

Mr. CRAMER. I have a growing community in my district; some of these people don't even speak English. They want to live together, to be together.

Rabbi HIRSCH. I am agreeing with you, Mr. Congressman. What I am saying is I think there may be other factors than the religious factor which may warrant some kind of special treatment. But I think here they key point is the intent, and it seems to me that this committee should be sufficiently wise to devise a formula by which the positive reasons for separating some groups out, whether they be of a religious or of an ethnic characteristic, which is a positive factor, should be delineated from the type of discrimination we are talking about which is negatively motivated.

The reasons for having a Jewish home are not related to the problem of racial discrimination or of morality, which we are discussing here.

The other problem, it seems to me, is the crux of the problem, and we should not permit this seeming inconsistency, if you would call it that, to destroy the overall purpose of civil rights legislation which affects the majority of Americans; and I include whites in that, because I think whites are affected by racial discrimination as much as Negroes.

Mr. CRAMER. The chairman cited exemption of religious denomination organizations in the New York law; I think in the definition of housing accommodations.

But shall not include any accommodations operated by any religious organization or denomination as part of its religious denomination.

The CHAIRMAN. Are there any other States in this category besides New York?

Mr. CRAMER. I have not checked that, but there is another exemption in the New York law for "rental of a unit in an owner-occupied two-family dwelling and a rental of room in a dwelling by the occupant thereof."

Now, the State of New York felt there were reasons for including that category. What would be your comment on that?

Dr. PAYTON. Mr. Chairman, I would think Rabbi Hirsch has put his finger on the point that may be relevant here.

To speak to your point—I think as relationships between persons get more and more intimate and as the size of the group diminishes and gets smaller there is good reason for the law to walk with some degree of care and caution in order that it not prevent choice, which is not the point here, but really to create a larger area of choice.

I think the point that Rabbi Hirsch made needs to be made again, and that that is the quality of an act cannot be determined merely by looking at the act itself; one has to take into consideration motives and intent, also.

For example, one problem that is now being widely discussed is the fact that under many of our urban renewal programs throughout the country a very deliberate effort is being made to integrate the areas that were formerly slums and were entirely segregated prior to the urban renewal.

Well, what does one say about this? In some instances, depending on the particular case, it may be bad from some moral perspective. In another instance it may not be so clearly that. If one believes that an integrated society is one condition of a good society then one has to make, sometimes, the kinds of decisions which from another point of view would seem to be bad. But when one takes into consideration the motive—one lady in New Jersey was telling me just a few weeks ago—she is a white lady—she wants to sell her home. She lives in an integrated neighborhood which is gradually nearing the so-called tipping point, at which point it goes on to become a segregated community. "What do I do? Put my home up for sale to anybody, to all comers and allow persons to come who need a home, or should I not look deliberately for a white family to sell to here in the interest of keeping this an integrated community?" Knowing that particular lady, knowing her motive, her intent, I think she is the one to make a decision in this kind of a matter.

Mr. CRAMER. Yes, but how do you write a law to exclude those who have a bad intent, yet include those who have a bad intent and excluding those who have a good one.

Dr. PAYTON. I don't know. How did we arrive at the urban renewal laws, statutes——

Mr. CRAMER. Executive orders.

Dr. PAYTON. They have found a way to exclude and include, and I think you astute gentlemen can find a way.

Father CRONIN. May I make a comment on the point that has been coming up about the religious institutions and so forth?

To me, I feel that exclusion of the New York law is largely a housekeeping provision in a technical sense to keep them from being technically in violation. I doubt very much if there is any great pressure for people who are not Greek to come in a Greek Home for the Aged, or not Lutheran to come into Lutheran Homes for the Aged, and so forth.

I think it is really a technical exclusion to avoid what might appear to be a surfeit violation of the law. I do not think it is a problem we have to come here—I do not like to see us in the position of urging something that is morally right and then wanting an exemption for religious groups on the grounds we can be exempt from morality. That is why I want to make it clear I think it is a technical problem. I do not believe religious homes for the aged or fraternal homes or anything else, do, in fact, create a problem of discrimination.

Mr. CRAMER. You think now in the 1964 act we excluded the private clubs. Let us assume that we put private clubs in this, as it relates to rooms, dwelling accommodations. Do we not end up in nondiscrimination in sleeping quarters but discrimination in eating quarters of clubs? Those are the practical questions we are faced with.

Father CRONIN. I think Dr. Payton handled that quite well earlier. That is when you come to the close borderline between social arrangements and the broader question of public policy. A private club does come in the category of an extension of a home, something somewhat social and, as Dr. Payton says, the law hesitates to move into areas like that. And I do not think exclusion of genuine private clubs would be a burden or a substantial evasion of the purposes of the law.

Mr. CRAMER. How about fraternities and sororities?

Father CRONIN. I believe they are taking care of themselves. I think practically all of them, nationally, with perhaps one exception, are handling the problem. I think there is only about one national fraternity that does practice discrimination. The bulk of them are moving the other way.

Mr. CRAMER. There has been a suggestion that college funds could be withheld at colleges where, in fact, discrimination is in practice. That is fraternity or sorority houses where there are only whites residing there. Do you think they should be included in the Executive order which appears to be the proposal now, of this law?

Father CRONIN. I would at the present moment tend to include them. I think they have lost, in most campuses today, any distinct element of being a social grouping. That is a factual assertion which could be judged by factual studies of the problem. In practice today a fraternity is just another university dormitory housing facility and I don't see any particular reason to exclude them from the law. I would not.

Mr. CRAMER. How about Masonic homes?

Father CRONIN. I would consider that in the same terms as a private club. I think that is a social fraternity, it is not open to the general public, and there is no racial reason for discrimination.

Mr. CRAMER. How about the private home where a few rooms are rented out by a party who is interested in companionship as well as income?

Father CRONIN. There I would agree with Dr. Payton, you are bordering on the question of social relationship. I do not believe pushing the law to a point that might create unnecessary public upset, if you want to call it that. Our main concern really is with the commercial practice of buying, selling, or renting housing. We can take care of 95 percent of housing relationships and clean those up in terms of racial and religious discrimination.

Mr. CRAMER. So it would not disturb your thinking if that type of situation were excluded?

Father CRONIN. No.

Mr. CRAMER. Would anyone else care to comment?

Dr. PAYTON. I think it is important we bring out the point that even if a home that is designed to provide companionship for the aged, if this home is in any way receiving Federal funds or if anyone of the smaller groupings in society would be receiving some sort of support through some sore of Federal subsidy, then that particular institution would have to be open to all persons, regardless of race or creed or national origin; and that is a point that we are very clear about. And our commission, on April 26, on page 10 of the appendix you will see a statement that the commission, which is sort of the board of directors under which I function, has come out very clearly that even if it involves religion or ethnicity as well as race, that as title VI of the 1964 Civil Rights Act provides, if an institution is receivng any kinds of Federal subsidy then the law would apply to it.

That, of course, does not answer some of the very tight questions you are asking.

Mr. CRAMER. You would include fraternity and sorority houses than when the university receives grants, although they do not relate to construction or maintenance of fraternity and sorority houses?

Dr. PAYTON. I would think so. Our universities are increasingly becoming so dependent upon the Federal Government for its existence and so many of us are involved in the support of these institutions, I think it would simply be grossly unfair for any segment of that university to deny access because of some of the factors we have delineated.

Mr. MCCULLOCH. The gentleman from Florida said he would yield.

Mr. Chairman, I would like to make this statement off the record.

(Discussion off the record.)

Mr. MCCULLOCH. I would like to submit that part of the Ohio legislation that follows the reading of the New York law in this field.

I should like to quote it because I have been inclined to believe that it becomes a little more than a technical importance in view of so many of these fraternal and religious organizations that provided extensive housing for the aged.

I quote the Ohio law which was finally adopted after much travail and is less than 2 years old.

"Nothing in division 8 of this section shall bar any religious or denominational institution or organization or any charitable or educational organization which is operated, supervised or controlled by or in connection with a religious organization, or any bonafide private or fraternal organization fom giving preference to persons of the same religion or demonination or to members of such private or fraternal organization or from making such selection as is calculated by such organization to promote the religious principles or the aims, purposes or fraternal principles for which it is established or maintained.

While this is technical and the difficulty is not perhaps probable, if we have no exclusion at all it is my off-the-cuff opinion, and I have not considered this, that it could lead to much immediate trouble and much misunderstanding, and beyond that, it might result in a long-time opposition that might materially hurt the main thrust of our purpose.

I just throw that out and we will want to be talking about it.

Meanwhile, may I say that you gentlemen who have been such courteous and cooperative and persuasive witnesses this morning.

Mr. CRAMER. I just have one other question, Mr. Chairman.

I will do it off the record.

(Discussion off the record.)

Mr. CRAMER. I am very interested in the last comment relating to Federal funds and, of course, the President has in his power, and to some extent exercised his power in 1962. I note by your statement you have suggested that that be broadened and have it pass. But do we not get this end result as it relates to religious retiree homes, for instance, which do qualify, or have in the past, for Federal assistance funds, that where there is Federal assistance there will be no religious discrimination, but where there is no Federal assistance there can be?

Now, what is the reasoning relating to that, the end result? Of course, we have to deal with practical end results in legislation.

Dr. PAYTON. I would think when Federal funds are used then the institution is more than strictly private in the traditional sense. It is then being at least partly supported by public funds, which funds are provided by all of the people. Therefore, it would follow, it seems to me, that institution should be open.

Mr. CRAMER. Let us examine that for just a minute. We are talking now about guaranteed mortgage funds, guaranteed mortgage

function of the Federal Government. I am sure you realize that we eliminated that specifically in the 1964 act from the withholding of funds provision.

Now, I assume you are suggesting that we should broaden it as it relates to housing to include guaranteed Federal function as a Federal impact that would bring these homes into nondiscriminatory position?

Dr. PAYTON. Well, the issue does get sticky. I think though that what we are saying is we would not want to insist that other private institutions be required to uphold the law if the church can find a loophole out. We are simply saying that we want to be fair with respect to our own institutions as well as to the others.

The CHAIRMAN. Gentlemen, I would like to ask this question:

The Supreme Court, in the case of *Torcaso* against *Watkins*, 367 U.S. 448, decided in 1961 said:

We repeat and again reaffirm that neither a State nor a Federal Government can constitutionally force a person to profess a belief or disbelief in any religion.

Now, the provisions we have with reference to qualification of jurors provides that the religion of the prospective juror shall be on the jury roles and that he shall indicate his religion.

What are your views on that?

Father CRONIN. I have never given any real thought to that problem. I do not know why it was put in the original draft because I am not aware of jury discirmination on the basis of religion.

The CHAIRMAN. There is not as far as you know, is there, any question of discrimination on the basis of religion?

Father CRONIN. Not that I know. I do not know of any such discrimination.

The CHAIRMAN. And I think the Attorney General so testified. It is in the bill in any event.

Father CRONIN. It certainly is not a burning issue to include as far as I can see.

Rabbi HIRSCH. Mr. Chairman, just to respond in terms of the Jewish community, there have been some discussions on this within the Jewish community and there are representatives of national Jewish organizations who, I think, have expressed both pro and con as to whether or not the word "religion" ought to be included and I might suggest——

The CHAIRMAN. Off the record.

(Discussion off the record.)

Rabbi HIRSCH. Since I am the only one here representing the Jewish community, if this is an issues, in all fairness neither I nor the committee should take a final position until we get some kind of a position from the national Jewish organizations.

The CHAIRMAN. Thank you very much, gentlemen. It has been very interesting testimony and you have been very, very helpful to this committee and we appreciate your coming.

Our next witness is Mr. William Higgs, director of the Washington Human Rights Project.

If you will forgive me, I have to go to a Rules Committee hearing to get a rule on one of the Judiciary bills and I will return shortly.

Mr. Rogers, if you will take over, please.

Mr. ROGERS (presiding). Mr. Higgs, you have a written statement?

Mr. HIGGS. Yes, I do, Mr. Chairman. If I may, I would just like to read the first two paragraphs, the opening paragraphs of that statement, and then proceed informally.

Mr. ROGERS. You proceed in your own manner. If you want to read the paragraphs and insert the rest into the record, we will be happy to receive it. So, you go right ahead.

Mr. HIGGS. Thank you very much, Mr. Chairman.

STATEMENT OF WILLIAM L. HIGGS, DIRECTOR, WASHINGTON HUMAN RIGHTS PROJECT

Mr. HIGGS. Mr. Chairman, members of the subcommittee, my name is William Higgs and I am the director of the Washington Human Rights Project, a nonpartisan, nonprofit educational organization interested in the furthering of human rights and located here in Washington.

As it has been in the past several years, it is now a pleasure to briefly appear before this distinguished body of men that has done so much to carve equality of all men into our Nation's foundation-stone.

(Statement follows:)

STATEMENT OF WILLIAM L. HIGGS, DIRECTOR, WASHINGTON HUMAN RIGHTS PROJECT

Mr. Chairman, Mr. McCulloch, members of the subcommittee, my name is William Higgs, and I am the Director of the Washington Human Rights Project, a non-partisan, non-profit educational organization interested in the furthering of human rights and located here in Washington.

As it has been in the past several years, it is now a pleasure to briefly appear before this distinguished body of men that has done so much to carve equality of all men into our nation's foundation-stone.

Before commenting directly on the pending proposed legislation, I feel that I should express a deep concern about the enforcement of the civil rights legislation that is already on the books. When this subcommittee legislates in vain, it is a mockery of all that our system of government stands for. I believe that we are perilously close to that condition today. I subscribe to a local Mississippi paper, the Greenville *Delta-Democrat Times*, considered a liberal paper by Mississippi standards. Daily one can read there of the various ruses and devices that are being conceived to circumvent the recent civil rights legislation. The federal officials there are fully aware of what is going on, and, indeed, seem at times to be themselves involved in out flanking the clear thrust of the federal law. I call your attention to a few examples which I now offer for the record. Perhaps the most glaring example of unfortunate action at the federal level is the article quoting Senator Eastland as he describes his role with the Justice Department in keeping registrars out of Mississippi. I am not at this point—in the interest of Congressional propriety—doing more than to note that in 1947 Mississippi's then Senior Senator Theodore Bilbo was denied his seat for actively urging that Negroes be prevented from registering and voting in his upcoming election; Senator Eastland is now up for reelection in the June 3 Mississippi Democratic Primary. However, I do raise here the question of the proper role of the Department of Justice, if, as the article indicates, it is actively consulting with Senator Eastland prior to sending in Federal examiners to Mississippi and if, as the article also indicates, the Senator has been successful in preventing such action.

Frankly, Mr. Chairman, I believe that it is far more important that this subcommittee assure that existing laws are being enforced than to pass this new legislation. Forgive me if I say that I am appalled to read in the Mississippi papers of blantant subversion of the Voting Rights Act and at the same time to be aware of what is apparently a serious lack of information by the members of the Congress, particularly of this Committee, about what is happening. I

am even more disturbed when I realize that the Justice Department has an extensive clipping service that is undoubtedly turning up item after item of circumvention of the law. Yet they have made no proposal to this subcommittee to plug these loopholes. Permit me at this point to be specific about some of the things that the State of Mississippi is doing. (indicate)

Moreover, time is not necessarily on the side of the right to vote without regard to race: Under the provisions of the Voting Rights Act (Sec. 4(a)) a state may reinstitute its literacy, interpretation and other tests after a period of five years has lapsed since Aug. 6, 1965, the date of passage of the Act, provided that in the meanwhile *such tests* have not been used to discriminate on account of race. Clearly intimidation, harrassment, violence, etc. are outside the pale of the language. In short, a state could resort to such means until it can reinstitute its "legal" methods of discrimination in five years. History is not without a lesson here. After the Act of 1870 (readmitting Mississippi to the Union and abolishing voting qualifications) and under federal occupation, Negroes could vote in Mississippi until 1875 when violence replaced federally-enforced order. Fifteen years later in 1890, believing that the Act of 1870 was unenforceable, the state of Mississippi once again turned from violence (except when necessary) to prime reliance on voting qualifications to prevent Negro voting (and jury service). I do not believe that this subcommittee can lightly disregard this history. Furthermore, with elections every four years, most southern states will have only one election under the provisions of the Voting Rights Act of 1965. Witness Mississippi (1967) and Alabama (just held), whose next election in 1971 will be beyond the 5-year time period of the Voting Rights Act's suspensions of literacy and interpretation tests.

In short, continuing oversight of the Civil Rights Acts is absolutely essential: to fail to do so would seem to be a grievous and costly mistake.

It is with these considerations in mind that I have awaited anxiously the report by the special subcommittee of this subcommittee that was appointed to look into the enforcement of present legislation and to report back in January. Not a word has been heard to date about that report or any action upon it. I believe this to be a tragedy of the first order.

Oversight is not only information; it constitutes one of the easiest and most painless means of enforcing full and orderly compliance. The mere existence of such a functioning body prevents now countless problems later.

Since the Administration bill does not even mention voting rights, I confine myself to urging the adoption of the provisions of the Gilbert bill, H.R. 14770, as amendments to the Chairman's bill, H.R. 14765. These two amendments to the Voting Rights Act would (a) prevent a state from using any aspect of the election process to deny the right to vote on account of race—not just the voting aspect and (b) assure that federal examiners would be placed where needed and give the potential registrants house-to-house access to them. Had these amendments been law, I am sure that the recent Alabama elections would have borne a different result. At this point I include an article showing the large sum of money returned to the federal treasury by the Civil Service Commission as a result of the Attorney General's stingy use of examiners. That such paltry sums inherent with so much democracy should be returned unused is a sad commentary on the priorities of our national government in the expenditure of funds. (Permit me to offer for the record a copy of my article for the Dec. 13, 1965, edition of the *Nation* on this subject.)

Having discussed voting rights, I believe it appropriate to introduce my comments on jury selection by stating that it is the elective police chief, sheriff, county prosecutor, and judge—not the jury—that renders 95% of "justice".

I believe that an automatic jury selection provision should be inserted for the Administration's unenforceable local-federal-court-based arrangement. This history in this area of implementation is so recent as to make one wonder at the judgment of the Administration in providing for such enforcement. The Gilbert bill, which adopts the Leadership Conference's proposal, but tightens it up, is an improvement; however, the approach of the Yale bill, when well perfected, seems the most effective. The Administration's use of a literacy test for jury service is absolutely inadvisable, as it will prevent large numbers of Negroes from serving in the most difficult areas. For example, about 50% of the adult Negroes of the Mississippi Delta have less than a sixth grade education. The Administration's use of the voting rolls also seems absolutely wrong for similar reasons. The Administration's reporting provisions are very weak, since the information is only available under the bill when a suit has been filed.

It also seems that the racial designation should be required on the records, since this information is already known in far greater detail by the local authorities in any case.

I believe that the education provisions of the Gilbert bill (Sec. 1102) will be a very useful strengthening amendment to the Administration bill; freedom-of-choice as exercised in the Southern school systems is in reality a direct challenge to Southern authorities to control that "freedom" by forcing the Negro child to go down a one way street to sign up for the traditional all-Negro school. The Gilbert bill's second education provision limits drastically the abuses of de facto segregation, yet preserves the "neighborhood school" concept; at least this step against de facto segregation should be taken.

The provision in the Leadership Conference bill for the removal of state law enforcement officials for gross violations of civil rights is a wise proposal. It is criminal that Sheriff Rainey of Neshoba County, Mississippi, still enforces the law in that benighted hill county.

Many others have already testified on the need for a truly effective housing title in the bill and have recommended administrative enforcement. One such procedure that does not involve the creation of a new agency is that in the Gilbert bill (Secs. 1208–9). In any case, I trust that the subcommittee will exercise a judgment that has so often in the past been quite discerning to enact a truly workable prohibition against racial discrimination in housing.

Thank you very much for the opportunity to appear.

Mr. HIGGS. Mr. Chairman, it seems to me that perhaps even more important than the enactment of the pending legislation is the concern for the enforcement of the legislation that is already on the books.

I think that, indeed, this committee must be concerned with closing loopholes in existing legislation so that they can be sure that what this committee has done in the past—indeed what it is about to do now—is not being done in vain.

I have with me a number of articles, primarily from the Greenville (Miss.) Delta Democrat Times, particularly on voting.

These articles illustrate what the State of Mississippi has done in the past 6 or 8 months to subvert the spirit and the purpose of the Voting Rights Act of 1965.

With the chairman's permission, I would like to offer these articles for the record. They are quite short and they are about, oh, there are six or seven of them.

Mr. ROGERS. These are articles which appear in the Greenville Delta-Democrat Times?

Mr. HIGGS. Yes.

Mr. ROGERS. Who is the editor?

Mr. HIGGS. Hodding Carter, Sr.

Mr. ROGERS. That is not the lady editor of one of the newspapers down there?

Mr. HIGGS. That is probably Hazle Brannon Smith of the Lexington Advertiser.

Mr. ROGERS. Is she the one that got a prize or some other honor?

Mr. HIGGS. That is correct.

Mr. ROGERS. Has this fellow ever won any prizes for his reporting?

Mr. HIGGS. Yes; he is a Pulitzer Prize winner.

Mr. ROGERS. There has been some allegation that somebody has helped support these two newspapers down there with outside contributions. Have you any knowledge of that one way or the other?

Mr. HIGGS. Well, I am sure that some outside contributions have helped Mrs. Smith with her newspaper, because the White Citizens Council in her county, in Holmes County, has been very active in trying to destroy her newspaper, so I know that she has solicited funds throughout the country to help her.

Mr. ROGERS. In other words, if she did not get funds from outside to help run her newspaper, why the local people would probably fail to patronize her and she would not be able to carry on the work; is that about the situation?

Mr. HIGGS. That is correct.

I had advised Mrs. Smith a number of years ago, oh, about 5 years ago, in regard to the county board of supervisor having taken away her printing contract and letting a bid to an opposing paper without even fairly giving her any legal chance to submit a bid, effective bid, or anything else; and I know she is under enormous pressure there.

Mr. ROGERS. Now, what you have that you want to offer for the record here are some articles that appeared in this Greenville Delta-Democrat Times and other papers, or just that one?

Mr. HIGGS. They are almost all from the Greenville Delta-Democrat Times. There is one or two from the Memphis Commercial-Appeal, which also has a large Mississippi coverage.

Mr. ROGERS. That is a Scripps-Howard publication?

Mr. HIGGS. Yes, it is, Mr. Chairman.

Mr. ROGERS. It is not subsidized as far as you know?

Mr. HIGGS. Not as far as I know, Mr. Chairman.

Mr. ROGERS. How lengthy are these articles?

Mr. HIGGS. Most of them are quite short, actually. I would say most of them are something like five or six paragraphs, which means about——

Mr. ROGERS. Do you want to read them or put them in the record?

Mr. HIGGS. I would like to insert most of them in the record. I would like to comment on them briefly and also there is one I think that the committee would be extremely interested in.

Mr. ROGERS. Well, you comment on them without reading them and then file them for the record. We will make a determination on how many of them we will insert in the record.

Proceed.

Mr. HIGGS. Thank you, Mr. Chairman.

These articles indicate that the State of Mississippi has undertaken a number of legal mechanisms to try to subvert the Voting Rights Act; the basic theory that the State has operated on is to say, OK, the Congress has dealt with the voting process. In other words, the Congress has passed the Voting Rights Act which lets people vote. However, this is not all of the total election process.

The Voting Rights Act does not deal with such things as the qualifications of candidates, it does not deal with the times for holding elections, and it does not deal with the districting, the type of election districts from which people are selected, and therefore, it is in these omitted areas in which legislation is either being enacted or has already been enacted in Mississippi.

As an example of this, legislation, I believe, has passed both Houses which authorizes the county board of supervisors, which is the county government, to either have at-large elections for members of the board or to continue to have what the present law has been for many, many years: that is, the selection of one member by each supervisor's district; and there are five supervisor districts in each of the 82 counties in Mississippi.

Now, the 1960 census figures quite clearly show that in some of these districts, in some of the supervisor districts, you will have Negro majorities, even though you might have a white majority in the county as a whole; so this means that by giving the discretion to the board of supervisors, they can eliminate Negro members of the board, members who otherwise would be elected under the new Voting Rights Act.

Mr. ROGERS. Do I understand that the Mississippi law provides that the board of supervisors of a particular county have the right to determine whether or not the board of supervisors should be elected at large within the county or in respective districts?

Mr. HIGGS. That is either the new law or such a law is in process of being passed. I think it actually has just been enacted, but at least I know it has passed one House and is out of the proper committee of the other House.

Mr. ROGERS. That is what the State legislature is now in the process of doing?

Mr. HIGGS. Yes, it is. But that was not the old law. The old law said the members who were elected, one from each supervisor district, but only by the qualified voters of that district.

Mr. ROGERS. How many supervisors would there be in the county?

Mr. HIGGS. Five.

Mr. ROGERS. Five in every county?

Mr. HIGGS. Yes.

Mr. ROGERS. And it is divided up by the State legislature and the five who are elected, do they make the division, do you know?

Mr. HIGGS. I believe the five who are elected make the division. I believe that is correct. So they, of course, have continuing power to revise those districts.

This is one law.

Another law has just been passed by the legislature—and I have an exhibit on that—which creates a so-called open primary. As I understand the provisions, this open primary will be held in October or so next year and there will be no party primaries at all.

The Republican Party primary as well as the Democratic is abolished and all candidates must file for this election, and I believe there will then be a runoff between the two top persons and then one person will be elected, who will, in effect, be the only person on the ballot in the November election, as I understand the law.

I am reading——

Mr. ROGERS. Is this a law that recently passed?

Mr. HIGGS. Yes; this was passed.

Mr. ROGERS. They are going to have an election in Mississippi this year on the basis of that law?

Mr. HIGGS. No, not this year, because it is only the congressional and senatorial election this year. Senator Eastland, you see, is up, but next year come the quadrennial elections.

Mr. ROGERS. In other words, you don't elect the Governor and the county officials this time?

Mr. HIGGS. No; everybody is elected next year for 4-year terms in all State offices, except for municipal offices.

Mr. ROGERS. On the congressional and senatorial levels, how is that going to be conducted? They have had a new redistricting down there. Are they going to go under the old law?

Mr. HIGGS. Well, the open primary law does not apply to the congressional elections. Now in just a moment I will speak about the recent congresional redistricting law which was just passed.

Mr. ROGERS. All right.

Mr. HIGGS. The chairman of the State Republican Party has labeled this act as a bill which is in many respects designed to kill the Republican Party in the State and I also have an article on that I would like to submit.

There are other election provisions. Frankly, it is not always easy to read from the newspaper stories exactly what has been passed. However, I feel that I should mention the recent congressional redistricting enactment.

The bill that was finally passed apportioned the State of Misissippi into four districts which a predominantly white population and one district which has a slight Negro majority, that is, of adult citizens.

However, the theory in the legislature—which is openly stated in these articles, I submit—was that the Negro vote, Negro majority was so slight that there was no real chance for the Negro population to elect a Negro in that district.

The way the legislation was done was to split up the delta area of the State which has most of the State's Negro population. This is the flat alluvial plain along the Mississippi River with the large cotton plantations. This would split it up into, I believe, four parts of the five districts, just slicing it horizontally.

Now, on the map, without looking at it, as a map of the State not seeing the topography, it looks like a reasonable apportionment, but in terms of splitting up the concentration of Negro population, it is very effective.

Mr. ROGERS. Do I understand that this redistricting did divide it populationwise.

Mr. HIGGS. Yes, it is quite fair populationwise.

Mr. ROGERS. The unfairness is that they have taken, as you have stated—taken and divided the congressional districts so that there would be a predominant white population in all but one district.

Mr. HIGGS. Yes; that is correct.

Mr. ROGERS. And in order to do that, they had to go down into the delta district and divide the voting counties down there; is that right? Is that what they did?

Mr. HIGGS. That is correct. All this was openly stated that it was done on the basis of race.

Mr. ROGERS. Is there any possibility that those who may want to run for Congress, like the ones that we had the big contest about here last year, that they will have an opportunity to get on the ballot and be voted on this fall?

Mr. HIGGS. Free Democratic Party contestants?

Mr. ROGERS. Yes.

Mr. HIGGS. I think they will have an opportunity to be on the ballot. However, there is litigation.

Mr. ROGERS. Will you make sure that all who want to get on the ballot can get on the ballot, and be voted on down there, so that we will not be bothered with that problem up here next year?

Mr. HIGGS. Mr. Chairman, I will certainly on our end do what we can.

Mr. ROGERS. You would certainly do a great service to the Nation if you did succeed.

Mr. HIGGS. Frankly, Mr. Chairman, the reason I am here this morning is that I do have some thoughts about what might be very helpful to assure that that condition does not occur this time.

Then finally, I have an article which indeed was extremely disturbing to me when I read it. It is in the April 22 edition of the front page of the Delta Democrat-Times. It is an interview by the Medill News Service here in Washington with Senator Eastland.

Mr. ROGERS. Is that a correspondent for that paper who is here in Washington?

Mr. HIGGS. In effect it is. It is really from Northwestern University School of Journalism, which supplies them. There are just a couple of paragraphs here that I think are quite relevant to the committee.

The article:

Senator James O. Eastland, Democrat of Mississippi, said today he did not block the sending of a Federal voting registrar in to Sunflower County.

In an interview with the Delta Democrat-Times, Eastland said that the Justice Department never discussed the possibility of sending a Federal registrar into Sunflower County with me. A Washington columnist (Drew Pearson) has charged that the Justice Department decided against sending a Federal registrar into the county because it was Eastland's home county.

"I've objected to the sending of every Federal registrar into Mississippi," Eastland said. "Ordinarily, the Justice Department will inform me the day it plans to send a registrar into a Mississippi county, and I've been able to block some."

Mr. ROGERS. Do I understand that Medill quotes Drew Pearson and that that appears in the Delta Democrat-Times? Is that the basis of it?

Mr. HIGGS. No; this is a direct quote from Senator Eastland, Mr. Chairman.

Mr. ROGERS. A direct quote. What is that reference to Drew Pearson quoting somebody?

Mr. HIGGS. Well, the reference to Drew Pearson was that Mr. Pearson, as I understand it, had charged that Senator Eastland had been instrumental in preventing registrars from going into Mississippi, but the principal quote that I read was from Senator Eastland.

Now, for reasons of congressional propriety, I don't want to comment on what Mississippi's senior Senator has said, except to the extent that he refers to the Attorney General—well, to the Justice Department and to the Attorney General, and it seems to me that if Senator Eastland has, indeed, been able to block the sending of Federal registrars into Mississippi, that otherwise should be sent there, then I think that there are some serious problems here, as I saw this article and was very concerned about it.

I think that in terms of the voting, one has to realize that in the 1965 act, particularly section 4(a), there is a 5-year provision and that language in essence says that if a State has not used a test or device—a test or device to discriminate—over a 5-year period after the date of passage of the act, which was August 6, 1965, then it may, by filing suit in the District of Columbia, reinstitute those literacy tests and constitutional interpretations tests.

So it seems to me, then, that it is quite clear that unless action is taken quite quickly, particularly, for example, in the case of Alabama and Mississippi, to assure that there is rather full Negro participation

this year and next year in those two States, then the subsequent quadrennial elections are going to fall beyond the pale of the coverage of the Voting Rights Act.

In other words, 5 years—Alabama's next election, which will be in 1971, that is the election in November, will fall beyond 5 years from the date of passage of the Voting Rights Act.

Mr. ROGERS. What you are saying is that Alabama and Mississippi may not use these testing devices for this 5-year period, then in 1971 they will reinstitute them when the Attorney General does not have the authority to use a triggering device and go in there and register them. That is what you are saying?

Mr. HIGGS. Essentially it is, Mr. Chairman.

Mr. ROGERS. And do you propose that we change that in this legislation or should we wait until the next Civil Rights Act of 1967 comes along?

Mr. HIGGS. Mr. Chairman, I am advocating a provision similar to that in the Gilbert bill, which would require the placing of Federal registrars in any county on the petition under oath of 20 citizens. This is very similar to the provision I believe Mr. Lindsay made last year.

I believe it was the intent of this committee when it did put out some sort of a standard, indeed, you, Mr. Chairman, asked a question of the Attorney General last year in that regard and frankly I want to tie in here another clipping that I have which shows that the Civil Service Commission returned over half of the funds that had been allocated for Federal registrars in the South.

Now, to me this is really tragic in terms of the amount of democracy that could have been brought to the Negro citizens in these States, had this money been used.

So, in essence I believe that a provision similar to the Gilbert bill which put in Federal registrars on a petition under oath of 20 citizens and would put in house-to-house registration on the petition under oath of 40 citizens from the county would be extremely advisable.

Frankly, I think it would be very advisable prior to the general election in Alabama in November of this year, because, as I say, I think we are dealing with a deadline situation by the present terms of the Voting Rights Act.

Finally, in terms of the voting rights provisions, it seems to me that it is absolutely critical that some committee or subcommittee or somebody be set up to have oversight of the enforcement or the lack of enforcement of these provisions. I think that is essential not only to inform the subcommittee, but to indeed to secure voluntary compliance in many cases. I think that if many of these States are aware that this committee and this subcommittee is keeping close tabs and close watch on the enforcement of these laws, that many of the problems are going to be avoided.

I think it is extremely unfortunate that as of yet the report from the subcommittee that was set up, I believe last September, a special advisory subcommittee to this subcommittee in terms of oversight, has not yet become available or, indeed, any action taken.

As I understood it, that subcommittee was to report back in January. But all I am saying is that I think that there is a tragic need at the present time for this sort of action.

Indeed, I think it would be extremely advisable if such a subcommittee were in existence that could travel down to the South and really see what was going on. I think this would be awfully essential in this area.

Finally, it seems to me that the Alabama election has shown that what Senator Tydings and Senator Fong mentioned last week is quite correct, that there is a great need for—one way or another—having poll watchers in those States, whether or not there happen to be Federal registrars or Federal examiners in the particular county; so I would think that the committee would want to remedy that defect in the present law.

In terms of the jury selection provisions, my feeling is that as a leadership conference spokesman has testified and as the three faiths have testified this morning, I think we learned some lessons from the 1957 and 1960 Civil Rights Act dealing with the voting problem.

I might add it seems to me that the Gilbert bill has an additional feature that is very useful which not only gives standing to the Attorney General and to the person who is actually killed or maimed to invoke the provisions of the act, but also gives standing to 20 citizens of the particular county to invoke the provisions of the jury selection act and other provisions.

The reason I think this should be done is because these are the people who have to live there in that county. They are the ones who feel the impact of the denial of equal justice, so it seems to me they also should have standing.

Mr. ROGERS. Are you talking about section 1 or section 2?

Mr. HIGGS. Section 2, Mr. Chairman, in terms of the State juries.

Now, in terms of the literacy tests, the sixth grade or whatever it may be test—I think it is reading and writing in the administration bill—it seems to me that this would be extremely inadvisable in view of the fact that in most of the more difficult areas of the South the illiteracy rate, particularly among Negroes, is extremely high indeed.

I believe the Department of Labor just conducted a survey in the Mississippi Delta 3 or 4 weeks ago and I have a clipping here based upon that survey, and the survey showed that in that area approximately 50 percent of the adult Negroes did not have a sixth grade education.

Secondly, it seems to me it is quite inadvisable to use listing or registration as a voter, because again in these more difficult areas the voting percentage is presently quite low. This is particularly true in the Mississippi Delta.

Thirdly, there has been much previous discussion in the subcommittee in terms of putting the racial designation on information questionnaires.

It seems to me that it is quite clear that, for example, in Mississippi where the jury lists are composed by the individual members of the board of supervisors, that these people know who are in their district. They know the individuals far more than any form could tell. Therefore, it is the person discriminated against, the Attorney General and the civil rights groups which really need this information, so I think for that reason it would be quite necessary to include the racial designation.

Also along this line as I read the bill, they only require this information once a court suit has been filed. It is only in connection with

litigation that this information is required, or—indeed—is required to be kept.

I think this is a very serious omission. It seems to me that there should be a flat requirement to keep certain information in all cases whether or not litigation has been filed.

I believe both the leadership conference and Gilbert bill and also the Yale bill do have this requirement in there.

In terms of the school desegregation title of the administration bill, it seems to me that there are at this time at least two things that can be done by this committee to help to secure desegregation in education, and both of these provisions are found in Mr. Gilbert's bill in section 1102.

Now, the first provision essentially will outlaw the use of the freedom of choice plan which is, of course, in widespread use throughout the South. This provision simply says you cannot assign students who live in the same geographical area to different schools. In other words, if they live in the same area, then they must be assigned to the same school.

The second provision puts the burden upon a school board which in a district in which there is racial imbalance to show that the districting that they have is fair and reasonable and not based upon racial consideration. This does not touch the neighborhood school concept, but yet it does, it seems to me, do away with many of the evils that now exist in terms of de facto segregation.

Finally, in terms of housing, I agree with the comments, of course, that have been said by Mr. Wilkins yesterday and by the members of the three faiths today in terms of the need for administrative enforcement.

Then I would mention to the committee that in Mr. Gilbert's bill, sections 1208 and 1209, there is quite simple language which places the Secretary of Housing and Urban Development in charge of affirmatively administering the non-discrimination provisions; this avoids the needs for the creation of a new agency.

Finally, Mr. Celler, the chairman of the subcommittee, has brought up a number of times the indemnification question, that is, a suit against a State.

As I read the 11th amendment, I do not believe that there is any real problem here because the 11th amendment deals with suit against the State by a citizen of another State. It is true that this provision was primarily not aimed at injunctive actions, but instead was aimed at money actions.

I think the cases of *Monoco* v. *Mississippi and Hans* v. *Louisiana* will indicate this; but nevertheless I myself have been able to find no constitutional law that would prohibit such a provision or such a statute that sets up a civil indemnification board.

Mr. ROGERS. Does that complete your statement?

Mr. HIGGS. That completes my statement, Mr. Chairman.

Mr. ROGERS. Any questions? Mr. Kastenmeier?

Mr. KASTENMEIER. Yes, Mr. Chairman.

I want to congratulate the witness on an excellent presentation. I notice you spent a good portion of your discussion, of your testimony, on voting, although the administration bill itself does not primarily

concern itself with voting except insofar as title V relates to it and a number of other activities.

I think you do well to suggest to the committee that we need to look prospectively ahead at what may happen as far as the Voting Rights Act of last year is concerned.

Do you feel that after the 5-year term is up, that the States will be able to reinstitute, for example, literacy standards and other things with regard to voting?

Mr. HIGGS. Yes, I do, Mr. Kastenmeier. As I read the present act, essentially what I think is happening right now, and indeed what is happening in that the State now can rely on methods other than voting qualifications to limit the Negro vote or the effectiveness of it and indeed prevent much of it in terms of economic and physical violence, and also intimidation. History bears this out, this was true back in Mississippi when the act of 1870 was passed by this Congress, readmitting Mississippi to the Union. That act specified that Mississippi could not ever again have literacy tests or constitutional interpretation tests or anything else of that nature.

For 5 years there was effective Negro voting in Mississippi, then in 1875 the white "Bourbon" forces came back into power; from 1875 to 1890 there was a rule of violence, and the Klan and everything else came into being at that time.

In 1890 Mississippi concluded that the Congress of the United States would not enforce the act of 1870 and would not enforce the 2d section of the 14th amendment and then she proceeded to reenact (or to enact) literacy qualifications.

So, I do feel that there is a very serious problem here and the best way to avoid it is to make sure that there is quick registration, effective registration.

Mr. KASTENMEIER. Well, then you think we are going to see prospective disenfranchisement of Nego voters now entitled to vote under the act in the years to come.

To a very great extent we may return to a condition from which we have just tried to release the less-educated Negroes in the South in terms of exercising rights to vote.

Is there any other way you think that we can obviate that result, that is, returning to seeing the Negroes are not disenfranchised again because many of them, as you pointed out, are not literate in 1966 and they will not be in perhaps 1972 or 1971.

Is there any way that we can get around that problem?

Mr. HIGGS. Mr. Kastenmeier, it seems to me that if the act is enforced effectively and quickly and registrars are put in—house-to-house registration is instituted throughout the South—then I think we are going to have a real democracy in the South, at least to the extent that everyone can, will and does vote; and I think this is going to be the most secure safeguard against a return of restrictions which are going to deny Negroes the right to vote.

Let me point out that I am not speaking or talking to the right to vote here in a vacuum. It seems to me that 95 percent of justice is not meted out by a jury, but by a police chief and by a sheriff or by a county prosecutor and by a judge, almost all of whom are themselves elected officials or directly appointed by elective officials throughout the South.

I think if we are going to deal with the problem of justice where it really counts, that the real thrust needs to be on effective enforcement of the right to vote.

Mr. KASTENMEIER. I notice that you are in strong support of the Gilbert bill which deals with a number of areas besides those areas dealt with in the administration bill.

In terms of your own priority thinking about legislation in 1966, which areas do you think are most important for Congress in terms of legislating for civil rights?

Mr. HIGGS. Well, my feeling is, of course, that voting rights probably tops the list. Secondly, I would think that the housing is quite important, and education as well. As you can tell, it is my own feeling that, really, it is far more important that the right to vote be secured and that an opportunity to exercise that vote effectively be secured than that a direct action against the jury system be taken, because frankly you are going to have the judges and the prosecutors and the other elected officials choosing those juries in any case, so it seems to me that here is an easy way to avoid many, many problems.

I do think that jury legislation is called for, but I am afraid of, at least I do not agree to, the placing of it in a pre-eminent position at the present time.

Mr. KASTENMEIER. In terms of the problem, particularly in the South in voting, the Congress has dealt with this in each piece of legislation, either in part or in whole, you know, in 1957, 1960, 1964, 1965. Do you still feel there are things which we must legislate to help the voting?

Mr. HIGGS. Well, I certainly do, Congressman Kastenmeier. As I have pointed out, I think that time is not on the side of the person who wants to register under the Federal Voting Rights Act. I think that the 4-year quadrennial election terms are going to bypass them in almost all the Southern States, if indeed they cannot vote this year in Alabama and next year in Mississippi.

Frankly, as I have stated in an article that I wrote for the Nation in December, I pointed out that in terms of the Members of the Senate from the South, of the opposite body, about half of them are up for election this time and certainly if the people cannot vote under the Voting Rights Act this time for those people who are up for the Senate, then 6 years from now they will be—they will be 2 years beyond the expiration of the terms of effectiveness of the Voting Rights Act.

Mr. KASTENMEIER. I assume that you feel that more Negroes in the South should be registered to be voting than perhaps those voting, let's say, in Alabama last month.

Do you take issue with the Attorney General in terms of the number of registrars, the Federal examiners appointed? And the places they have been sent?

Mr. HIGGS. I take extremely strong issue with the Attorney General on that. I think it is a real tragedy that only about 40 registrars have been appointed in the approximately 500 or 600 election districts in the South.

Mr. KASTENMEIER. Is there any other area apart from the number and places to which examiners were assigned under the act that you feel that the act is not implemented sufficiently or do you feel anyone else is falling down? Do you feel that, say, voluntary organizations

are not getting individuals registered, and not pressing them to vote? Do you think there is lack of motivation?

Mr. HIGGS. I frankly feel that voluntary organizations are doing quite a bit. Perhaps they can do more. But frankly my feeling is that when the Congress has passed an act, and I may be very wrong in this, but as I recall the legislative history, the thinking of a lot of Members was that there would be registrars in about every county in Mississippi and Alabama, and I may be wrong in this, but it seems to me that this is certainly what was called for and is called for and that they should be sent house to house.

Now, I recall that in response to a question, I believe, by either Mr. McCulloch or by yourself, before this very subcommittee last year. Chairman Macy of the Civil Service Commission testified that he would have registrars going house to house, if necessary, to enforce this act.

Now, when you look at the registration figures, the differences in the count by race, in terms of so many of the counties, particularly in the counties of Mississippi which have no Federal registrars, then I think it is quite obvious. You take Sunflower County: maybe 15 percent of the Negro population is registered, about 80 percent of the white population is registered and the Voting Rights Act has been in effect, well, almost a year now.

Mr. KASTENMEIER. But in fairness to the Department of Justice, do you not feel there is a subtle, sometimes not so subtle, coercion, intimidation that still exists, that still prevents Negro citizens to either register or to vote, and some of this is extremely difficult to pinpoint and to literally prove to where the Justice Department is willing to send examiners?

In other words, the Justice Department would have to exercise altogether a new standard about sending examiners in than it presently does in order for it to act much differently than it does?

Mr. HIGGS. I could not agree with you more. I think they have to have a completely new standard. I think it is long overdue in terms of the actual facts that exist down there, the very idea that the Negro on a plantation in Sunflower County is going to go 20 or 30 miles to go down to Indianola to register with the Federal registrar, with the police chief and sheriff and all watching him. I do not think this is in accord with the facts.

I think the only way that all this accumulation of enormous intimidation which is real—it is very real, because murders are still going on in Mississippi today—is going to be overcome is that these registrars be sent in house to house.

Mr. KASTENMEIER. Thank you for your comments.

Mr. ROGERS. Thank you, Mr. Higgs. We appreciate your coming before the committee and giving us the benefit of your statement and, as I understand it, there will be a primary election in Mississippi on June 3?

Mr. HIGGS. On June 7, Mr. Chairman.

Mr. ROGERS. And you do not know of any candidate that wants to run that has been denied the right to put their name on the ballot?

Mr. HIGGS. Well, I mentioned there is litigation in regard to that, because there is a controversy. Now, I do believe that the technical answer is, "Yes," that the candidates are going to be on the ballot.

However, there is litigation over that election, because the candidates of the Mississippi Freedom Democratic Party, as I understand it, are apparently required to sign some sort of an oath saying that they support the principles of the Mississippi Democratic Party, which in its convention in 1964 came out for racial discrimination and segregation, so there is litigation that is pending. I believe, to try to enjoin those elections, so that they will not be held at the present time.

There is also very strong objection to the fact that those primaries are all being conducted, even those Federal elections, by all-white officials. I do not believe there is a single Negro election official throughout the entire State, and this involves thousands of officials——

Mr. ROGERS. That is in the process of litigation now in the State of Mississippi?

Mr. HIGGS. I am not sure that the latter point is. I think the former point is in terms of what has to be certificated, that is, this oath that you support the principles of the Mississippi Democratic Party. In other words, I did not mean to give the impression that there are not problems here, but the technical answer to your question is "Yes."

Mr. ROGERS. I wanted to make sure they were going to have free and open elections in Mississippi, so that any person who wants to run has a right to run and I want you to help see that they do.

Mr. HIGGS. We certainly try to do that, Mr. Chairman.

Mr. ROGERS. Thank you so much.

Mr. HIGGS. Thank you for the opportunity.

Mr. ROGERS. Our next witness is Mr. Lawrence Speiser, director of the Washington office of the American Civil Liberties Union, which is no stranger to this committee as we know he has from time to time been interested not only in civil rights but every other right protected by the Constitution, and has made himself available in many instances in connection with litigation.

I think the last was the poll tax, wasn't that right?

STATEMENT OF LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

Mr. SPEISER. That is right, Mr. Chairman.

Mr. ROGERS. You have a prepared statement?

Mr. SPEISER. Yes, I believe they have been distributed.

Mr. ROGERS. Yes. Would you care to read it?

Mr. SPEISER. It is a relatively short statement, but I will not read it, Mr. Chairman.

Mr. ROGERS. Would you like to insert your statement in the record at this point and proceed in your own manner?

Mr. SPEISER. Yes, Mr. Chairman.

Mr. ROGERS. Let it be received for the record and you proceed in your own manner.

(The statement follows:)

STATEMENT BY LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union supports H.R. 14765 with the four amendments proposed by Roy Wilkins, Chairman of the Leadership Conference on Civil Rights, in his testimony before this Committee. These are:

(a) The establishment of an indemnification board which would award damages to victims of civil rights violence.

(b) Administrative remedies for the enforcement of the fair housing provision.

(c) The inclusion of triggering devices for instituting procedures for ending jury discrimination; and

(d) Extending the coverage of Title VII (equal employment opportunity section) of the Civil Rights Act of 1964 to state and local government employees.

However, there are additional amendments we feel should be made.

In § 1865, Title I on Federal Juries, there is a provision for a questionnaire to be sent to all prospective jurors. It states, "The form shall elicit his name, age, sex, education, race, religion, occupation, and citizenship and whether he has any physical or mental infirmity, is able to read, write, speak and understand the English language, and has not been convicted in any State or Federal court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty."

Similar provisions appear elsewhere in the bill. [See p. 7, § 1866(b)]

We urge the following:

1. *The question on "religion" should be stricken.*—We believe this is patently unconstitutional under the United States Supreme Court decision in *Torcaso* v. *Watkins*, 367 US 488 (1961). In that case, a unanimous Supreme Court stated "We repeat and again reaffirm that neither a state nor the Federal government can constitutionally force a person 'to profess a belief or disbelief in any religion'."

The bill states categorically that the form shall elicit "religion." There is, apparently, no discretion involved. Even if there were, such an inquiry on the part of government is improper, in violating freedom of religion—the freedom of individuals to keep their religious beliefs to themselves—no matter how highly motivated the purpose.

There is no real reason for the question in the first place. There has been little, if any, evidence that religious discrimination in jury selection is occurring. Not all of the potential discriminations prohibited by the Bill under § 1862 are subjected to inquiry on the questionnaires. For example, under § 1862, discrimination is prohibited on the basis of "national origin" or "economic status." It is true there is a question on "occupation," however, this is such a general question it may or may not disclose the economic status of the individuals. The question on "citizenship" would not necessarily disclose the national origin of the prospective juror.

We quite agree discrimination on the basis of religion should be prohibited. Yet, the means selected may be the basis on which discrimination could occur—by the forced disclosing on a government form of the private religious beliefs of all individuals.

2. *The literacy qualification for jury service should be eliminated.*—The bill continues the present qualification for jury service of requiring an ability to read and write the English language. We urge the deletion of this requirement. For those few case in which literacy is a valid qualification, we suggest the following language. "If the District Judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no person shall be excluded on this ground who has completed the sixth grade in an English language school."

The basis for this change is the fact that Negroes throughout the South have been subjected to second-class education. Even with the passage of this bill, it is clear that broad scale discrimination against Negroes can be utilized on the basis of a literacy requirement which has no real relevance to most jury cases. For example, in Mississippi, more than 50% of adult Negroes have not had a sixth-grade education. It is for this reason that the literacy requirement was suspended under certain provisions of the Voting Rights Act of 1965. We urge similarly that it be deleted for jury service.

3. *The disqualification of those convicted of crimes should be limited to those who have actually been imprisoned for one year.*—The bill continues the disqualification of individuals who have been convicted in any state or federal court of record of a crime *punishable* by imprisonment for more than one year and who has not had his civil rights restored by pardon or amnesty. We see no justification for continuing the anachronistic view that individuals who have been convicted of crimes have defects in character. Certainly, with enlightened views of rehabilitation, it would be far better if they could participate in the processes of society as full-fledged citizens. We, therefore, urge the deletion of

any such disqualification. However, in the event that this recommendation is not accepted, at the very least, this language should be changed to bar only those who have been convicted in a state or federal court of a crime *and as a penalty have actually been imprisoned for more than one year* and has not had his civil rights restored by pardon or amnesty. There are a great many crimes which have a broad range of sentences which can be imposed, yet, if a person has been convicted and has been given probation or suspended sentence, he would still be barred from jury service no matter how appealing his case had been.

This committee has a major responsibility for the passage of this Civil Rights Bill. In the spirit of trying to improve this bill and yet not hobble it with politically unrealistic proposals, we urge the adoption of the amendments we have suggested.

Mr. SPEISER. Generally, the American Civil Liberties Union supports H.R. 14765, the administration civil rights bill, plus the four amendments which were proposed by Roy Wilkins speaking on behalf of most of the organizations of the Leadership Conference on Civil Rights.

We have some additional amendments we would like to suggest. The first one concerns the question of religion which is provided in the questionnaire in the title on Federal juries. We believe that that question is unconstitutional in light of the opinion of the Supreme Court in the *Torcaso* case in which the court says:

We repeat and again reaffirm that neither a State nor the Federal Government can constitutionally force a person 'to profess a belief or disbelief in any religion'.

The bill states that the form shall elicit religion of those subject to jury duty. Although it is done for a good purpose, there has been no evidence that there is any religious discrimination in jury selection.

The questionnaire was not intended to be a complete questionnaire. For example, although title I also forbids discrimination based on "national origin" and "economic status," there are no questions specifically on those grounds. There is a question on "citizenship," but that would not necessarily disclose national origin, and there is a question on occupation and that also would not necessarily disclose economic status.

Mr. ROGERS. What about sex?

Mr. SPEISER. There is a question on sex. And I would think there is no great harm in asking that question. I think the religion question is essentially a very different thing; religion is concerned with a person's belief. Generally a person's sex and race are fairly obvious to the eye. The only way that you can find out about a person's religion is if he tells you, or presumably if he attends church and some sort of a judgment is made on that basis, although that is not foolproof.

Mr. ZELENKO. Mr. Chairman?

Mr. ROGERS. Counsel.

Mr. ZELENKO. How would you be sure Federal juries were not discriminating against atheists unless the question on religion is asked?

Mr. SPEISER. I think you have to balance the problem. If you have a random selection system that is going to operate, you may not know whether there is discrimination against atheists. I think, however, it is more likely that there will be discrimination against atheists, if you force them to disclose whether or not they are atheists, and that information is available to jury personnel, to counsel, and even to the general public.

Even though the intent of the questionnaire is to provide the means to discover whether discrimination occurs, it may very well provide the means by which discrimination can occur by disclosing the information that is none of the business of the people.

You may recall there was a furor just prior to 1960 census as to whether there would be a question on religion on the 1960 census. Originally there was an intention to do so; there was a complaint about it by a wide range of organizations and the Bureau of the Census eliminated the question.

It may be desirable in our society to know to what extent people are adherents of various religions and members of various churches, but the disadvantages in requiring individuals under penalty of law to respond to such questions, it seems to me, greatly outweigh whatever statistical value there is.

Mr. ZELENKO. Mr. Speiser, in a case dealing with State records which indicated race, a 3-judge district court held that the separation of such records was violative of the 14th amendment. However, in the case of *Hamm* v. *The Virginia State Board of Elections*, the court had this to say about the State's power to collect such information on its records:

> Of course, the designation of race just as sex or religious denomination may in certain records serve a useful purpose and the procurement and compilation of such information by State authorities cannot be outlawed, per se.

Mr. SPEISER. First of all, I think it is clear that that statement is dictum in that particular case. The issue in the case was the separation by list of Negro and white people, and so, therefore, the religion question was really not in issue.

I could break the issue down, perhaps, a little more. I think there may be instances where the Government might ask the question of a person's religion. I do not think there are any instances when the Government has a right to require an answer or penalize the one who is asked if he does not answer the question. I do not think there are any instances that would permit that.

For example, those who go into the Armed Forces are generally asked about their religion. The reason for that is if they are wounded the military services would want to get the chaplain of each individual's own particular faith. We agree that the Government can properly ask the religion question in that situation. I think, however, that is a very limited kind of a situation; I do not think you could necessarily use that purpose to encompass this area as well.

Your reason here is to try to eliminate religious discrimination but that is greatly outweighed, it seems to me, in the compulsion on individuals to respond to the question.

Mr. RODINO. Mr. Speiser, if a person were to answer, "none," do you feel that this would necessarily mean that there would be a basis for discrimination against him?

Mr. SPEISER. Yes, I do, because of the recognition of the attitudes of the public today—that there are disadvantages for those individuals who would give the answer "none" to a question on religion.

Mr. RODINO. If some of the people who are sitting in judgment on the prospective juror were Catholic or Protestant and the prospective juror wrote that he was of another faith than those who were going to

judge him, or judge his application, would you then conclude that there was going to be discrimination because they were of a different faith?

Mr. SPEISER. No, that is not what I was referring to, Mr. Rodino. I was referring to the fact that this will be a Government form which is going to be generally available, not just to jury commissioners, although that is its major purpose. These are public records. Other people, even those who are not engaged in the jury selection processes will know what someone puts down. This fact is nobody's business but the individual himself. For the Government to force that answer out of him, it seems to me, is clearly unconstitutional.

The next item I wish to discuss is on the literacy qualification for jury service. The bill changes nothing as far as the Federal requirements right now——

Mr. CRAMER. Mr. Chairman, may I ask a question on the last topic?

Mr. ROGERS. Yes.

Mr. CRAMER. Do you believe that under the bill as proposed that a person would be revoked for jury service or should be if he failed or refused to complete the section of the form requesting a statement of his religious preference?

Mr. SPEISER. Well, as I read the bill I think that he can be penalized if he fails to fill out the form. It is stated in mandatory language, the form shall elicit, although the language as written in the bottom part of page 6 of the bill, who fails to appear and fails to show good cause for noncompliance to a summons, does not necessairly correspond to failure to fill out.

I would think, as far as the law is concerned, that it would be the intent of Congress that individuals be required to fill out the forms. It is not just a question of religion, but isn't the committee of a belief that an individual is required to fill out the form? What would happen if individuals refused to fill out the form in toto?

Mr. CRAMER. That is the question I am asking you.

Mr. SPEISER. Well, the bill as it is presently written may not cover that, and if it does not I would assume that the committee is interested in covering that. Otherwise the questionnaire really is of no value, but even at that point I would still suggest that if there isn't any penalty for not filling out the form I would still suggest eliminating the question on religion.

Mr. CRAMER. Are you suggesting that the congressional requirement in declaring religion is an unconstitutional requirement?

Mr. SPEISER. I would put it in this way: That a congressional requirement that a person give his religion is unconstitutional. I think there is some doubt, however, as to whether the governmental asking of the question with no absolute requirement of answering it is unconstitutional.

I think the disadvantages that would occur, though, in a small area in a small community to individuals who refused to answer the question or put "none," still exists. I think that a case can be made that even though it may appear that the answer to the question is supposed to be voluntary, that the fact that the Government asks it, the fact that the individual must be aware of community pressures would provide the compulsion which would then push it over into the first category of Government compulsion, and would, in my view, be unconstitutional.

Mr. CRAMER. You do not object to him determining by the form his race, the requirement he declare his race?

Mr. SPEISER. I left that out primarily because I think there is a flux in the thinking on that question among civil rights organizations.

Mr. CRAMER. Precisely why I asked the question. A lot of civil rights organizations don't think a person should ever have to fill out a form at all that states his race because that is, in effect, discrimination. So are we not faced here with that very problem?

Mr. SPEISER. I can suggest a way out of that if that is the view of the Congress and it has been the view of my own organization for some time and it is presently reconsidering that position, so that the ACLU is also in this state of flux at the present time. I think it is perfectly possible to put down race on the basis of the jury commissioner putting that down without asking the individual that. One concern that arises in this area is that many people who have mixed ancestry, are doing what is usually called "passing." We don't define race. Obviously, I would think it would be reprehensible for the Federal Government to accept the standards of "race" that are put in the statutes in a number of Southern States.

Mr. CRAMER. What do you think the standard on it should be, assuming race were left in as a requirement? We have to have specifics. What standard would you suggest we adopt?

Mr. SPEISER. I would not put it on the basis of what ancestry exists. I would, I suppose, put it on the basis of what a person considers himself to be.

Mr. CRAMER. Well, a commissioner cannot determine that? You state on one hand the commissioner write it in and now you say on what the person considers himself to be.

Mr. SPEISER. Well, I think that for any drawing of the lines that I think that that is not very consequential. If we are talking of individuals who have both white and Negro ancestry in which there is some difficulty in determining what their race is does not appear to me to be a major problem. I think there are a sufficient number of individuals who are clearly Negro who are being discriminated against by all the statistics you need as far as discrimination is concerned.

Mr. CRAMER. I think some of them who have mixed blood are discriminated against even more.

Mr. SPEISER. They may be.

Mr. CRAMER. Where do you draw the line, 10 percent, 20 percent, 40 percent? What objective standards can you have?

Mr. SPEISER. Well, the problem would be eliminated if the individual were asked the question, because he could put down what he considers himself to be.

Mr. CRAMER. You don't think he should be asked that question on religion; now, do you, or do you not on race?

Mr. SPEISER. On religion I have no problem. You can detect from my responses to your race question that we are in an equivocal situation.

Mr. CRAMER. We cannot afford to be. We have to go one way or the other.

Mr. SPEISER. At the moment I think that it is permissible to leave the race question in. I think it is impermissible to have the religion question in.

I had my hand in some drafts of jury discrimination bills and in order to mitigate this problem we put the race question at a far later point.

Mr. CRAMER. You think it is all right then for the Federal Government to encourage the keeping of records relating to race and requiring a person to answer the race on the one hand relating to juries, but not relating so far as the States are concerned to registration for voting purposes? What is the difference?

Mr. SPEISER. I wasn't aware of the fact that they are prohibited from collecting those statistics insofar as voting statistics are concerned now. This is being done now, is it not, as far as the Voting Rights Act?

Mr. CRAMER. There are drives underway now to eliminate that requirement.

Mr. SPEISER. As I indicated, most civil rights organizations are in a state of flux about that problem. I think the problem of racial discrimination within the processes of criminal justice, and within the voting area is such a tremendous mass problem it may very well provide the legitimate motivation for Government. I do not think that anything of that kind has been indicated as far as governmental inquiry into religion.

Mr. CRAMER. As I recall, the Voting Rights Act had a provision in it relating permanent records shall not be kept on the basis of race for voting?

Mr. SPEISER. I do not recall. My recollection is——

Mr. CRAMER. It isn't the policy of your organization that that objective should be accomplished?

Mr. SPEISER. Yes.

Mr. CRAMER. And yet you equivocate whether we should keep such records relating to jury system.

Mr. SPEISER. I am sorry. I spoke too fast. The whole question, not just restricted to jury as against voting, asking the race question is under review by my organization, it is not just a question of the jury question alone.

Mr. CRAMER. That is all I have, Mr. Chairman.

Mr. KASTENMEIER. Mr. Chairman, on that point, while I really do not know the answer, it would seem to me that the rule of thumb really is that the policy of the Federal Government is opposed to discrimination. Accordingly, where eliciting, let us say race, would only serve to discriminate against an individual it ought not to be done, but where the eliciting of race is used to prevent discrimination, as a tool to end discrimination or to oversee the question of discrimination, then as a matter of public policy it is to be used.

I think really that has to be the determinant whether race is or ought to be used in the questionnaire.

Mr. SPEISER. Yes, I think this is entirely true. You cannot just make a flat judgment that Government agencies can elicit race for any and all circumstances. They have to have a proper purpose and there would seem to me some showing that it is necessary in order to eliminate discrimination. I think your statement of the problem is entirely accurate. It may not satisfy those who would like a simplistic test, but a categorical answer that the Government has a right to

elicit race under any and all circumstances just is not true, nor should it be true.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

Mr. ROGERS. Proceed.

Mr. SPEISER. All right.

On the literacy qualification for jury service, the bill, as far as the Federal juries, merely continues the present requirement of being able to read and write the English language.

We believe that this should be eliminated and only continue with the qualification of being able to speak and understand the English language.

In the South Negroes have been subjected to second-class education under the theory of separate but equal for many years. In the State of Mississippi more than 50 percent of the adult Negroes have not had a sixth grade education.

I think it is entirely possible that we would still have widespread jury discrimination if you maintained the literacy requirement. We do agree that there can be certain cases in which literacy may be a valid requirement and I have suggested some language which is in some of the other bills which have been introduced; that is:

If the district judge determines that the ability to read or write English is reasonably required in order for jurors to perform their duties in any particular case or cases, he shall be empowered to exclude those who cannot read or write English, except that no persons shall be excluded on this ground who have completed the sixth grade in an English language school.

In most cases the ability to read or write is not a relevant factor. The jury listens to verbal testimony. Its function is to determine what happened, the contact between individuals, and it is really just unnecessary in order for them to make determinations of fact.

There are some States that do not have this requirement and operate their State courts without having a literacy requirement. If the purpose of this bill is to eliminate discrimination against Negroes in Federal and State juries, then it seems to me that the literacy requirement would be a real bar to accomplishing this purpose.

Mr. ROGERS. Mr. Speiser, I take from your statement that you are opposed to that part of the bill which would require that a juror have the qualifications of being able to write and understand the English language. Do you think that that provision should be eliminated?

Mr. SPEISER. To—well, I agree with part of what you said, but not all of what you said.

What I would like to eliminate are the words "read" and "write." I would keep in "speak and understand the English language."

Mr. ROGERS. Well then, would that not eliminate many of the Puerto Ricans in New York from jury duty?

Mr. SPEISER. It might. I had the thought of this problem and I think it is conceivable that we could operate a system of justice without having this requirement. It would require interpreters, it would require a good deal of money in order to accomplish this and it would drastically slow down, it seems to me, cases if you did have jurors who could not understand English.

I think the most appealing case, it seems to me, is the defendant who cannot understand English, who is on trial.

Mr. ROGERS. Well, of course, where a man is on trial and does not understand English, why, I am sure the judge will see that his rights are protected to the point of giving the man an interpreter. At least that is the experience out our way, because very often we have people charged with a crime, as an example, who do not understand the English language.

Mr. SPEISER. I agree and I think in most situations that there is no reason why you need to have jurors who understand English so long as you have an interpreter for the defendant.

Mr. FOLEY. At that point, Mr. Speiser, here is your problem. That interpreter cannot go into the jury room when the jury deliberates, and there it becomes a question for the juror who does not understand the English language when the 11 other jurors who do go with him to deliberate the issue.

Mr. SPEISER. It would require an additional interpreter to go into the jury room.

Mr. FOLEY. You cannot do it under the State or Federal laws, nobody is allowed in that jury room but the jurors.

Mr. SPEISER. Well, then I suppose it would require changing the State laws.

I had mulled over that problem and had finally decided not to encompass those who couldn't understand English, although not because of the particular point that you raised, Mr. Foley. The problems and the expense would be tremendous, and that really is not a problem that we are trying to reach at the present time with this bill; I would go along with understand the English language as a continued requirement, and as you can see, I am still going beyond what many of the leadership conference groups have, because they did not consider this one of the major amendments they wanted to put in.

Mr. ROGERS. Mr. Speiser, I think your next proposal is that the disqualification of those convicted of crimes should be limited to those who have actually been imprisoned for 1 year. By that, you mean if a man has been arrested for speeding or things like that, why, that should not disqualify him for juror service?

Mr. SPEISER. That's right. He may be arrested, for example, for reckless driving. I am not sure, but I believe in some States reckless driving can be punished for longer than a year in jail. If he is convicted, he may get off with a $50 fine, or he may get off with probation or suspension of sentence, yet that would bar him from jury duty as the bill is presently written.

I must initially say I really disagree with the whole concept of disqualifying people from jury duty who have been convicted of crimes, anyway. I think there is a value to society to have them participate in the responsibilities of citizenship. So, I would prefer completely eliminating the disqualification based on previous convictions of crimes. However, in the spirit of compromise, I would like to suggest that the bill as written is too tough a standard and if you are going to continue this idea, that it should be restricted to those who actually serve a year in jail rather than those who have been convicted of crimes.

Mr. ROGERS. As I understand your statement, you do not think a man should be disqualified for jury service because he may have been convicted of a felony in the past; that is your original position. But

you are willing to compromise and state that if he has been convicted of a felony, he may still continue to be disqualified, only if it is a misdemeanor and he has not gone to jail for more than a year, then he still should be able to qualify for jury service?

Mr. SPEISER. I think you slipped something in on me again, Mr. Chairman.

Mr. ROGERS. What is that?

Mr. SPEISER. If he has been convicted of a felony, which is punishable by more than a year, but was not given a year's sentence or did not serve a year in jail, I still thing he should be eligible for service. It may have been a first offense.

Mr. ROGERS. That leads to my next question. We use the probation system not only in the Federal courts, but in State courts. Many times the judge will inflict the maximum penalty and then place him out on probation, have him go to places on probation. He finishes it out and never goes to jail at all.

Mr. SPEISER. That's right.

Mr. ROGERS. In that case you would feel that he is qualified to be a juror?

Mr. SPEISER. Yes; because the factors which may have influenced a judge to give a man who is convicted of a felony, probation or a suspended sentence, may be the very factors which would indicate he should not be barred from jury service.

It may have been a first offense; he may have been technically guilty of a crime and still would come under the purview of the criminal law. He may be a completely good citizen and for one slip to bar him from jury service for the rest of his life, it seems to me, would be a bad way of rehabilitation, and the whole probation process is aimed at rehabilitation.

So, I would not use the disqualification that a person who has been convicted of a felony should be barred from jury duty.

Secondly, the variations in the States as to what they consider to be felonies is just fantastic. There is no rational sense to them at all. In one State something may be a 30-day misdemeanor; in another State it is a 5-year crime.

Mr. ROGERS. In other words, you make the distinction between he who becomes a "jailbird" for a year and one who has not.

Now probably that is not fair to you, because you state that regardless of what he may have been convicted for, you still feel that he is qualified for jury service. He should not be discriminated against or prohibited from serving on the jury?

Mr. SPEISER. That's right.

I have one additional point which I do not have in my prepared statement, which occurred to me afterward in reading the bill and also reading the testimony of the Attorney General.

The bill seeks to bar discrimination in jury selection on the basis of sex. I don't think there is a problem as far as Federal juries are concerned, but I think there is a problem under title II as far as the State juries are concerned.

In the testimony of the Attorney General, he stated this:

Under Title II two types of state laws regulating jury service by women would be nullified. First, those in Alabama, Mississippi and South Carolina, which totally exclude women from jury service. Secondly, those in Florida, Louisiana

and New Hampshire exclude women unless they affirmatively volunteer for jury service by taking steps, not required of men, to sign up for jury service. The laws in the second category place a heavier burden on women who want to serve than men, and exclude a lot of women who want to participate, that they not volunteer.

The Attorney General has not covered an additional group of State laws which I think is composed of about 19, which provide exemptions for women. In those States, they do not have to apply, as they do in Florida, Louisiana, and New Hampshire, to get on jury service, but as women they have a specific statutory exemption in getting off. The general practice is stated in a study on State jury laws that was compiled by the Library of Congress Reference Service. It includes an article by Chief Judge Vanderbilt of the New Jersey Supreme Court. He said that the general practice is to eliminate all those people in the exempt classes from the final jury list. This is also true as far as women are concerned.

Therefore, I do not think that the law goes far enough in eliminating discrimination on the basis of sex. I attempted rather hurriedly to draft some language which might cover this problem so that it would clearly go beyond the two categories that the Attorney General mentioned, and I come up with this—this would go into title II. It would replace the policy statement.

It shall be unlawful to make any distinction on account of race, color, religion, national origin or economic status in the qualifications for service and in the selection of any person to serve on grand or petit juries in any State.

I think it is clear that with the legislative history based on what the Attorney General said, that we are not covering the kinds of exemptions which exist in those States which exempt women, and that you are still going to have a considerable amount of discrimination against the women on the basis of the exemption which exists.

Mr. ROGERS. Any questions? Mr. Kastenmeier?

Mr. KASTENMEIER. Mr. Chairman, just one or two questions.

On being convicted of crimes, would you permit a person who is on probation for, let us say, a year or more to serve on a jury?

Mr. SPEISER. While he is on probation?

Mr. KASTENMEIER. Was at that time on probation.

Mr. SPEISER. I would. I think that one useful attribute of probation is to have the person take part in the responsibilities of citizenship and I would not disqualify him for that reason. It may be, I suppose, that a district attorney might want to exercise a preemptory challenge against an individual who is on probation, but I would not disqualify him on that basis.

Mr. KASTENMEIER. Even in a criminal case?

Mr. SPEISER. Even in a criminal case. That does not appall me.

Mr. KASTENMEIER. One other question that is more general.

In your view about jury service that it ought to be, as far as qualifications, as broad as for voting, generally speaking, would you make a distinction? In other words, is your philosophy that really a jury, except the question of understanding the English language, that really a man ought to be tried by his peers as people drawn at random in a community or people who might exercise the right to vote?

Mr. SPEISER. Yes, my answer to that is, yes, although, I am saying that somewhat apprehensively waiting for some other member of the

committee to pose a specific situation, that I have not thought of them at the moment.

I think it is true, that generally a person who is able to vote (and we have gone through this in the Voting Right Act) ought to be able to participate as a juror.

We have long since given up the idea of the value of the blue-ribbon juries. I think that the greater participation that we have of all people in our processes of Government the better. There is absolutely no proof that individuals who are illiterate are for that reason less capable of making determinations of fact and less able to understand what is presented before them.

I think that we find ourselves continuing anachronisms simply because they have existed before. I think we do it with respect to disqualifying people because of conviction of crimes in serving on a jury, as we do in voting. I think that is an anachronism.

Mr. ROGERS. Mr. Cramer, any more questions?

Mr. CRAMER. I have a couple, Mr. Chairman.

As I understand your proposed definition of literacy, it in effect would be a person being able to speak and understand the English language, but not having to read and write it?

Mr. SPEISER. That's right.

Mr. CRAMER. You insist, however, including the English requirement? Those who don't speak the English language, even though the case may involve somebody who doesn't understand the English language?

I understand in Puerto Rico that the edict of the Government is that schools may no longer be allowed to teach in the English language. What happens to all the Puerto Ricans that come to this country? What happens to the Puerto Ricans in Puerto Rico?

Mr. SPEISER. You are not changing anything in the present United States Code, but I do not know whether the United States Code provisions——

Mr. CRAMER. I understand, but what is the position of your organization on that question?

Mr. SPEISER. In Puerto Rico, I would think it would be improper to impose an English language requirement to serve on juries, no matter whether the Government has taken a position or not. I think you have to make a pragmatic judgment.

Mr. CRAMER. Do I understand your position relating to sex and women serving on juries that it would be that a woman should not have the absolute right to say she does not wish to serve on a jury?

Mr. SPEISER. That's right. Incidentally, the language I suggested would replace section 201 in title II on page 15 of the bill.

Mr. CRAMER. Then you do not agree with the State laws that give permission for a woman to claim exemption and state her reasons? You do not basically agree with the idea that a housewife is needed in the home, she should be in the home, as compared to a man who might be available for such service?

Mr. SPEISER. Mr. Cramer, we do not have the exemption in Federal law for Federal juries.

Mr. CRAMER. I am talking about your proposal relating to State jurors.

Mr. SPEISER. The answer is, there is no reason for the blanket exemption giving them that right; the bill does provide that a judge has a right to permit individuals to be exempted for a period of 6 months on the basis of great hardship, which would seem to me to cover the situation.

Mr. CRAMER. You think that a woman should be forced to serve on a jury, even though she does not desire to do so for other obligations or reasons?

Mr. SPEISER. Just like a man, Mr. Cramer.

Mr. CRAMER. You do not think her first responsibility is to her family?

Mr. SPEISER. We all have responsibilities and part of our responsibilities are jury service. The Federal court system operates with no exemption for women and I do not see why——

Mr. CRAMER. I don't see where that is discrimination. If a woman doesn't want to serve, she is certainly not being discriminated against in having been given the opportunity to do so. How is she discriminated against?

Mr. SPEISER. Even if I were to agree with you, the fact is that the way these exemption systems operate, according to Chief Judge Vanderbilt, is that everyone in the exemption category who has the right to be exempted merely by asking is automatically excluded by the jury commissioners from the final jury list.

This he states on page 171 of the article which appears in the Legislative Reference Service report.

Mr. CRAMER. Come to the conclusion you suggest you have to take the position, do you not, that a women should not have the right to refuse to serve on a jury, even though she is offered the right to serve in the first instance.

Now, what discrimination is involved in that?

Mr. SPEISER. The discrimination in treating her differently than men as regards the responsibilities of citizenship.

Mr. CRAMER. But if it is for her benefit?

Mr. SPEISER. I do not think so. Perhaps that it is voluntary on her part is not how it actually operates. Generally, women are excluded even though this is supposed to be done on the basis of their own request. It operates in that fashion, but even if it were not done in that way, I think the answer to it is that the juries are supposed to be composed of the peers of the individuals on trial. This includes individuals without regard to sex, economic status, and all of the classes mentioned in the bill.

There is a responsibility to the individual himself who is on trial. He has a right to demand from those who are subject to jury service that they not get off merely on the basis of their own preference.

Mr. CRAMER. Off of what, the panel or the jury itself?

Mr. SPEISER. Off of both.

Mr. CRAMER. Well, there is no constitutional requirement that I know of, do you, by any court decisions that a jury be constituted to include someone of a given race, even though the defendant may be of the same race, for instance?

Mr. SPEISER. No, but he has the right to have the selection for the jury venire to be made on a representative cross section basis, and it

is not supposed to be hand selected. There is a pragmatic way in which this operates. Although there is no hard and fast rule, but women on juries have something to add. I don't know whether you can generalize on that basis, but perhaps they are of value because they bring compassion into the picture, which may be a very desirable quality.

There is a right of defendant here to have a representative cross section——

Mr. CRAMER. On the venire, not on the jury?

Mr. SPEISER. On the venire, that is right.

Mr. CRAMER. Challenges have been used to strike everyone that is a Negro, everyone who is a woman?

Mr. SPEISER. That is right of an individual defendant, but if he does not have that opportunity because they are not on the venire——

Mr. CRAMER. That is right.

Mr. SPEISER. But against, that is the determination made by the individual counsel, prosecutor, and defense counsel. If he does not have the broadly representative venire from which to make that determination——

Mr. CRAMER. The reason I bring that out is partially because the reaction I get from some of my mail is that the people who are reading about these proposals end up with the impression that a person will have, if this becomes law, an absolute right to have a nonsegregated jury, for instance, not a venire, but a jury. And that is not the effect of it at all.

Mr. SPEISER. I quite agree that peremptory challenges will still exist, and I agree it will not have that effect.

The CHAIRMAN. I notice that in 16 jurisdictions women are permitted, if they so claim, an exemption from jury service solely because they are women. These are Alaska, Arkansas, District of Columbia, Kansas, Maryland—Maryland jury law varies from county to county. Of the 23 counties, 4 permit women to claim exemption on the basis of sex and 19 counties apply equally to men and women. Further, Minnesota, Missouri, Nevada, New York, North Dakota, Rhode Island, Tennessee, Virginia, Washington, and Wisconsin.

Now, if women are permitted to claim exemption from jury on the ground that they are women, is that not really and truly a discrimination against men?

Mr. SPEISER. Yes.

Mr. ROGERS. Mr. Chairman, we are privileged to have with us one of our valuable Members from the State of Missouri. I think probably he would like to ask a question.

Mr. Hungate?

Mr. HUNGATE. Thank you, Mr. Chairman. As I understand it, your proposed amendment would apply to a State such as Missouri, which permits women to claim an exemption?

Mr. SPEISER. That's right.

Mr. HUNGATE. Is this amendment—as I understand your reading of Judge Vanderbilt's article—a de fecto discrimination against women in selection of the venire or the selection of the panel?

Mr. SPEISER. It is both. He states in his article that in many States women, in the States which have an exemption for women, which

they do claim voluntarily, they are automatically excluded by the jury commissioners. That is one problem.

Even if that were not the case——

Mr. HUNGATE. I suggest that is not the case in Missouri.

Mr. SPEISER. Even if that were not the case, I still believe this proposed law should ban that kind of special privilege for women getting off of jury service.

Mr. HUNGATE. One other question on your statement about disqualification of those convicted of crimes.

As I understand it, it is your position that we should not look perhaps at the labels, "misdemeanor," "felony"; it should be whether or not they have been imprisoned for a year or more?

Mr. SPEISER. That's right.

Mr. HUNGATE. What about a fellow that had 10 different 6-month sentences?

Mr. SPEISER. I would not disqualify him. I start off perhaps with a different starting point than you might, Congressman. I think I said, before you came, that I did not feel that any kind of prior conviction should be a disqualification. I am trying to provide a compromise suggestion which I think would be acceptable, because it seems to me as presently written the bill is——

Mr. HUNGATE. In other words, you are suggesting the 1 year as a compromise? Actually you would be willing to go further than that?

Mr. SPEISER. Yes.

Mr. HUNGATE. Thank you very much, Mr. Chairman.

Mr. CRAMER. As I understand, your basic position is that you would prefer that no one be excluded because of previous criminal activity or conviction, regardless of the crime?

Mr. SPEISER. That's right.

Mr. CRAMER. So your position is that a person who has been found guilty of murder and been paroled for one reason or another, for instance, would be permitted to serve on a jury, adjudging someone charged for murder?

Mr. SPEISER. That is entirely possible. You can pose all of the cases you want to me, Mr. Cramer, but I basically feel that someone who has served his time and you are trying to rehabilitate him, you are trying to bring him into society, that the best way to do it is to permit him——

Mr. CRAMER. Somebody has been convicted of rape and would serve on a jury of someone charged with rape?

Mr. SPEISER. Very possibly. He might serve in a personal injury case. Why bar him completely from jury service?

Mr. ROGERS. Mr. McClory?

Mr. MCCLORY. I just want to ask this question: As I see your objection, you are objecting to this questionnaire in which a number of questions are asked of prospective jurors. Yet you would not bar counsel of asking any questions such as that in selecting the jury; would you?

Mr. SPEISER. I would like to, but I do not think it is covered by the bill. I think the question on religion in most cases is irrelevant and I think that presents a formidable problem. I think that most judges

would bar such questions by attorneys for both sides, unless there was some showing of the relevance of it.

Mr. McCLORY. That would depend upon the case. The thing I have in mind is this: A great deal of information is secured in advance of selecting the jury by counsel as a result of the questionnaire which the jury commissioner has sent out and your barring of these questions would not preclude the questioning of jurors, but it would consume some time that otherwise would be avoided if counsel had the answers to these questions from the questionnaire.

Mr. SPEISER. Except you are asking the question of everybody and I cannot think of one-half of 1 percent of the cases where a question of religion to a prospective juror would be relevant. I am getting back to the point of what is your purpose in asking the question?

Your purpose is to prevent discrimination on the basis of religion, but the disadvantages from that, it seems to me, are so great that in requiring people to answer a question, plus the fact that if we do absolutely require them to answer, I think it is unconstitutional. But merely asking it puts them in a position of providing information which may be disadvantageous to many and which I do not think, in general, the Government has a right to know.

I think you can "overkill" except for the situation that you are suggesting.

Mr. ROGERS. Thank you, Mr. Speiser. We appreciate you taking time out to come here and give us the benefit of your thoughts in connection with H.R. 14765.

AMERICAN CIVIL LIBERTIES UNION,
Washington, D.C., May 20, 1966.

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I am submitting this letter as a supplement to my prepared statement on H.R. 14765, "The Civil Rights Act of 1966," to urge the subcommittee to amend the bill in order to eliminate completely sex discrimination in state jury systems. I covered this same point in my oral testimony, but I request that this letter be inserted in the record of the hearings as well.

The American Civil Liberties Union suggests replacing the language of Section 201 in Title II with the following language:

> "It shall be unlawful to make any distinction on account of race, color, sex, religion, national origin, or economic status in the qualifications for service, and in the selection, of any persons to serve on grand or petit juries in any state."

Our suggested amendment is prompted by the interpretation of Title II, given by the Attorney General in his testimony before Subcommittee No. 5, on May 4. He stated:

> "Under Title II two types of state laws regulating jury service by women would be nullified. First, those in Alabama, Mississippi and South Carolina which totally exclude women from jury service. Second, those in Florida, Louisiana, and New Hampshire which exclude women unless they affirmatively volunteer for jury service by taking steps—not required of men—to sign up for jury service. The laws in the second category place a heavier burden on women who want to serve, than on men, and undoubtedly exclude many women who do not know that they must volunteer."

We feel that this nullification of only those six state laws is not sufficient. Some nineteen other states exempt women from jury service. They are listed in footnote 83 of the article entitled "Statutory Provisions Relating to the Mode of Jury Selection and Jury Service in Several States" by Arthur J. Vanderbilt, former Chief Judge of the New Jersey Supreme Court. This was reproduced by the Library of Congress, Legislative Reference Service, December 23, 1965.

There may be a number of changes in the number of states which exempt women from jury duty since the article was written in 1949, however, I don't believe the problem has changed much quantitatively.

In Chief Judge Vanderbilt's article, he states: "In many states, moreover persons classified as exempt from jury service but otherwise qualified are in reality disqualified since they are eliminated from the final jury list, although in nine states, the names of those qualified but known to be exempt are placed on the final jury list."

For those who are concerned about whether women who have small children can be released from jury duty, the bill, as it is presently written, and many state laws provide for exemption from jury service for those who would suffer great hardship.

We respectfully recommend that the subcommittee give serious consideration to our proposed amendment as well as the other amendments set forth in out prepared statement.

Sincerely yours,

LAWRENCE SPEISER,
Director, Washington Office.

Mr. SPEISER. Thank you, Mr. Chairman.

Mr. ROGERS. At this point we will insert telegram from the Japanese-American Citizens League in support of the pending legislation, H.R. 14765; also a statement of the National Council of Catholic Women as it related to H.R. 14765; a statement from the American Newspaper Guild, together with a statement from the American Veterans Committee.

(Documents follow:)

SAN FRANCISCO, CALIF., *May 16, 1966.*

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee
House Office Building,
Washington, D.C.:

The Japanese American Citizens League supports statement of Roy Wilkins on Civil Rights Act of 1966.

MASAO W. SATOW.

STATEMENT OF THE NATIONAL COUNCIL OF CATHOLIC WOMEN

The National Council of Catholic Women has been involved in the struggle for interracial justice since 1948. Our commitment is based on the recognition of man's human dignity, on the belief that each man is a unique individual, created by God, and as such, entitled to live under conditions most conducive to realizing his innate dignity.

We have engaged in the creation of understanding and communication between the races in our communities and have worked to educate ourselves and others in the causes of interracial tension.

We actively sought passage of the civil rights legislation of 1964 and 1965 and have continued to press for the strong enforcement of these laws.

We have reviewed the "Civil Rights Act of 1966," H.R. 14765, and strongly recommend its passage. Two statements adopted by our Board of Directors at their January 1966, meeting are particularly relevant:

HOUSING

We are aware that housing directly affects the stability and health of family life, and that many of our citizens do not enjoy the right to buy or rent decent homes in neighborhoods suitable to their means and family goals. We join the President of the United States in urging legislation to prohibit racial discrimination in the sale and rental of housing.

JUSTICE IN THE COURTS

NCCW expresses deep concern for the cause of justice in the courts resulting from the acquittals of the Alabama slayers of Jonathan Daniels, Rev. James Reeb and Mrs. Viola Liuzzo.

Though we affirm our belief in the validity of the jury system, we believe the system itself is on trial so long as these juries are not representative of the community.

We urge the Attorney General be empowered to require nondiscrimination in jury selection in federal and state courts.

We further urge legislation to prohibit intimidation, attack and murder of civil rights workers and other citizens seeking to exercise their constitutional and civil rights.

We further urge that H.R. 14765 be strengthened to assure its enforcement. We would recommend:

1) Civil indemnification for the victims of civil rights violence and for those persons injured because of their race or color, while trying to exercise their rights.

2) The enforcement of the fair housing provision by an administrative agency.

3) A more automatic method of instituting procedures for ending jury discrimination.

4) The inclusion of state and local government employees under the coverage of Title VII, the Equal Employment Section of the Civil Rights Act of 1964.

AMERICAN NEWSPAPER GUILD,
Washington, D.C., May 16, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
New Senate Office Building,
Washington, D.C.

DEAR CHAIRMAN CELLER: I should like to draw to the Committee's attention our endorsement of the Leadership Conference on Civil Rights' position on the proposed Civil Rights Act of 1966 as scheduled to be presented to the Committee on Tuesday, May 17, by Mr. Roy Wilkins.

As an organization cooperating in the Leadership Conference and as itself having advocated and worked for full equality for all since the days of its founding, the Guild urges the Judiciary Committee to do all in its power to speed enactment of a meaningful Civil Rights Act during this session of Congress. Adoption of the amendments proposed by Mr. Wilkins would certainly give validity to the adjective "meaningful" when the record of this session is written.

We should like our endorsement of the Leadership Conference's position on the proposed act recorded in the record of the Judiciary Committee's hearings on H.R. 14765.

Sincerely,

WM. J. FARSON,
Executive Vice President.

AMERICAN VETERANS COMMITTEE,
Washington, D.C, May 16, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: The American Veterans Committee supports the Civil Rights Bill of 1966, as recommended by the President and introduced by you as H.R. 14765 (S. 3296 in the Senate), but we respectfully urge that your Committee make the following 5 amendments.

The first 4 proposed amendments are specifically supported by the Leadership Conference on Civil Rights and AVC, as a cooperating organization of the Leadership Conference, concurs with these proposals. The Leadership Conference has not yet specifically considered the fifth proposal we here urge, but we believe the Conference would support it.

In essence, H.R. 14765 is intended to provide legislative tools:

(a) to end the discrimination based on race, color, religion, sex, national origin or economic status, which is still rampant in jury service in Federal and State courts;

(b) to eliminate two conditions (that an individual file a written complaint and that local residents are unable to bear the burden of litigation) before the Federal Government may bring suit to end racial discrimination in schools and public facilities. (The Attorney General already has authority, without such restrictions, to initiate suits to end racial discrimination in voting, employment and public accommodations).

(c) to declare a national policy against discrimination in the sale, rental, and financing of all dwelling places.

(d) to protect people against interference, by violence or threats, with the exercise of their constitutional rights in voting, education, housing, employment, jury service, travel, and use of public facilities, public accommodations and federally supported programs.

The reasons and the necessity for these measures are cogently set forth in the President's Civil Rights Message of April 28, 1966. AVC believes, and we think that the overwhelming majority of the people of the nation believe, that these legislative measures are needed—that they are just and reasonable—and that their enactment by Congress will enhance our nation's democracy, welfare and security.

The amendments we urge be included in the bill are as follows:

1. To establish an Indemnification Board authorized to award monetary indemnities for injuries or death inflicted on persons as a result of violence intended to interfere with the exercise of the civil rights guaranteed under the bill. The Board also should be authorized to sue the persons and the governments engaging in such violence. Criminal punishment is only a partial sanction against such violence. Negroes and civil rights workers injured in the effort to give meaning to the civil rights laws must be protected against the personal losses and damages they suffer when racists resort to violence in efforts to interfere with the exercise of constitutional rights.

2. To provide for enforcement of the fair housing provisions of the bill through an administrative agency rather than merely by permitting aggrieved individuals to initiate court litigation. Experience with voting discrimination and school desegregation has clearly proven that to put on individuals the burden of enforcing their constitutional rights through personal litigation would largely undermine the effectiveness of the protection contemplated by the Constitution and the Civil Rights statutes.

3. To include state and local governments under the provisions of Title VII of the Civil Rights Act of 1964 which now requires private businesses engaged in interstate commerce to provide equal opportunity in employment. The amendment we here urge would establish a procedure for giving meaning to the Constitutional obligation of state and local governments to refrain from racial discrimination in selecting and employing state and local government employees. We urge, moreover, that this amendment be coordinated with the amendments to Title VII, which the House of Representatives adopted on April 27, 1966 (H.R. 10065) (and which we support), authorizing the Equal Employment Opportunity Commission to enforce the law more effectively through administrative cease-and-desist orders, etc., rather than depending solely on negotiation.

4. To provide automatic standards for sending in jury commissioners (along the lines of the automatic provisions for sending in federal registrars under the 1965 Voting Rights Act) to end discrimination in jury service, rather than relying merely on litigation to enforce the provisions of the bill concerning nondiscrimination in jury service.

5. Our fifth recommendation deals primarily with the inadequate language of the bill in controlling sex discrimination in state jury service.

Section 201 of the bill now provides as follows:

"Sec. 201. No person or class of persons shall be denied the right to serve on grand and petit juries in any State court on account of race, religion, sex, national origin, or economic status."

We urge that it be amended to read as follows:

"Sec. 201. It shall be unlawful to make any distinction on account of race, color, religion, sex, national origin, or economic status, in selecting any person to serve on grand or petit juries in any State court."

We make this recommendation in order more effectively to deal with the widespread discrimination in jury service, on the basis of sex, which is current in at least some 25 states.

The President, in his State of the Union Message of January 12, 1966, promised to "propose legislation to establish unavoidable requirements for nondiscriminatory jury selection in Federal and State courts." When Attorney General Katzenbach testified on the Administration's bill before the House Judiciary Subcommittee No. 5 on May 4, 1966, he told you that Title II of the bill "prohibits discrimination in state jury selection processes on account of race * * * sex * * *."

However, the present language of sec. 201 is not sufficient to effectuate the President's purpose. It may be adequate to reach efforts to "deny the right to serve" on a state jury such as now is denied on the basis of sex only by the laws of Alabama, Mississippi, South Carolina, partially in Florida, and in some circumstances in Louisiana, New Hampshire, Rhode Island and Nebraska. But it would not reach the discriminatory jury selection practices based on sex in some 25 other states which discriminate between men and women solely on the basis of sex with respect to excuses or exemptions from jury service.

The President's Commission on the Status of Women vigorously urged the ending of these discriminations to assure "equal jury service without distinction as to sex." (See pp. 46–47, *American Women*, 1963). So have most of the women Members of Congress (See Congressional Record of March 1, 1966, pp. 4311–4313).

We support their views and urge that sec. 201 be amended as set forth above, to effectuate fully the President's promise to have "unavoidable requirements for nondiscriminary jury selection in Federal and State courts."

We believe that this bill and the amendments we propose will strengthen the ideals for which we, as veterans of the armed forces of the United States, fought and bled to preserve and enhance for ourselves and the future generations of America.

We would appreciate having this letter printed in the record of the hearing on the Civil Rights Act of 1966.

Sincerely,

JOHN S. STILLMAN,
National Chairman.
BEN NEUFELD,
Vice Chairman.

AMERICAN VETERANS COMMITTEE,
Washington, D.C., May 18, 1966.

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: With regard to our letter of May 16 in support of the Civil Rights Act of 1966, we have discovered a typographical error in the language we propose to replace the present section 201 of the bill, particularly in its impact on discrimination based on sex in state jury service, on page 3.

We bring this to your attention so that the record of the hearing will accurately reflect the specific language of the amendment we urge.

The proposed amended wording of Section 201 should read:

"Sec. 201. It shall be unlawful to make any distinction on account of race, color, religion, sex, national origin, or economic status, in the qualifications for service, and in the selection of any person to serve, on grand or petit juries in any state court."

Sincerely,

JOHN S. STILLMAN,
National Chairman.
BEN NEUFIELD,
Vice Chairman.

Mr. ROGERS. We will meet tomorrow morning at 9 a.m., when we have scheduled the following witnesses to appear: Mr. Whitney Young, executive director of the National Urban League, New York City; Mr. Andrew Heiskell, chairman of the board of Time, Inc., Time-Life Building, New York; Mr. William J. Levitt, president,

Levitt & Son, Inc., Lake Success, N.Y.; Mr. Joseph L. Rauh, vice chairman of Americans for Democratic Action—I thought he was the chairman. And then Mr. Clarence Mitchell, director of the Washington bureau of the National Association for the Advancement of Colored People; and the Reverend Duncan Howlett, D.D., Unitarian Universalist Association.

The committee now stands in recess until tomorrow morning at 9 o'clock.

(Whereupon, at 12:10 p.m., the hearing was recessed, to reconvene at 9 a.m., the following day, Thursday, May 19, 1966.)

CIVIL RIGHTS, 1966

THURSDAY, MAY 19, 1966

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

The subcommittee met at 9:10 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, and McCulloch.

Also present: Representative Smith of New York, William R. Foley, general counsel, Benjamin L. Zelenko, counsel, John W. Dean III, associate council.

The CHAIRMAN. The committee will come to order.

Before hearing witnesses the Chair wishes to make a statement.

Chief Justice Earl Warren, for whom I have the greatest respect and esteem, warned yesterday that: "Ill-advised proposals pending in Congress to bar racial discrimination in the selection of juries could, if enacted, encroach on rights of States."

Another quote, and I am now repeating what the New York Times indicated: "Some of them go a long way and may radically change the relationship between the Federal and State Governments."

These are rather unusual remarks for a U.S. Supreme Court judge to make. Judges of that Court rarely comment on legislation that is pending in Congress and I believe it is unseeming for him to do so, because such legislation may subsequently reach the Court for interpretation and thus the commenting judge may find himself in a position of prejudging a case.

I agree that some of the bills may go too far, especially the so-called automatic trigger bills, but the Chief Justice might well have avoided a sort of blanket indictment.

For example, my bill does not warrant this dispraise and I venture the statement that the Justice did not have the criticism apply to the bill I offered.

I can assure the judge and the country that the Judiciary Committee will be most careful in reporting out a bill that will involve the problems that the Chief Justice describes.

I say all this with deep and abiding faith in the judgment of Chief Justice Warren, who is my friend and who has, indeed, by his works and his words shown himself to be a most exemplary Chief Justice.

Mr. Whitney Young, are you prepared to go on? We are very happy to hear from you.

Mr. Whitney Young, executive director, National Urban League, New York.

STATEMENT OF WHITNEY M. YOUNG, JR., EXECUTIVE DIRECTOR, NATIONAL URBAN LEAGUE

Mr. YOUNG. Thank you very much, Mr. Chairman and members of the committee.

My name is Whitney M. Young, Jr. I am executive director of the National Urban League.

The National Urban League is a nonprofit, charitable, and educational organization founded in 1910 to secure equal opportunties for Negro citizens. It is nonpartisan and interracial in its leadership and staff.

The CHAIRMAN. Before you go on—this is off the record.

(Discussion off the record.)

The CHAIRMAN. On the record.

You may proceed.

Mr. YOUNG. Thank you.

I was about to continue my certification for this testimony. The National Urban League has affiliates in 76 cities, in 30 States and the District of Columbia. It maintains national headquarters in New York City, regional offices in Akron, Atlanta, Los Angeles, New York, and St. Louis, and a Washington bureau. I had already mentioned that the Urban League is some 56 years old.

We have a professional staff of some 800, trained in the techniques and disciplines of social work, which conducts the day-to-day activities of the Urban League throughout the country, aided and abetted by more than 8,000 volunteers who bring expert knowledge and experience to racial matters.

The National Urban League is deeply grateful for the invitation which this committee has given to appear before it today in order to add to your body of knowledge the information and evidence we have accumulated over the years as experts in the area and on the subject now before you.

I am aware that the proposed Civil Rights Act of 1966 (H.R. 14765) contains five titles of legislative substance and a sixth covering appropriations. On the basis of Urban League experience and in light of our attempts to give intelligent and balanced direction and guidance to the heightened aspirations and growing impatience of America's 20 million Negroes, I strongly recommend passage of the total package.

With respect to titles I, II, III, and V, I believe it is abundantly clear that they are but necessary supplements to the Civil Rights Act of 1964; that they constitute that amplification of the 1964 act which is necessary to give it significant meaning and establish a realistic basis for its implementation.

The murders, bombings, dismissals from employment and defiant campaign oratory we have been witness to since adoption of the 1964 act, provide sufficient evidence that without further Federal guarantees of personal safety from intimidation and violence; that without Federal assurance of full representation on juries; that without stronger measures in the hands of the Attorney General, the victims of 300 years of historic discrimination cannot be expected to attempt the full exercise of the rights granted them by the 1964 act.

At present, the burden of proof lies with the victim. It is he who must initiate complaints under threat of personal and physical har-

assment. It is he, the man in the most vulnerable socio-economic position, who must institute legal action and bear the high cost of carrying it through the courts and in this there is patent injustice. There is a clear and present need for further assurances of protection under Federal law.

In coming before you I know that you were serious in 1964—that you were not deliberately perpetrating a hoax upon the waiting Negro population. We simply, however, could not have anticipated opposition of the character that has developed.

I do not mean to suggest that passage of the 1964 Civil Rights Act has not brought progress. On the contrary, just as we predicted at the time, many institutions, public facilities, and industries followed up immediately in voluntary compliance with the law, once it was law. We predicted this would be the case and it was.

These are the areas in which real progress has been made. But where the burden of proof has lain with the oppressed, where the burden of court action has been placed upon those who are most vulnerable socially and economically, we have seen little or no progress.

None among us could have anticipated the degree of resistance and violence latent in some few of our citizens and now manifest. I am not blaming anyone for having failed to include these stronger provisions in the first place.

We could not have foreseen that there were those few in our society who would resort to such acts of violence and intimidation in contravention of the law. We could not have foreseen that jury members would take their roles so lightly or let their personal feelings, fears, and prejudices enter into consideration of such serious matters as murder. We could not have foreseen that local police officials, wearing the uniform of law enforcement and vested with the responsibility for law and order, would serve as derelict and callous as some in our recent experience have proved to be.

It is inconceivable to me that those who have been witness to unsolved murders, bombings, losses of employment, harassment and threats of harassment—and certainly you as members of this committee have been witness to them as well as I—can acknowledge any quarrel on this point. It is inconceivable to me that any one of us could fail to recognize these acts but as tragic testimony to the need for enactment of the legislation before you.

Because I think the need for this legislation is obvious—it's simple justice—not only to the members of this committee and to this country at large, but also to the whole world—I find it difficult to conceive of serious opposition to these titles, and I will not take the time of this committee to belabor their significance.

Title IV, however, mandating "the right of every person to be protected against discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use, and occupancy of housing throughout the Nation," however, is a different matter, one around which there is a great deal of misunderstanding and misinterpretation.

Title IV deals with matters that make it impossible for us to point a finger at any geographical area. The housing patterns that call it forth exist throughout the land—though in this instance it is possible we owe this pattern of housing segregation more to northern genius

than to southern. It is a matter of simple historic fact that housing segregation has been more clearly a creation of practices in the North than in the South.

First, in examining title IV, it is important to establish the fact not only that there is rigid segregation of housing, but that it has persistently increased and that it continues to increase. Then we must recognize what the picture in our central cities will be in the very near future barring adoption of legislation to create an open housing market; what the racial composition of the central cities is destined to become unless there is a Federal fair housing law which mandates dispersal of the ghetto population now increasingly occupying the central cities.

Whether you accept or reject—and I would like to make this clear, Mr. Chairman, I am not now talking about the basic immorality which this committee may quibble and quarrel about, or—the basic immorality inherent in the existence and growth of the racial ghetto. Instead I hope to make it eminently clear that the emerging picture in the central cities of this increasingly urban Nation has economic and political implications which will soon affect, not just the Negro, but all Americans; implications which can make past so-called social and economic revolutions pale into insignificance.

The explosive increase of the Negro population in northern, central and western cities is one of the most dramatic social changes in urban history. Between 1940 and 1960, the Negro population living outside the 11 States of the Old Confederacy increased 2¼ times—from 4 million in 1940 to over 9 million in 1960. Most of this increase was concentrated in the central cities of the Nation's 12 largest metropolitan areas.

During the period 1940–60, the Negro population of New York increased nearly 2½ times. The Negro population of Chicago increased more than two and a half times. In Philadelphia, the Negro population doubled. In Detroit, it more than tripled. And the Negro population of Los Angeles County increased a phenomenal 600 percent, from 75,000 to 464,000 in that 20-year period.

Today, here in Washington, D.C., and in Newark, N.J. Negroes constitute more than 50 percent of the population. In Detroit, Baltimore, Cleveland and St. Louis Negroes represent one-third or more of the population. And in a number of others, including Chicago, Philiadelphia, Cincinnati, Indianapolis and Oakland, they constitute well over one-fourth.

Even at the height of European immigration, no other ethnic group ever made up as large a proportion of the big cities' population and it is clear to the most casual observer that the vast bulk of the housing occupied by Negroes in these and other cities is segregated housing.

Thus the problem we are confronting is no longer confined to the plantations of the Mississippi Delta, nor to the sleepy towns of the Old South, nor even to the bustling cities of the New South. On the contrary, the most serious social problem confronting America today is to be found at the heart of its biggest cities, at the commercial nerve centers of the nation. And it is fanning out into a score of smaller cities like New Haven and Gary, San Diego, Buffalo and Rochester, Toledo and Akron, Fort Wayne and Milwaukee, Kansas City and Wichita.

And yet the migration continues and the rigidity of residential segregation continues to increase. Here, in Washington, D.C., the number of census tracts where nonwhites made up 75 percent or more of the population approximately doubled during the 1950's. An analysis by the Philadelphia Commission on Human Relations shows that in Philadelphia the number of census tracts with a nonwhite population of 80 percent or more nearly tripled during the same decade. Newark, which was 34.4 percent Negro at the time of the 1960 census, is now over 50 percent Negro.

And what is the precise degree of residential segregation in such cities throughout the country? A recent study shows that in Washington, D.C., 80 percent of the Negro population lives in segregated housing; in Newark, 71.6 percent. These are the two cities where more than half of the population is now Negro.

In cities with a Negro population of one-third or more, the segregation index in Detroit is 84 percent; in Baltimore, 89 percent; and in Cleveland and St. Louis, it is 91 percent.

In cities with a Negro population which exceeds one-fourth of the total population, we find the following picture: the segregation index in Oakland is 73 percent; in Philadelphia, 87 percent; in Cincinnati, 89 percent; in Indianapolis, 91.6 percent; and in Chicago, 92.6 percent.

It may be reassuring to some to assume that these patterns of segregation, which have literally established a white ring—which some have chosen to call a "white noose"—around the central cities, developed quite by accident because of differences in socio-economic levels or because of taste.

The facts are completely at variance with this assumption. The facts show that the Negro has not been permitted to disperse. Members of other immigrant groups who initially settled in the central cities were able, upon acquiring education, money, and personal resources, to disperse freely, to buy and occupy housing wherever they could afford it. But the Negro has not had this opportunity. For the Negro, the port of entry in the central cities has become a prison.

And so, a man like Ralph Bunche, with his Ph. D., his Phi Beta Kappa key, a Nobel Prize, sufficient finances, and a triple A credit rating, could not until very recently move from the South Side of Chicago to Cicero, although criminal elements, as represented by Al Capone and others, could and did.

May I also refresh your memory on the terms under which the first subdivisions were built in this country. The first advertisements for suburban subdivisions in this country enumerated all the advantages of suburban living and then said quite bluntly, "No Negroes allowed."

Later these sentiments were more subtly expressed, but the message was loud and clear and the barriers were just as strong. The message was "exclusive," "restricted," or "homogeneous," and no Negro, however talented or gifted, no matter whether he wore the coveted Phi Beta Kappa key or the Distinguished Service Cross, could gain admittance.

Where there has been change, it has often been less than nominal. Recently in northern California, for example, fewer than 100 nonwhites were able to buy homes in unsegregated tracts in a period during which 350,000 new homes were built.

Ironically enough, the culprits in this undemocratic and immoral undertaking were not just the private lending agencies, nor just members of the real estate fraternity, nor even the builders. All of these were culpable, to be sure, but they were ably assisted and in effect given sanction for their actions by the Federal Government, which not only permitted residential segregation, but through its FHA programs required as a condition of loan insurance, an insistence upon the "homogeneous" neighborhood, the "compatible" neighborhood.

From 1935 to 1950, Federal public housing law mandated racial segregation as a condition of constructing public housing. So that in the last 30-odd years, residential segregation has been deliberately established in areas throughout the country where it had never existed before.

It should be clear that while today this society is, for a variety of reasons, more socially sensitive than at times in the past and that while broad segments within it find some of these conditions repulsive and morally reprehensible, the simple adoption of new attitudes will not significantly alter or eradicate the work of generations dedicated to calculated, planned, and deliberate racial segregation.

I believe we must face the fact that just as there were hotel and restaurant owners and public officials in the South and employers around the country who personally preferred to change segregationist and discriminatory patterns and practices, few had the courage to proceed or felt they could run the risk of change without the sanction of Federal law, and so it is in housing.

We can expect only token change in the direction of open housing, unless in fact the housing man is given the same legal mandate and the same personal security that other individuals and institutions felt was necessary in order to take comparable actions in their respective fields.

Probably the most disturbing aspect of trying to secure legislation in behalf of open housing has been the deliberate distortions by the opposition of what this legislation really calls for. The same was true in California in the battle over proposition 14, and it has been true in cities and States, North and South, where fair housing laws have been in dispute.

This legislation does not, as its critics so often assert that it does, force people to sell a house to a Negro or any other member of a minority group. It does not destroy the historic and cherished American right to sell to whom one pleases, an argument the converse of which is always certain to get an emotional response.

And the time has come for you gentlemen here, as lawmakers, to set the record straight, to turn the light of reason and goodness upon an area long darkened by bigotry and prejudice, to see that justice rules where prejudice has prevailed.

Neither this legislation, nor any other fair housing legislation, has ever demanded the forced selling of a house to a Negro. It has said, rather, that an owner, a lending institution, a builder, a real estate operator, cannot refuse to transact business with a fellow American simply because he happens to be born a different color—obviously through no fault of his own. The housing merchant, the financing agent, can set any standards he chooses as long as he does not impose

standards upon a given human being, which through no fault of his own, he cannot possibly meet.

I would then hope that the members of this committee would go beyond the moral issue and ponder the serious economic and political implications for all Americans of any failure to adopt this legislation. For the health of the entire society, it is essential that a way be found to break up the pattern of disproportionately housing low-income, minority groups of high visibility in the central cities.

Obviously, here I am talking about the inevitable erosion of the tax base of American cities in an increasingly urban society attributable in substantial measure to the development of the racial ghettos. What is already happening in New York City should give you pause.

New York City is in the grips of a budget crisis which derives in just such substantial part from a failure to solve the problems of the ghettos. With an increasing occupation of the central city by an undereducated, underemployed ghetto population which cannot disperse because of enforced housing segration, sources of municipal revenue are diminishing while the need for essential services mushrooms.

In the current crisis, the mayor of New York has clearly stated "that without new revenues a major reduction of all city services will be necessary resulting in a drastic change in the quality of life in New York City." It is this impeding change in the quality of life in our urban centers that I beg you to ponder.

In New York today this is no mere abstraction. In the present crisis the City University of New York is faced with accepting 2,300 fewer freshmen than it accepted 1 year ago.

The CHAIRMAN. I will say, Mr. Young, that is being cured. I was with the chancellor and the head of the board of education of New York City. They assured me they are going to take care of those 2,300 students.

Mr. YOUNG. I am glad to hear we have met this crisis at the moment. I am sure it will pose great problems, and you will admit it, in the future.

It is also in New York they have had to raise taxes because of limited opportunity facilities for pupils, and raise the grade level for getting into about at least 85 percent of the schools, which automatically eliminates large numbers of people who come from environments that make it difficult for them to achieve at that level.

The 21 municipal hospitals of New York City, up until just yesterday, were threatened—and it is still in the negotiation stages—with a catastrophic mass resignation of nurses on May 23 for want of adequate pay.

As of Sunday, hospital administrators had issued directives for the closing of all outpatient clinics which normally serve 12,000 people daily, including pediatric patients, heart patients, obstetrical patients, and patients convalescing from serious illness; for restricting admissions to emergency patients; and for transfer or discharge of all patients who can possibly be transferred or discharged.

Bellevue, Kings County Hospital and the Bronx Municipal Hospital Center have all requested permission to eliminate elective surgery. The New York Stock Exchange, as you no doubt know, is threatening to move to New Jersey.

The CHAIRMAN. I question that.

Mr. YOUNG. I say it is threatening. I question that they will follow through.

The CHAIRMAN. If they should move, a new stock exchange would be formed the very next day.

Mr. MCCULLOCH. Mr. Chairman, I would like to say we would welcome the New York Stock Exchange in Ohio. We think that we have been discriminated against out in that great State and we have a way to go to get even.

Mr. YOUNG. I think the point that I am trying to make is that if this population, that is limited in its ability to supply taxes continues to grow and to increase, then the tax base erodes further, and more taxes are going to be required from the remaining institutions—the business and financial institutions—and it will create a tax burden that ultimately, I think will be felt in Ohio, if Ohio has not solved the problem. Cleveland is facing the same problem.

The CHAIRMAN. I am one of those persons who agrees with Mr. John Lindsay on taxing some of the stock transfers in New York City.

Mr. YOUNG. I am in favor of it, too. I am only stating the condition of having to impose taxes on those persons in the city—those institutions in the city, because the city is continuing to grow in low-income population.

Whatever the resolution of these current problems in New York, I submit that it will be temporary until the ghetto population is dispersed, and that the patterns of crisis that are emerging in New York will emerge in one urban center after another throughout the country unless the ghetto population in each city is permitted to disperse through the functioning of a clear and open housing market. Short of that, we are faced, in the words of the mayor of New York, with "a drastic change in the quality of life" in this country.

When the hospitals close their doors to all but emergency patients, when publicly supported institutions of higher education must turn away students by the thousands, and when major financial institutions threaten to change their bases of operation, it is not just the Negro who suffers. It is the entire society.

Any failure to enact title IV, a Federal fair housing law, has political as well as economic implications, though it is surely unnecessary to point out to men who are themselves politicians, the political significance of the picture emerging in our central cities; of the implications of finding our central cities occupied more and more fully by a dispossessed undereducated, underemployed, embittered, angry, impatient, low-income population.

For these reasons alone, I would think that responsible public officials and leaders in industry would find themselves in strong support of this legislation with its promise of permitting the ghetto population to disperse.

Do not misunderstand me, I feel strongly that there are many Negroes who are well qualified and capable of being mayors and Congressmen in all of our major cities, but I would get small comfort from their election if it were based mainly upon a superiority of numbers in the central cities rather than upon the personal qualifications of the individuals involved.

Finally, I would appeal to you on grounds which may on the surface seem emotional, but grounds which I honestly believe to be very

realistic and practical in today's world. To a degree, the point I would make is already recognized by the more secure and enlightened citizens of our society. It is not only that Negro citizens would benefit from the enactment of this legislation—educationally and economically, culturally and socially—but that white citizens, especially our young people, would benefit equally.

Integration provides an opportunity for white citizens to help prepare their children in a natural, diversified setting for the world they're going to live in, a world in which it is 15 minutes by missile from Cape Kennedy to Africa. For a youngster to grow up today with no knowledge of social diversity in a world which is two-thirds nonwhite is a terrible handicap.

Unless such a youngster overcomes or outgrows these hindrances, he will not be able to work for any enlightened major corporation. He won't be able to work for the State Department or for the United Nations. He will not qualify for a $75-a-month job with the Peace Corps. He will certainly not be elected as a distinguished Congressman on this committee.

Increasingly it is the insecure, the frightened, the unsure who need to surround themselves with sameness. But there is richness in diversity and white citizens will benefit just as surely as Negroes from a solution of the racial problems to which title IV speaks.

In a way, I feel I may appear to have over-complicated the picture by talking of the economic, legal, and political implications of this legislation. I fear I may have obscured the basic human rights involved, such sacred things as freedom and dignity and equal rights for all men, the children of a Common Maker; that I may have obscured what should be the most persuasive argument of all, the elementary right of a human being to provide decent shelter for his family.

I may have obscured the fact that the only real qualifications that should matter in the selection of housing should be a man's desire, his determination, his thrift, his standards of decency, and in the case of the Negro, and additionally, his loyalty, his restraint, and his patience with a society to which he has given so much and from which he has received so little.

I would remind members of this committee that in the very soil on which this building rests lie the bones of Negro slaves and of Negro soldiers who died in the American Revolution, that the grass which we view out of these windows has been nourished by the blood and bodies of those for whom I now seek just to secure the right to buy a house.

Even today as we sit here, all of us must be conscious that though the Negro represents but 10 percent of the population of this country, approximately 20 percent of our troops in Vietnam are Negro and they are dying at a more rapid rate than other soldiers because they tend to choose the high-hazard assignments in a war 10,000 miles from home, a war our leaders have described as a war for freedom.

My hope is that this committee, through its deliberations, its determinations, and finally through its vote, will show that those who have died, and will die in behalf of this country, will not have done so in vain and that those who live through the battle will not return to find that the freedoms they fought for 10,000 miles away do not exist for them in their own home towns.

Some generation, it seems to me, must succumb to an excess of decency to make up for the generations where we have had an excess of callousness and brutality.

Gentlemen, I would submit to you that for the reasons I have given, both to the advantage of the white and the Negro community, economically, morally, politically, I think that this bill is not at all and should not be a controversial bill, but one that should flow normally and naturally from a sensitive Congress and Congressmen who themselves, I am sure, are aware of this situation.

Thank you very much.

The CHAIRMAN. Any questions?

Mr. ROGERS. Yes.

On page 11 of your statement you state that, this legislation does not, as its critics so often assert that it does, force people to sell a house to a Negro or any other member of a minority race.

It does not destroy the historic and cherished American right to sell to whom one pleases, an argument the converse of which is always certain to get an emotional response.

Now, do you not interpret that this Title IV would require that if a man has a house to sell and he lists it with an agent and the agent finds a Negro who meets and is willing to pay the price, that he then must accept that Negro as the purchaser of his home?

Mr. YOUNG. Sir, this was a comparable argument and observation made about FEPC, for example, that an employer would be forced to hire a Negro whether he wanted to or not. What it says is that this man is not forced to sell to a Negro or Italian, Catholic or Jew or anyone else. It says he may set any standards in terms of the amount.

Mr. ROGERS. He can set any standards he wants to so long as he doesn't say, I don't want to sell it to an Irishman or an Italian or a Negro?

Mr. YOUNG. Yes, because then he is saying, I am setting a standard that a human being cannot meet, so it says he cannot refuse to sell to a person simply because of his race. He can sell on any other ground.

This may force him to sell to a Negro, yes. But the legislation is not designed to make him sell to a Negro; it does not say you must sell your house to a Negro.

Mr. ROGERS. But if you do so?

Mr. YOUNG. The end-result means that he may, he may be forced to do what I would say in 99 percent of the cases a person would want to do anyhow if he could get the best price.

Mr. ROGERS. Sure.

Mr. YOUNG. But he is scared to do it because he is afraid of neighborhood pressures, so what we are getting now are people who say this to us, but say I cannot say this out loud to real estate men or others. They will tell us, "I sure hope you can get that law through, because then we can say we have no choice, it is the law."

Ninety-nine percent of the people want to sell to whomever they can get the best price from, and if it happens to do so, you have freed him to do so.

Mr. ROGERS. But if everybody in the block says, well, we are not going to sell to Negro and have our block busted, then that would be unlawful under the provisions of title IV, wouldn't it?

Mr. YOUNG. Yes, it would be and——

Mr. ROGERS. And that is the thing you are trying to get at in this proposal?

Mr. YOUNG. I think what we are really trying to get at is to get rid of any escape hatches. The only reason you have block-busting is because people feel they have someplace to run to. If there is a law that says you cannot discriminate in any neighborhood, then there can be no assurance that by moving out, being persuaded to move out by some real estate man who is trying to, you know, get a sale or commission, there is no assurance that he can find a haven—you know, a little white haven, with a permanence of any assurance of it remaining that way; then he will not run. That is really what we are trying to do here.

Mr. ROGERS. If you have some convincing arguments to carry out the suggestion that you have made concerning the statement that you suggest here, that it does not compel him to sell to anyody at all, I would certainly appreciate you coming forward with it, because that is the problem that is confronting us when we try to pass this title IV.

Mr. YOUNG. Well, I cannot say that any more than I can say that the right to vote compels a man, you know, to vote. The fact that you guarantee him the right to do it, I think we still must guarantee the right and in that possibility the man may vote.

In this case the purpose of the legislation, I still say, is not to compel that owner to sell to a Negro. That is not the purpose. It may result in his selling to a Negro. The purpose is to prevent him from refusing to sell to a man simply because he is a Negro.

Now, I would agree with you that I can give no argument that at some point if a man is so prejudiced or so resentful or for whatever reason, that he does not want a Negro to live in his home that he once occupied, that at some point, by stating it that way, he might not be compelled to do so. I can find no argument for that.

Mr. ROGERS. If we adopt title IV as provided in this bill, what are you going to do with State fair housing laws like the one in my State of Colorado which has definite provisions in connection with anti-discrimination.

Do you have expectation of a Federal law and a State law at the same time covering the same situation.

Mr. YOUNG. I expect there again to have the same situation we have had with title VII with FEPC where you already had many more States with a State law against discrimination in employment than you have States with discrimination laws in housing.

What happened was, this became supplementary. In fact, in several cases, like Kentucky, for example, they passed a State civil rights bill after the Federal civil rights bill, which I think sometimes is useful, because it removes some of the responsibility and the obligation of the Federal Government to actually enforce its laws. It puts it down closer to a local level.

This would not override it, but at the present time there are so few States with fair housing laws and even those States that have them, they vary so much in their enforcement, in the implementation of them, and we do need something uniform today because we are a mobile society.

Mr. ROGERS. We have a definite section in here which provides that the Federal act cannot disturb these State laws.

Mr. YOUNG. I should not think that we would want to. If they are strong, leave them in. If they are not as strong, the Federal law will help.

Mr. ROGERS. In title IV, if you violate the section you can be sued for what is it—$500 in punitive damages?

Mr. YOUNG. Yes.

Mr. ROGERS. Now, in any State you can be sued for $250, or you can take it to the Commission and show any other damage and get a cause of action in a State court.

Do you feel that both of them should be on the statutes?

Mr. YOUNG. I know your State fairly well and you happen to come from a State that would be probably less affected by this law than anybody else. I believe that there is a natural inclination for the citizens of your State to seek diversity, and I happen to know that increasingly in Denver and other places that there has been a gradual dispersal of population.

This would free your State to do what its citizens have already shown an inclination to want to do even more. It would accelerate the base, so that I do not think Denver would reach the point of Newark or some of these other places that are facing a real problem.

Mr. ROGERS. We have lawyers practicing law in Denver; he may have a real estate man come in and want his opinion: Can I be sued in the State court? Can I be sued in the Federal court?

Mr. YOUNG. For violating the Federal law, I would say you would be sued in the Federal court, but every experience with the civil rights bill of 1964 has shown that there has been no great overwhelming number of complaints, that what the law does is to actually free people to go ahead and do what they basically would want to do.

I do not anticipate—I do not think there has been more than one case on title VII where an employer—none have actually been sued, they have been given cease-and-desist orders, but I think when you weigh the possible inconveniences that you mentioned as against the serious problem of what is happening in our central cities in terms of the eroding tax base and economic reasons and the concentration of this low-income group and the political implications, I remind you that history has shown that when a group takes over and has to take over, that the leadership is not always the best, the most responsible, or the best educated leadership.

Now, this is posing real problems in our central cities of the country and for the life of me, I cannot understand why men who have such a strong stake in the central city, I cannot understand why all Congressmen from urban areas are not coming all out to try to disperse this population, because I think it has significant implications.

Mr. ROGERS. Thank you for your answers.

The CHAIRMAN. Mr. McCulloch?

Mr. MCCULLOCH. Mr. Chairman, I am pleased to say to Mr. Young that I think that your statement is an excellent one and it provides substantial information that I did not have before and which I am glad to have.

I have only two or three questions, Mr. Chairman.

I refer to page 6 of your statement where you refer to the 12 large metropolitan areas in the country where conditions are the worst.

Could I properly conclude that you would mean that those metropolitan areas are in such States as California, New York, Pennsylvania, Illinois, Ohio, Michigan, Maryland, Missouri, Indiana, Wisconsin, Connecticut, Massachusetts, Kansas, and New Jersey, and in the District of Columbia?

Mr. YOUNG. Yes, sir.

I am talking about the concentration of people now; I am not talking about——

Mr. MCCULLOCH. Yes, it would be within those States. I understood that.

Would you know how many of those States have legislation in this field? For instance, New York has, I happen to know. Ohio has, and I presume California now has such law; also Pennsylvania, but how about the rest of them?

Mr. YOUNG. I cannot give you the precise—Illinois does not. I cannot give you the precise number; I can give you most of it.

Mr. MCCULLOCH. I understand that. Counsel has handed to me the list of States.

Mr. YOUNG. The problem is, if I gather what you are referring to, is the fact that here is a place like New York with legislation and yet I cite it as one of the worst places in terms of concentration and so it flows from that, what would the advantage of a Federal law be?

I can only answer that two ways: One, the Federal law goes into some areas of financing still untouched by the Executive order on housing; there is a certain prestige and urgency that is most impressive when it is mandated by the Congress of the United States as against a city council, which especially in a city like New York that is considered very liberal and very sensitive to liberal causes. I do not think the full impact hits; I think that there is not the same degree that a place like New York when it passes a law that only a few States have, they develop a degree of smugness and complacency once they pass a law, and where you do not have—and this is very true in New York—you do not have the machinery for enforcement. You do not have the machinery for checking for implementation.

Mr. MCCULLOCH. There is, of course, some machinery in every State which has adopted this kind of legislation; certainly in every State the courts are available and in most, if not all, there will be commissions which are created pursuant to the law. But the main thrust or the main intended thrust of my question was and is finally this: Do you find that the Lew York law is wholly inadequate to meet the problems presented in New York?

Mr. YOUNG. Yes, and I find that it is inadequate because of the way it is presented and administered. It is a law which seeks—it is negative in the sense that it says it seeks to forbid discrimination, but it is not administered so as to encourage dispersal and to rid itself of the city of segregation.

It simply says, if you are done an injustice, we provide you with a vehicle for some kind of redress. What we need is a positive thrust where we decide that for the benefit of the society and everything else that a diversified community is better than all-white and all-ethnic

groups and so the administration—that is why I would like to see even in this bill more educational activities built into it.

Mr. McCULLOCH. Well, that was to be the next question. What do you find in the legislation introduced by the chairman that you do not find in the New York legislation? What instruments are lacking in the New York law that are in this legislation?

Mr. YOUNG. I am really not sure. I do gather that there would be this positive thrust. There is not the emphasis on the educational and community interpretation that I think we ought to have. There is not built in the administrative and executive action that I would like to see. This bothers me a bit.

Mr. McCULLOCH. In other words, you are of the opinion that there will be definite and positive and quick action from the Central Government if this legislation be passed?

Mr. YOUNG. I would go further than that. I would say that there would be immediate and quick action voluntarily on the part of many financial institutions, many builders, many real estate operators, many individuals who want to sell their homes, who at this point remain fearful and who feel that in some way their business might be hurt or they might become unpopular.

This is what has happened with public accommodation, for example. Immediately, as soon as the bill was passed, hotels in the South wanting conventions opened up right away. I think you would get an immediate response—and I think the second thing would follow, and that is something that did not follow with the Executive order on housing.

This has been one of the most poorly administered Executive orders I know anything about. That is why we—there is something about the country having spoken with its full dignity and that it is serious and that it is not a geographical-political issue as when a State or city passes a law.

When you pass it, you give it an urgency and a dignity, and a seriousness that I think would have overwhelming influence.

Mr. McCULLOCH. By reason of the fact that we have so many witnesses scheduled today whom we wish to hear, I want to ask just a brief question or two about another feature or another proposal of this law.

First, I would like to know whether or not you are a lawyer, because this takes on some technical aspects that a layman or even most of us lawyers might not know.

Mr. YOUNG. No, I am not.

Mr. McCULLOCH. Have you studied the provisions of title II from the standpoint of a lawyer?

Mr. YOUNG. No, I sort of left up to Mr. Wilkins and the NAACP those details, since they are more experienced in legal matters. I want to associate myself with his testimony which went into some of the legal implications. I am afraid I am not adequately competent, but you can try me. Go ahead and try me.

Mr. McCULLOCH. You understand that we find no fault by reason of the fact that you have not prepared yourself in this field. I would like then to go to another field and that gives us some concern. It is not unlike Mrs. Murphy's boardinghouse in the Omnibus Act of 1964.

Do you believe that it will be necessary to have some exemption, some exemptions in this legislation to make it acceptable to a wide cross section of the people in the country?

I will be more specific. That is too general a question. In housing for the aged and now provided by the Masonic Order, the IOOF, the Knights of Columbus, the Methodists, and the like, the Jewish homes for aged?

Mr. YOUNG. I believe, again, that an institution may set any rule in relation to its acceptance of people, if it is a private institution, that it chooses, providing, again, it does not become a rule that a person cannot meet.

I can become Jewish, for example; I can be Catholic; I can be any kind of religion. I cannot be white, but I can be these other things. But I think frankly, Congressman, that a right compromised really becomes no right at all.

If you have to do these things and it is a decision you have to make to try to make things more palatable or to move through evolution—and revolution, as some might think this legislation to be—this is a political decision. It does not make it more right. I would feel that you would, to a degree, be providing an escape hatch that many groups would then latch on to, and we'd find more of Mrs. Murphy's homes around the country that in the past had been motels, but which suddenly became Mrs. Murphy's.

It seems to me it is like being pregnant. There is no such thing as being a little bit pregnant. I have got a little bit of a house. You are pregnant or you are not.

If we believe this to be a right then a person running an institution, commercially, as Mrs. Murphy is doing for money, in America, living on a street paved by tax moneys of all peoples, getting the fair protection, the health rules, provided by all people, there should not be things set up and arbitrarily based on a man's race.

The one thing we seem to be missing in all of this is that there is already built into our society a natural control of who lives in neighborhoods and apartment buildings by the socio-economic realities of life. If you opened up tomorrow, just the sheer reality of the position of the Negro socio-economically, and minorities, would not allow him to move into the Waldorf-Astoria, or allow him to move into the exclusive suburbs, but any Negro who could afford it would also, by the nature of things, have to have more on the ball than his neighbors—esthetically, culturally, tastes, and all, because the average Negro who gets that kind of money has to get it because of his professional excellence. He is not a businessman, and the numbers banker doesn't want to move to the suburb; he wants to stay where his business is, in the ghetto.

Mr. MCCULLOCH. I would like to ask you a very difficult, hard, yet not unfriendly, question, because we have to always consider the different situations that affect all these things.

If you were to have a choice between no legislation enacted into law and legislation enacted into law with the exceptions in the general fields for the reasons that I have said, would you take the law with the exceptions or would you take nothing?

Mr. YOUNG. That depends on how far the exceptions go, what compromises are made. I do think you reach a point where you compro-

mise or you make exceptions or you are realistic. I do not want to use the word "compromise," but you become realistic, so realistic that you run the danger of doing two things: That the legislation is not meaningful, but more important that you give people the false notion and feeling that we have, in fact, done something. Their conscience has been salved. They theoretically feel purged in their conscience and we have lost, therefore, one of our greatest weapons, and that is the conscience of people.

Mr. McCULLOCH. I repeat that was a difficult, hard question not intended to be unfriendly, but we are pressed for time and thank you for all the questions, Mr. Chairman.

Mr. YOUNG. Thank you, Mr. Chairman.

The CHAIRMAN. As Mr. McCulloch says, we are pressed for time like an Egyptian mummy.

I want to thank you very much, Mr. Young, for your very compelling, very interesting statement.

Mr. YOUNG. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. William J. Levitt, president, of Levitt & Sons, Inc., Lake Success, N.Y.

STATEMENT OF WILLIAM J. LEVITT, PRESIDENT, LEVITT & SONS, INC.

Mr. LEVITT. Mr. Chairman and members of the subcommittee, my statement is directed to title IV of the 1966 civil rights bill which proposes, throughout the United States, to outlaw discrimination in housing based on race.

There are important questions of public policy involved here as well as moral issues of right and wrong. I won't dwell on these. I am here to give facts—to tell you what has happended to us—because we must also consider the practical effects of such momentous legislation.

First and foremost, can it work?

Second, what will be the economic impact on the homebuilding industry and, thus, on the Nation's total economy?

I believe, and I can prove, insofar as any future eventuality can be proved, that title IV, if enacted, would work and work well. I also believe, and I can prove, that title IV is likely to have absolutely no impact whatever on the economics of the homebuilding industry.

Let's take this matter of economics first by using my company as a case history. Levitt & Sons started selling housing on an open occupany basis in 1960. That was in line with our policy in this matter to obey the law where there was a law and elsewhere to follow local custom.

In 1960, for the first time, we were building in an area where there was an antidiscrimination law on the books—the State of New Jersey. In the course of that year our total business amounted to something over $15 million.

Since that time we have branched out. We are building at more than a dozen locations in four Eastern States, in Puerto Rico and in France. In every area except one we sell on an open occupancy basis.

We do in New York and New Jersey, for instance; the law requires it. We do in Puerto Rico; custom demands it. The one area where we don't is Maryland. That State has no antidiscrimination housing

law, so we conform to prevailing practice there. I'll say more about that a little later.

Our sales volume for the fiscal year just completed came to some $74 million. That's fivefold increase in the 5 years since we began to sell on an open occupancy basis.

Just to keep things in the right perspective, I want to point out that this growth is not in any way attributable to boom conditions in the homebuilding industry. In 1959 there were 1.5 million housing starts. Last year it was just about the same. In between there were ups and downs—as low as a million and a quarter and as high as 1.6 million.

Obviously integration has certainly not hurt us and that's why it's logical to believe there's absolutely no reason for anyone to fear the economic impact of title IV on the homebuilding industry.

Now, apart from economics, can title IV work? Is it feasible? Can whites and Negroes live peaceably in the same community? Again, the answer must be, "Yes." The plain fact is that it worked before; it's working now and, again, we have the proof. Not just talk, not guesswork, not theory, but just facts.

To this date I don't know of a single racial disturbance in any open occupancy community we have ever built. There have been no outbreaks, no violence, no picketing, no commotion of any kind. No one ever even said, "Boo."

Quite the contrary. All children go to the same schools. All residents share the same community swimming pools. They participate in the same community life: and those who have leadership qualities get elected to public office. I can cite three such instances, and there may be others. One is on a town committee; another, on a local school board; and the third, on a planning board.

The really amazing thing, after all the years of fear and hestitation about integrating housing, is that when integration does take place, nothing bad happens—absolutely nothing. No one fusses. Everyone goes on about his normal business. No one really seems to care—after the fact.

That is why I say that title IV is feasible, is practical and can work. Wherever integrated communities exist, with Negroes and whites living side by side, the conditions that title IV hopes to produce are already on display for everyone to see.

It would seem the evils of picketing, violence, racial tension, stem from nonintegration, not from integration. I suggest that removing the cause may eliminate the problems.

Three years ago I suggested that the President's Committee on Equal Opportunity in Housing, headed by Governor Lawrence, sponsor area meetings of builders to set up voluntary programs, for open occupancy. These meetings took place but they led to no tangible results.

It was true 3 years ago, it is true now, and it will continue to be true until positive steps are taken to solve the problem, that no single builder can function on an open-occupancy basis unless all builders in the area do likewise.

I said then, and I repeat now, that this Nation must achieve a realistic solution to the problem of discrimination—not only in housing, but in every aspect of American living. The only way this can be

done is by establishing national policy applying equally to everyone under law that governs all of us.

The human race may be perfectible, but it is certainly not perfect yet, and prejudice exists. Because of this, any homebuilder who chooses to operate on an open-occupancy basis, where it is not customary or required by law, runs the grave risk of losing business to his competitor who chooses to discriminate. That, in a nutshell, is why we follow our present policy in Maryland. We have no other choice.

The barriers to equal opportunity which have denied to Negroes a fair share of their birthright as Americans are crumbling everywhere—in education, in jobs, in politics, and in housing, too.

It is high time we recognize what is already taking place and write a new set of ground rules in respect to housing which reflects these altered circumstances.

It is not only compassion for the Negro and our sense of justice that must guide us: it is plain commonsense as well. The strains and tensions of the continuing civil rights conflict are dividing this Nation. The enactment of title IV as part of the 1966 Civil Rights Act is one of the most important steps the Government can take to restore civil peace in the United States.

Thank you.

The CHAIRMAN. Mr. Levitt, in the light of the many letters that we are getting from the so-called real estate lobby, your statement is indeed most refreshing.

I would like to ask, Mr. Levitt, in your opinion what effect would a national fair housing law have upon developers in general?

Mr. LEVITT. Well, I think, Mr. Chairman, that I pretty much have answered that question. Again, judging from our own experience, I can see only that the relieving of tensions, the lack of violence, the lack of any kind of upsetting of economic conditions: I know that in Levittown, N.J., where our business was rather slow, once we started to integrate our business gradually got better and better and better. And today it is one of our more profitable communities.

So I can only see that a fair housing law would once and for all remove that from the list of competitive items, builder against builder, or builder against—I am going to use a harsh word—chiseler, which we have in this business, as we have in every other business.

The CHAIRMAN. I take it then a fair housing bill and open occupancy would not hurt the sale of the houses you build?

Mr. LEVITT. We are 100-percent in favor of it.

The CHAIRMAN. Can you give some specific examples of some of the communities where you have built?

Mr. LEVITT. Examples of what, Mr. Chairman?

The CHAIRMAN. Any of these communities, name some.

Mr. LEVITT. Well, we started to build after Levittown, N.J.—in northern New Jersey in a place called Matawan. We built some 1,900 houses there; they were all sold ahead of schedule, and we have—I don't know by all count—but we have some 10, 12, or 15 Negro families of which 1, incidentally, is on the town committee. It not only did not slow down sales——

The CHAIRMAN. All those are cases where there was general information that there was open housing, no discrimination, and your sales were not affected?

Mr. LEVITT. Correct. The State of New Jersey, as you know, Mr. Chairman, has an antidiscrimination law. The State of New York also has such a law, and we are building currently out in Long Island, where we have several Negroes in residence. We obviously operate on an open-occupancy basis. We have no problem there. We are roughly sold out a year in advance.

The CHAIRMAN. What about Willingboro, N.J.?

Mr. LEVITT. Willingboro is what used to be known as Levittown, N.J. That is the same thing.

It is a large community, has some 6,000 houses in it now. There are currently about 200 Negro families. We sold about 100; another hundred purchased resales. All I can tell you is that today you cannot purchase a house in Willingboro, N.J., for the sale price we sold it for several years ago. Prices have gone up.

The CHAIRMAN. What about resale?

Mr. LEVITT. That is what I mean, Mr. Chairman.

The CHAIRMAN. There is no trouble in the resale?

Mr. LEVITT. None whatsoever.

Mr. CHAIRMAN. Despite the fact Negroes have occupied these houses?

Mr. LEVITT. Correct.

The CHAIRMAN. Now, we are rounding some of these provisions on the interstate commerce clause in the Constitution. I would like to have you answer a couple of questions. Does any part of the lumber you use come across State lines?

Mr. LEVITT. Yes.

The CHAIRMAN. Can you estimate what proportion?

Mr. LEVITT. One hundred percent of our lumber comes from the Pacific coast.

The CHAIRMAN. And I presume that goes for the nails, cement, brick, construction equipment, wallboard, furnaces, plumbing, wiring, and so forth?

Mr. LEVITT. At an educated guess, Mr. Chairman, I would say that perhaps 80 percent of the materials that go into our houses come from across State lines.

The CHAIRMAN. I take it you also arrange financing of your homes, do you not?

Mr. LEVITT. We arrange all the financing of our houses.

The CHAIRMAN. Any of the funds from your mortgages come from across State lines, from States other than where the premises are located?

Mr. LEVITT. With the possible exception of the New York community that we are building now, every other community in which we build receives its financing from a State other than the one in which it is located.

The. CHAIRMAN. What proportion would the amount be that you receive from outside the State?

Mr. LEVITT. All of it; 100 percent.

The CHAIRMAN. Do you ever advertise for purchasers or buyers of your property outside the State where the house is located?

Mr. LEVITT. Yes. We advertise in the New York newspapers, New York City newspapers, for our north Jersey communities. We adver-

tise in Philadelphia, Pa., newspapers for our south Jersey communities. We advertise in Washington in the District newspapers, for our Maryland communities. So again, with two exceptions, Puerto Rico and New York, every other community is advertised in a newspaper located out of State.

The CHAIRMAN. Could you give approximately the proportion of your advertising that is interstate?

Mr. LEVITT. Roughly, I would say from 75 to 85 percent is interstate.

The CHAIRMAN. Do substantial numbers of your purchasers in the current projects come from outside the State to purchase the properties?

Mr. LEVITT. In the various communities we have our out-of-State purchasers run from about 35 to 40 percent, on the low side, to some 70 percent, on the high side.

The CHAIRMAN. Where do these people come from? They do not come from the locality where the property is located; they come from outside?

Mr. LEVITT. Yes. We, for instance, get New York residents purchasing in northern New Jersey, a great many of them. We would get a great many Pennsylvania residents purchasing in southern New Jersey who work in Philadelphia.

The CHAIRMAN. Can you tell us, roughly, the numbers who come from outside the State?

Mr. LEVITT. I would say from 35 to 40 percent low in certain communities to perhaps a 70-percent high. I would think, for instances, high in Maryland. Most of the people who purchase in Maryland come from other than Maryland. They come from Virginia; they come from the District; they come from all over the United States, coming to work in Washington and purchase in Maryland.

The CHAIRMAN. Mr. McCulloch?

Mr. MCCULLOCH. I note on page 2 of your statement, Mr. Levitt, that you say that in every area except in one State you have had open housing.

Mr. LEVITT. Correct, sir.

Mr. MCCULLOCH. Could you give us the average cost of your housing in the United States in the States where there has been open housing?

Mr. LEVITT. We run from approximately $14,000 low in one community to approximately $32,000 high in another community.

Mr. MCCULLOCH. And the answer that you gave to the chairman, that you found no difficulty in reselling or the owners found no difficulty in reselling property that had been occupied by Negroes, would be as true for the $14,000 level as for the $30,000-odd?

Mr. LEVITT. That, Mr. McCulloch, is the community in which we have the greatest amount of Negroes, which would be in Willingboro, N.J. That is our lowest price.

Mr. MCCULLOCH. But the answer would be the same?

Mr. LEVITT. There is no difficulty.

Mr. MCCULLOCH. They found no difficulty in disposing of the houses?

Mr. LEVITT. Correct, sir.

Mr. MCCULLOCH. What percent would you estimate of your housing has been bought by Negroes?

Mr. LEVITT. A very, very small fraction. Let me take, for instance—take the largest community at the moment, in Willingboro, N.J. We have there something over 6,000 families with some 200 Negro families, of which we sold 100 and another 100 have purchased resales.

Mr. MCCULLOCH. Could I interrupt you right there?

Mr. LEVITT. Certainly.

Mr. MCCULLOCH. About how long was the first sale that you made when you had completed——

Mr. LEVITT. 1960. So that would be approximately 3 percent, and that, I think, is about the highest percentage we have in any community. In northern New Jersey, for instance, in a community of some 1,900, we have approximately a dozen families who are Negro, which would be, of course, less than 1 percent. I think that 1 percent or less would be a good figure for your purposes.

Mr. MCCULLOCH. Have you reached a conclusion why so few Negroes have decided to seek housing in your projects?

Mr. LEVITT. I think two reasons; I think No. 1, of course, the Negro has not reached the economic level of his counterpart of the white man, which is as Mr. Young said a few moments ago. I think we have a long way to go on education and employment practices, so that the Negro gets to where he is on the level with the white man.

As a result, among a given amount of Negro prospects and the same amount of white prospects, there are many, many more white prospects that are eligible salarywise, economicwise to purchase housing from us and others than the Negro.

You take Philadelphia, from which we would draw a great many potential Negro customers for our south Jersey community. There are not enough of them that are economically qualified to purchase, and that, of course, is the principal reason. There is another reason which is much less valid, but I think to a certain degree has to be taken into consideration.

I think that all minority groups, of which I happen to be a member of one, are clannish, very clannish. I think they like to stick together. I know of communities, for instance, that when Jewish people went in, they became almost 100 percent Jewish over a period of years, and I think the Negro might be a little bit timid in going into a community where he knows it will be overwhelmingly white.

More and more, however, that is being broken down. That is not as valid an argument as the economic one.

Mr. MCCULLOCH. But you think the psychological reaction is at least somewhat of a barrier?

Mr. LEVITT. It is somewhat of a barrier.

Mr. MCCULLOCH. You think it will be broken down as educational opportunities present themselves and are taken advantage of?

Mr. LEVITT. I do not think there is the slightest doubt. Not the slightest doubt.

Mr. MCCULLOCH. Thank you, Mr. Chairman.

Mr. SMITH. No questions, Mr. Chairman.

The CHAIRMAN. You know, of course, Mr. Levitt, that certain States have fair housing laws, but they have exceptions. For example, New York excepts the owner-occupied house where they rent another apartment.

Would it make any difference to you if the Federal law would preempt such statutes and exemptions that apply to owner-occupied premises?

Mr. LEVITT. I think it would make a difference, Mr. Chairman. I think that unless title IV is passed almost exactly as it is written, it will be watered down to the point where it will defeat its purpose. I think if you give me as a builder competition from someone who is not under the same set of ground rules, that I am going to suffer.

I think you are going to—not quite as much as we have now—but I think you are going to put us pretty much in a similar condition to what we are now.

The CHAIRMAN. So you would favor title IV as it is now written?

Mr. LEVITT. I would; yes.

The CHAIRMAN. Despite the fact that it preempts these State statutes?

Mr. LEVITT. Oh, I think so.

The CHAIRMAN. The Chair wishes to note the presence in this room of the very distinguished former Governor of the Commonwealth of Pennsylvania, Governor Lawrence, who is also chairman of the President's Committee on Equal Opportunity in Housing.

Governor, we welcome you to this conclave here.

Governor LAWRENCE. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Levitt, we are grateful to you for coming down here and giving this testimony that is quite contrary to the very, very many letters we are receiving from real estate operators, real estate brokers. I am inclinded to take your expert view on this matter.

Mr. LEVITT. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Our next witness is Mr. Andrew Heiskell, chairman of the board of Time-Life, New York.

Mr. Heiskell?

STATEMENT OF ANDREW HEISKELL, CHAIRMAN OF THE BOARD, TIME, INC.

Mr. HEISKELL. Mr. Chairman, I am appearing in support of title IV of the 1966 civil rights bill.

One outside activity to which I devote considerable time is Urban America, of which I am board chairman. For some 12 years I have worked actively for this nonprofit organization and its predecessor, the American Council To Improve Our Neighborhoods. Urban America is a private organization that works with private and public agencies throughout the country to improve the quality of life in American towns and cities. Its directors, of whom there are 24, are businessmen, city planners, developers, and union leaders.

If I may, I would like first to speak personally as a citizen. As such it is my conviction that true democracy in this country requires, in addition to many other conditions, that every citizen have an equal opportunity to buy or rent housing without regard to his racial or religious origin.

However, far more is at stake today than personal theory or ideology. It is no exaggeration to say that we are now at the point where the

social, economic, and physical future of our metropolitan complexes is dependent on the elimination of racial segregation.

As this committee well knows, many, if not most of our metropolitan areas are well on their way to becoming central core inhabited by Negroes surrounded by suburbs that are almost exclusively white. The core ghettos have become the centers of economic, social, educational, and health problems. The white ring is more and more disavowing any concern for the cities without which the subrubs would be meaningless.

It is regrettable, but it must be admitted that Government policy and private enterprise have jointly contributed to this tragic result. Heavy migration to the cities, combined with lack of construction during the depression and World War II, built up an enormous pressure in terms of housing needs. The most obvious immediate answer was to construct millions of units on open suburban land.

With the help of the Federal Housing Administration and the Veterans' Administration, the home building industry was able to bring about a seeming quantitative answer to these needs. In an expanding economy new housing was built for those who could pay the full price, but thereby relegating the Negro to the central city because of his generally low income.

Furthermore, FHA's conservative mortgage appraising policies, by stressing stability within a social and racial context, reinforced the division between the black core and white suburbia.

In the same period, and with the best of intentions, the Public Housing Administration not only erected most of its buildings in central areas, but also set maximum income levels for admissibility, thereby automatically excluding all but a small minority of white citizens.

These polices, multiplied by a natural tendency toward racial discrimination on the part of many individuals and groups, have brought us to our present situation—one which, moreover, is self-sustaining. For in the core of the city live the young minority families swelling in number at a tremendous rate, while a considerable proportion of the white inhabitants are single or elderly. In the suburbs we mostly find young white families who also are multiplying rapidly.

The economic and social consequences of these trends are inescapable. We see the cities, with a continuously eroded tax base, faced with enormously increasing costs in terms of welfare education, police, and housing. Bitter and discouraged, our minorities are exploding into violence.

I would be the last to argue that title IV will solve all of these problems. Far from it. Yet it is the first essential step. It may not open the doors wide, but it will unlock them. It will make it possible for a builder to promote open occupancy because he will no longer have to worry about a less fair-minded competitor selling segregated housing.

Under the present system a part of the financing mechanism is under fair housing regulations, while the bulk is free to operate as it pleases. Compliance can only be achieved if all must abide by the same rules.

Passage of title IV will make the work of the hundreds, if not thousands, of voluntary fair housing committees much more resultful.

These grassroots organizations have already, in many instances, accomplished what was once thought impossible.

I do not give much credence to those who imply that this bill will cause chaos in housing. In fact, it will not bring about a sudden dispersal of Negro households into white neighborhoods. Most Negroes could not afford to move and for that matter, many would not care to any more than many Italians or Jews want to leave their particular neighborhoods.

But it is a right which some will take advantage of and others will know they have, even though they do not exercise it for other reasons. And, of course, gradually the dispersal will occur as other measures are taken to improve the lot of the underprivileged minorities.

This problem must be tackled step by step starting now. Title IV is the urgent first step and I therefore hope the committee and the Congress of the United States will see fit to enact the fair housing provisions of the Civil Rights Act of 1966.

Thank you, gentlemen.

The CHAIRMAN. What is the organization called? American Council To Improve Our Neighborhoods?

Mr. HEISKELL. There were two organizations. One was the American Council To Improve Our Neighborhoods, and another organization. They were merged and are now called Urban America, Inc.

The CHAIRMAN. Have they spread all over the country?

Mr. HEISKELL. It is really a national clearinghouse that helps other private organization and public organizations throughout the country to try to find answers to the problems that face us, to try to exchange experiences, knowledge, know-how, to try to stimulate activity in this field.

The CHAIRMAN. As chairman of the board of Time, Inc., may we cherish the hope that the magazine Time will editorially support your point of view?

Mr. HEISKELL. I think the record would show, sir, that all our magazines have supported the cause of minority groups quite actively——

The CHAIRMAN. Will they support this bill?

Mr. HEISKELL. I don't know whether they will specifically, but they are certainly in favor of it.

The CHAIRMAN. Will they support title IV, do you think?

Mr. HEISKELL. My colleagues are of the same opinion as I am.

The CHAIRMAN. That is very encouraging. Can that hold good also for the magazine Life and for Fortune?

Mr. HEISKELL. Yes, sir. I have discussed the matter with our editors. We have always felt this way, this is nothing new.

The CHAIRMAN. I am happy to hear that.

Mr. McCulloch?

Mr. MCCULLOCH. No questions.

The CHAIRMAN. Thank you very much for coming down and revealing this to us, because it is something that we are very, very anxious to hear. The magazines and you as chairman of the board of the company that owns them have expressed views which are so enlightening.

I want to thank you very much, sir.

Mr. HEISKELL. Thank you, Mr. Chairman.

The CHAIRMAN. The next witness is Mr. Joseph Rauh, the vice chairman of the Americans for Democratic Action.

Mr. Rauh, and are you accompanied by Mr. Clarence Mitchell, who is the director of the Washington bureau of the National Association for the Advancement of Colored People? I want to ask at this point, is Dr. Duncan Howlett in the room?

Dr. HOWLETT. Yes.

The CHAIRMAN. All right; thank you.

STATEMENT OF CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. Mr. Chairman and members of the committee: I am Clarence Mitchell. I would like to indicate what we are trying to do here.

As you know, Mr. Roy Wilkins came in and spoke for the Council on Leadership Rights on Tuesday, and it was our hope that any technical questions that Mr. Wilkins did not answer would be answered by Mr. Rauh, and I would present for the record matters which would substantiate points made in Mr. Wilkins' testimony.

This, of course, is for the purpose of conserving the committee's time. I have discussed with Mr. Rauh, Mr. Chairman, your question about the effect of the 11th amendment on our proposal to indemnify the victims of violence in civil rights matters. I think I will open his statement, addressing himself to that question.

The CHAIRMAN. I would like to get your view, Mr. Rauh, if I can, on the question of founding title IV on the interstate commerce laws.

STATEMENT OF JOSEPH L. RAUH, JR., VICE CHAIRMAN, AMERICANS FOR DEMOCRATIC ACTION

Mr. RAUH. Thank you, Mr. Chairman. I appear here this morning, as does Mr. Mitchell, in our capacities as general counsel and legislative chairman of the Leadership Conference on Civil Rights, to supplement the testimony given the day before yesterday by Mr. Roy Wilkins.

At that time Mr. Wilkins suggested we would be available to the committee to answer any questions it might have.

First, I was told that a question had arisen under one of the four amendments the leadership conference is proposing. We are proposing the amendments outlined by Mr. Wilkins. One of the amendments and one on which we feel very strongly is the need for some indemnification procedure for those Negroes and civil rights workers injured in the civil rights struggle.

A question has been raised whether the 11th amendment would forbid the Federal Government from suing a State to recover the amount of funds which the Federal Government pays out to the individual who has been injured or to his family.

I think the case of *U.S.* v. *Mississippi* in 380 U.S. settles the question authoritatively. It not only permitted the Federal Government to

sue the State of Mississippi, but in language as clear as could be, the court ruled as follows:

> The 11th Amendment in terms forbids suits against states only when commenced or prosecuted by citizens of another state or by citizens who are subjects of any foreign state. While this has been read to bar a suit by a state's own citizen as well, nothing in this or any other provision of the Constitution prevents or has ever been seriously supposed to prevent a state's being sued by the United States.

Then it goes on to elaborate on that.

Mr. ZELENKO. Mr. Rauh, did that case involve tort liability?

Mr. RAUH. No, but I do not see that the principle is any different, Mr. Zelenko. And I would be glad to go through the additional cases. Since the answer is so clear. This Mississippi case is the only one that I brought along this morning. But if the question in your mind is whether the rule would be different in a tort liability case, I would be glad to present a memorandum on that.

I cannot believe that the language there which was so flat was not intended to cover the whole subject, but that——

The CHAIRMAN. As I read the 11th amendment, we have as follows:

> Judicial power of the United States should not be construed to extend to any suit at law or equity, commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state.

This is pretty dogmatic, is it not?

Mr. RAUH. It does not anywhere say, though, "by the United States of America." And it is the United States of America which would bring the action under the indemnity provision that we are proposing.

The CHAIRMAN. You make a distinction because the words "of America" are not used after the words "United States"?

Mr. RAUH. No, sir.

The CHAIRMAN. You claim then that the claimant would be the United States rather than a private individual?

Mr. RAUH. Yes, Mr. Chairman. And that is the way the indemnity section is written in the bill that I referred to, the bill of Congressman Diggs. It is also in the bill introduced in the other body by 21 Senators.

The CHAIRMAN. But the benefit of the suit would be the individual, would it not?

Mr. RAUH. No, sir; the individual recovers first and irrespective of whether the United States would recover from the State.

Under the provision in Congressman Diggs' bill, and it is in some others, the United States pays out the money to the injured person or his family. Whether the Government can recover or not, that money is paid out. Therefore, at the time the United States sues, it is not the individual who has any rights. It is the United States of America, because they have already paid the funds to the individual. I do not believe there is any reasonable chance that the 11th amendment would apply to that, sir.

The CHAIRMAN. It is pretty strange construction, but it may muster. I don't know.

Mr. MITCHELL. Mr. Chairman, I would just like to interpose that in that Mississippi case, the Supreme Court addressed itself very strongly to that question, because the State of Mississippi had attempted to get

out from under by saying that the Government of the United States had no right to sue it.

I just cannot see why there is any legal problem connected with this.

The CHAIRMAN. The case was not squarely before the Supreme Court that the United States could sue for damages against another State for injuries in civil rights. The benefit would be to the individual who was hurt.

Mr. RAUH. Sir, I think it would be a close case if the United States, instead of paying the money to the individual, brought a suit against a State on behalf of the individual. I think that would, in fact, be a close case.

That, however, is not the case here. Under the bill for indemnification, as we propose it and urge upon this committee, the Federal Government pays the indemnification and pays even though it would not bring a suit against anybody. It would not in all instances bring the suit.

In other words, the transaction involving the Federal Government is complete upon payment, and, therefore, I think the situation where the Federal Government would be suing on behalf of an individual is not the case we have. If you had that, I would admit it would be a close case.

Mr. ZELENKO. Mr. Chairman, I think the issue arose previously with respect to other indemnity provisions which authorized a suit by an individual against the State, establishing a State liability by Federal statute. In that connection the question was raised in prior hearings as to what authority there would be for a Federal enactment imposing tort liability on a State.

Mr. RAUH. I think that is exactly right, Mr. Zelenko. I think it is the bill of the gentleman from Maryland, Mr. Mathias and some of his colleagues, that raises this legal problem, and it is a problem there, it seems to me, although I do not think the answer is necessarily one way or the other. But in the proposal we are making, the one that was drafted by the leadership conference on the indemnity issue, I do not think there is an 11th amendment problem, sir.

I think Mr. Zelenko properly stated the difference between the two types of bills and where there is this problem.

Second, the chairman asked me to address myself to the constitutional question concerning title IV under the interstate commerce clause. I believe, sir, that title IV is a valid constitutional provision, both under the interstate commerce clause and under section 5 of the 14th amendment.

I think you will recall that I spent a full morning with your subcommittee on public accommodations in 1963, arguing for both theories for the public accommodations section. I think at the end the committee more or less agreed on using the interstate commerce clause as the major basis of title II of the 1964 law.

I think both constitutional cases can be used here. I believe both do give Congress the power to enact the housing title. I thought the testimony which we just heard from Mr. Levitt was conclusive on the general subject of the movement of goods, finance and people, all three, in the housing field.

Some people say, what about a house that has been there for 50 years? You still have the movement of finance and people, although

I would have to admit that those bricks have come to rest for some considerable time. But you still have movement in this country and the interstate commerce clause, it seems to me, has now been so broadly construed as to give Congress pretty much authority to deal with any subject that can be truly called a national problem.

I can think of no subject today in which a national problem arises, such as this one, where the Supreme Court would not uphold the power of Congress to act under the interstate commerce clause through the movement of some matters, such as finance and people, even if goods don't move.

But certainly here Mr. Levitt made perfectly clear that practically all of his materials come from outside the State.

I would, however, urge you, Mr. Chairman, not to underestimate the strength of section 5 of the 14th amendment, especially in view of the Supreme Court's most recent cases in which they practically say that section 5 of the 14th amendment has been underused by the Congress.

I felt very good about the *Price* and *Guest* decisions, in part because I had urged upon this committee the widest use of section 5 of the 14th amendment. I feel that Congress can properly put its title IV on both bases.

The CHAIRMAN. In other words, the Supreme Court has interpreted section 5 as being that broad.

Mr. RAUH. That's the way I read the most recent decisions, sir. It was very unusual for the Supreme Court to have made this kind of a statement, practically inviting Congress to use section 5. I think that was an unusual type of urging for the Court and must evidence a strong position on its part.

The CHAIRMAN. Any questions?

Thank you very much, Mr. Rauh and Mr. Mitchell.

Mr. MITCHELL. I had not finished, Mr. Chairman. I wanted to insert a couple of things briefly, Mr. Chairman.

In Mr. Wilkins' testimony he mentioned the fact that we need to give the Attorney General the power to institute suits on behalf of parents because of difficulties that these parents face when they undertake such actions independently.

I would like to——

The CHAIRMAN. We have that in the bill.

Mr. MITCHELL. That is correct. Just by way of substantiation, I want to ask that there be included in the record the statement of Mr. Jasper Brown, who is now living at 2606 24th Street NE., Washington, D.C. This is a man who——

The CHAIRMAN. We have that on file already, Mr. Mitchell.

Mr. MITCHELL. Right. I am not reading it, I am only asking that it be included, because this is a man who was arrested, given 4 months in jail, had to pay a hospital bill——

The CHAIRMAN. I think it might raise an extraneous question. Let it be on file, Mr. Mitchell.

Mr. MITCHELL. I am not sure I understood how you were disposing of that.

The CHAIRMAN. I didn't hear the last.

Mr. MITCHELL. I am not sure I understood how you meant that.

The CHAIRMAN. It is on file. It is not in the record.

Mr. MITCHELL. Is there any particular reason? The reason I say this, Mr. Chairman, I find——

The CHAIRMAN. The Chair has ruled.

Mr. MITCHELL. I know it has, but I wanted to say, respectfully, that I get so weary of somebody saying that Negroes are asking for this legislation without justification and then when we give the stories of the flesh-and-blood victims, there is some question about them. But here is another thing I would like to offer for the record, which I do not think would lead to a technical problem.

That is a statement from the office of the superintendent of Wilcox County in Camden, Ala., calling on the colored parents not to let their children go to——

The CHAIRMAN. I would like see that before I admit it. Let the Chair rule later on that.

Mr. MITCHELL. All right.

The other thing which I would also like to ask, subject to your later scrutiny, to go into the record, is a statement from Mrs. Cary Perry, who lives in Elmore County, Ala., indicating the problems that her children have been confronted with when they tried to go to desegregated schools. The wonderful statement which she makes at the end is indicative——

The CHAIRMAN. This letter from the office of the superintendent of Wilcox County to the parents and guardians from the Wilcox County Board of Education, that seems appropriate for the record and that will be accepted.

(Letter follows:)

OFFICE OF SUPERINTENDENT OF WILCOX COUNTY, CAMDEN, ALA.

To: Parents and guardians.
From: Wilcox County Board of Education.

The Justice Department has filed suit against the Wilcox County Board of Education in Federal Court, the purpose of which is to prohibit the Board from operating a dual school system in the County as it has done in the past.

In an effort to prevent the destruction of the school system of Wilcox County as we know it and realizing what is best, we are asking that you promote and encourage your children to continue in the schools in which they are now attending. In our honest opinion, integration or desegregation is not good for education; it is against sound educational principles and works to the disadvantage and to the detriment of both races. It is our further opinion that in all this controversy the person who has invariably suffered is the child.

The Wilcox County Board of Education intends to do all in its power to continue to work towards complete equality of educational opportunity for every child in the County regardless of race, color or creed.

The people of this County will, in all probability, have to continue to live here in this County together after the influences from without have ceased. It is best for all if they can do so in a mutual spirit of good will. We all need the good will and support of our fellow citizens.

Thank you for your understanding and assistance in all our mutual school problems.

The CHAIRMAN. What is the other one?

Mr. MITCHELL. The other is a statement from Mrs. Cary Perry. She indicates how her children have been harassed while attempting to attend desegregated schools, but the marvelous thing about this is the last line. It is dated October 25, 1965. The last line says: "My home was burned down Saturday night, October 23."

The CHAIRMAN. Let me see that before I admit it for the record.

I don't want to clutter the record up with a lot of extraneous matters, Mr. Mitchell.

Mr. MITCHELL. I understand that, Mr. Chairman. When you get on the floor and do your usual wonderful job, I just would like to have you in possession of some facts.

The CHAIRMAN. We could use them on the floor, even if they are in the files. I like to see these things first.

This lady—we have letters like this by the hundreds. There is no use putting that in the record. We have that information. We will put that in the file. You do not need that, Mr. Mitchell.

Mr. MITCHELL. If the chairman will just take judicial notice of the fact that we could provide a great deal of information.

The CHAIRMAN. I know you can. I can dig out of my own files hundreds of those kinds of letters. There is no reason why we should fill the record with all that.

Mr. MITCHELL. I am glad to hear you take that position, because some of the people who come before the committee seem to act as though Negroes are not having any problems, and the reason they are not in these desegregated schools is because they do not want to go.

The CHAIRMAN. Nobody knows that better than the members of this committee, Mr. Mitchell. You know that.

Mr. MITCHELL. I know that. I am always ready to support it with evidence.

The final thing I would like to bring to your attention, subject to rejection if you do not think it proper to have it come in, is some correspondence that I have from a Capt. Vernon Jigg, who was stationed at Fort Sill, Okla., and is now in Texas. He came back from Vietnam where he served his country on a helicopter, and he was offered some housing at a place called the Northgates Apartments in El Paso, Tex. He paid his money, and he had every reason to believe he would be admitted; then he discovered that even though he is a soldier in the U.S. Army and taking special training to make him a better fighting man on a return trip to Vietnam, he was turned down on the basis of his race.

In conclusion, Mr. Chairman, I would just like to say that this committee and the work that it has done has, in my opinion, saved this country from a blood bath, I think that the fact that you have removed from the area of controversy disputes in places of public accommodation has made it possible for many communities to enjoy peace that they otherwise would not have been able to enjoy.

I think it is terrifically important that your committee continue its great work in the field of housing, because I can see how we are on the brink of people willfully bringing about community stresses and strains over these issues of housing.

You have only to go to the city of Baltimore, Md., where there is currently a dispute raging in which some people have been picketing a place which excludes Negroes on the basis of race.

The Ku Klux Klan showed up with police dogs and with heavy flashlights that could be used for clubs, and with picket signs that had sticks hung on them that could also be used for clubs.

Had it not been for the wisdom of the police commissioner, General Gelston, who was in charge, there could have occurred on the day that they showed up on the scene a terrific amount of violence. If we are going to remove these controversies from the streets, we have to do it

by the passage of this legislation. And you have done such a wonderful job in that respect, I just hope that you are able to do so again.

The CHAIRMAN. We are doing our best, I assure you. Thank you very much.

Mr. MCCULLOCH. Mr. Chairman?

The CHAIRMAN. Excuse me.

Mr. MCCULLOCH. I would like to ask Mr. Mitchell one question. I, of course, should have asked Mr. Young this question because the figures come in this statement, but if you have the answer, I will be glad if you give it, and I will certainly understand if you do not have it.

I am reading from page 16 of Mr. Whitney M. Young, Jr.'s last paragraph on that page:

> Even today as we sit here, all of us must be conscious that though the Negro represents about 10 percent of the population of this country, 20 percent of our troops in Vietnam are Negro and they are dying at a more rapid rate than other soldiers because they tend to choose the high-hazard assignments in a war 10,000 miles from home, a war our leaders have described as a war for freedom.

Do you know the basic reasons why there should be twice as many Negroes in proportion to population committed to war in Vietnam, as other American citizens?

Mr. MITCHELL. I have heard the Department of Defense's explanation of it, Mr. McCulloch, and it is as follows:

The Department says that there was a higher enlistment rate of Negroes in the combat units, partly for patriotic reasons and partly because this represented an opportunity for a career in military life that did not exist in civilian life. They are now, according to the Department of Defense, in the units which ordinarily would carry the brunt of the fighting and for that reason, since they were there in larger numbers by enlistment and choice, this necessarily results in a larger rate of casualties.

I might say that this also was mentioned by Senator Richard Russell, chairman of the Armed Services Committee, after he came back from Vietnam and said that he had noted in his travels a large number of noncommissioned Negro officers who were there as career men.

Mr. MCCULLOCH. So then your answer is that it is upon the choice of the Negro rather than any other choice?

Mr. MITCHELL. The Department of Defense has given that explanation and I do not have any reason for doubting it. I don't think it is an effort just to assign Negroes to hazardous positions.

The CHAIRMAN. Thank you very much, gentlemen.

Our final witness this morning will be the Reverend Duncan Howlett of the Unitarian Universalist Association.

First, I just want to put in the record, if you don't mind, sir, a telegram from Edwin J. Lucas, also with the American Jewish Committee, and a letter from Allan R. Rubin, of the Allan Rubin Homes, Inc.

(Documents follow:)

NEW YORK, N.Y., *May 16, 1966.*

HON. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives, Washington, D.C.:

The American Jewish Committee associates itself with Roy Wilkins testimony in behalf of the leadership conference respecting H.R. 14765.

EDWIN J. LUKAS.

ALLAN RUBIN ARBOR HOMES,
Hamden, Conn., May 16, 1966.

Congressman EMANUEL CELLER,
House Judiciary Committee,
Washington, D.C.

DEAR CONGRESSMAN: I am writing to express my support of Title IV of the Civil Rights Act of 1966. As head of a company engaged in building and selling homes I feel that operating within the framework of fair housing is good business. However, I believe that it is important that all those engaged in this field should operate under the same rules.

In addition, I want to make it clear that I feel very strongly that this act is morally right, and conforms to the American principle of giving everyone an equal chance for a better life.

Yours truly,

ALLAN R. RUBIN, *President.*

The CHAIRMAN. Proceed.

STATEMENT OF REV. DUNCAN HOWLETT, UNITARIAN UNIVERSALIST ASSOCIATION

Dr. HOWLETT. Mr. Chairman, I am Duncan Howlett, minister of All Souls Church, Unitarian, of Washington, D.C., and chairman of the Washington advisory committee to the Department of Social Responsibility of the Unitarian Universalist Association.

With your permission, instead of reading all of my prepared text I have here, since much of it is repetitive of points already made, I would like to emphasize some of the points.

First, our population is going through a social revolution with its goals, that of attaining equal rights for all citizens in this country, and our purpose is to keep this revolution going, to keep it bloodless, as it has been for the most part, and to discuss a point made a little earlier, to keep it basically evolutionary in character.

I would like also to stress what we believe fundamental, and that is the role that the Congress has played in this revolution for it has, step by step, kept pace with it by providing the needed legislation, which has made it possible to channel this revolution through peaceful and nonviolent means.

Civil rights legislation passed in 1957, 1960, 1964, and 1965 has brought advances in public school desegregation, opening the voting rolls to all, desegregation of public accommodations and public facilities, breaking down barriers in employment and desegregation in Federal aid programs.

Now, once again, for the fifth time in 9 years, the Congress is asked to enact legislation to secure civil rights and, for the first time, is asked to declare national legislative policy in the field of equal opportunity in housing.

I am here because the Unitarian Universalist denomination has had a long commitment to human rights, expressed through word and deed, through resolutions passed at our general assembly, and through frontline participation by our ministers and laymen in the civil rights movement.

I am appending to this testimony two representative resolutions adopted by the Unitarian Universalist Association in 1965. I should like to add at this very moment, this morning, there is before our general assembly, which is meeting in Miami, Fla., a comprehensive

statement of consensus on racial justice. As far as I know, it has already been passed or is being debated since they are on eastern standard time, or an hour behind us.

I have every reason to think that this statement will be passed, as it is for the most part based on resolutions we have already passed.

Taking up the separate titles in the bill. Titles I and II, we heartily endorse, but I should like to add that we support the automatic triggering device similar to that enacted in the Voting Rights Act of 1965, where as you know Federal examiners or registrars are often authorized to be sent into any State where that State's voter registration or total vote in the 1964 presidential election was less than 50 percent of the voting age population. This has proven to be a most effective way of getting the desired goal achieved, as witness the registration of thousands of new Negro voters in the Deep South.

Here I should like to interrupt again the written statement to refer to the article in the New York Times this morning which our chairman noted, referring to the speech by Chief Justice Warren.

I, like all of us, have the most profound respect for the Chief Justice. I certainly defer to him in every aspect of the law of the land and, like all the rest of us, am proud of the record that the Supreme Court has made under his leadership.

If he thinks in his wisdom that we can go too far in our attempt to control the selection of juries, it would not be for me to say this is not true. However, you perhaps noticed that the reporter in the Times said that he did not think the comments of the Chief Justice referred to the bill which we have before us. I should like to hazard the opinion that the automatic triggering device which is in the Voting Rights Act of 1965 might not also contravene State's rights.

Going on to title III, nondiscrimination in public education and other public facilities.

Again, I can say that our church is virtually unanimous, including almost all of our people, in support of a title of this kind.

On title IV there has been a great deal of discussion this morning and I will not take a long time to comment on it except to answer a question which seemed to me to be quite pertinent asked by Congressman Rogers earlier. I think he is not here now, but I should like to comment on that, if I might.

He was asking if under this title a person with a house to sell would be forced to sell to a Negro. In my opinion, the answer to that question is, "No." He is not forced to sell to anyone. What he is forced to do is to show his house to everyone and to accept any offer by whomever made, as we do in all ordinary commercial transactions. The first offer that is made closes the contract. The problem is right now if a Negro wishes to accept such an offer, he may or he may not get the contract and usually he does not.

The purpose of this title, as I understand it, is to put the Negro on the same footing as the rest of us, which is all he is asking for and all those of us who are supporting this bill are asking for.

I can only add that we are impressed with the broad coverage of this title and again we heartily endorse it, although I would like to make one additional point here, if I may.

We feel the housing title may have the same defect which is found in the equal employment opportunity title of the Civil Rights

Act of 1964, namely, that reliance for enforcement is placed on the courts and no administrative remedy is possible.

This title would be greatly strengthened, we feel, if an administrative agency—a Commission on Equal Opportunity in Housing, for example—were empowered to issue cease-and-desist orders when it finds cases of discrimination in housing. Of course, to safeguard rights of all parties, judicial review of administrative actions should be provided.

Coming to title V, here I would like to expand on my remarks, because this comes closest to me. I mean, myself personally, not only I as a Unitarian minister, but I as a man who has known people who have put their bodies on the line for civil rights.

Tragically, as the advances in civil rights and equality under the law have been made, certain persons, feeling they can no longer preserve the old ways of segregation and subjugation by legal means, have resorted to terror and violence.

The night rider and the bomber and sniper have made their reappearance in American life. Striking in the nighttime on a lonely road, or even in broad daylight on a peaceful Sunday morning, these terrorists have sought to cow the Negro into acceptance of the second-class station in life which has been his too long. And the white person who tries to aid the Negro in his cause finds that he, too, is in danger of life and limb from these same cowardly terrorist elements.

The list of the victims of terror is long and it is interracial—the four little Sunday school girls in Birmingham—Addie Mae Collins, Denise McNair, Carol Robertson, Cynthia Diane Wesley; the three civil rights workers, two white, one Negro, killed in Philadelphia, Miss.—Michael Schwerner, Andrew Goodman and James Chaney; Medgar Evers, shot and killed in front of his Jackson, Miss., home; Lemuel Penn, gunned down on a Georgia highway; and last spring, in fast succession, Jimmie Lee Jackson, fatally wounded by police in Marion, Ala., the Reverend James Reeb mortally clubbed in the streets of Selma, and Mrs. Viola Greeg Liuzzo, shot to death on Highway 50 following the Selma-Montgomery march; and last summer, the Reverend Jonathan Daniels shot and killed by a deputy sheriff in Hayneville, Ala.

Many more killings, physical assaults and bombings could be listed. Most of these crimes are unsolved, and the killers and assailants have gone unpunished. It goes without saying that much of the violence has taken place because the perpetrators thought they could commit these acts with impunity—they knew that Southern white juries would acquit regardless of evidence and they knew there is no Federal crime for murder, and penalties under the old Reconstruction statutes are light.

Some 93 deaths attributable to race or civil rights activity have been documented by the Southern Regional Council from May 1957 to September 1965. Birmingham has had at least 29 bombings since 1957. Some 35 churches were burned—and I have been in the South and seen it—and 31 homes and other buildings bombed or burned in Mississippi in a 4-month period of 1964.

Now, this terror hit home to those of us of the Unitarian Universalist movement in the past year, and to me as an individual. Epecially

because James J. Reeb, a dedicated young man who worked hard in this city and in Boston to help the poor and defenseless and to bring the races together, and one of our ministers, was killed.

May I add a personal word. He was my friend; he was my assistant at All Souls Church here in the city and he was not the kind of flamboyant man who seeks trouble. He was the kind of man who loves his fellow man and was willing to commit himself to this cause.

The second is Donald A. Thompson, formerly minister of our church in Jackson, Miss. I visited him there a year ago. He virtually organized alone and ran for a while the Mississippi Council on Human Relations, and he was struck down last summer in a shotgun ambush within a few days of the slaying of Jonathan Daniels.

Fortunately Mr. Thompson survived, but he has had to leave Mississippi.

Title V would do much to strengthen the defects found in both sections 241 and 242 of the U.S. Criminal Code, in that it specifies the rights protected by the Constitution and the 14th amendment. Furthermore, it makes violations of these rights punishable by penalties that fit the crime. Whereas, sections 241 and 242 carry maximum sentences of 10 years and 1 year, respectively, this new title will carry a maximum sentence of life imprisonment for taking a life.

Coupled with the jury reforms in this bill, these new penalties ought to serve as strong deterrent to the terrorists, and go far toward protecting the right of Negroes, workers for civil rights and peaceful demonstrators.

We would ask, additionally, that there ought to be provision made for civil indemnification—you have heard this point before—of the victims or survivors of victims of racial assault. Insofar as it is proved in proper hearings that the injury or death resulted in whole or in part from action taken under color of law, the political subdivision and/or the State under whose authority such action was taken should be held liable along with the person or persons committing the act of assault.

One final point: We believe an additional title ought to be created in this bill, to correct deficiencies in title VII of the Civil Rights Act of 1964, dealing with equal employment opportunity. As mentioned earlier, one of the great defects in the employment title of the 1964 act was that it did not provide the administrative agency—in this case the Equal Employment Opportunity Commission—the power to issue cease-and-desist orders upon making a finding of an unfair employment practice.

Instead, the 1964 law, on the one hand, relies heavily on mediation and conciliation—and certainly these are important first steps—and, on the other hand, upon bringing suit into court as a last resort.

The Commission should have an administrative enforcement power as other Federal regulatory agencies and as already exist in 27 State fair employment agencies.

Also, it would be desirable, we feel, for the equal employment opportunity title to cover public employees on State, county, and municipal levels. Federal employees are covered presently by Executive Order, but the administration of justice in many parts of our land is distorted by all-white officials and personnel in State and county courthouses and police forces.

We therefore recommend that a new title VI incorporate the excellent provisions of H.R. 10065—the Hawkins bill—which passed the House on April 27 by overwhelming vote and that these provisions be amended to cover State and local public employees.

In conclusion, I think President Johnson expressed it well in summing up his civil rights message to Congress of April 28 when he said:

> We are engaged in a great adventure—as great as that of the last century, when our fathers marched to the Western frontier. Our frontier today is of human beings, not of land.
>
> If we are able to open that frontier, to free each child to become the best that is in him to become, our reward—both spiritual and material—will exceed any that we gained a century ago through territorial expansion.

The Unitarian Universalist Association strongly supports the Civil Rights Act of 1966, with strengthening amendments, and urges this committee and the Congress to speedily enact it into law.

The CHAIRMAN. I think we will place your entire statement in the record.

(Statement follows:)

STATEMENT OF REV. DUNCAN HOWLETT, D.D., REPRESENTING THE UNITARIAN UNIVERSALIST ASSOCIATION

I am Duncan Howlett, minister of All Souls Church, Unitarian, of Washington, D.C. and chairman of the Washington Advisory Committee to the Department of Social Responsibility of the Unitarian Universalist Association. I appear here today to support, H.R. 14765, a bill to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

America is going through a social revolution, a movement with its goal that of attainment of equal rights for all citizens of this great country.

Congress has, step by step, kept pace with this revolution by providing the needed legislation which has made it possible, to channel this revolution, for the most part, through peaceful, nonviolent means. Civil rights legislation passed in 1957, 1960, 1964 and 1965 has brought advances in public school desegregation, opening the voting rolls to all, desegregation of public accommodations and public facilities, breaking down barriers in employment and desegregating Federal-aid programs.

Once again, for the fifth time in nine years, the Congress is asked to enact legislation to secure civil rights and, for the first time, is asked to declare national legislative policy in the field of equal opportunity in housing.

The Unitarian Universalist denomination has had a long commitment to human rights, expressed through word and deed, through resolution and through frontline participation by our ministers and laymen in the civil rights movement. I am appending to this testimony two representative resolutions adopted by the Unitarian Universalist Association in 1965.

I would like to take up each Title of the bill, in order, and comment on each:

TITLES I AND II—FEDERAL AND STATE JURIES

We are in general accord with the provisions of Titles I and II relating to insuring fair representation of a cross-section of the community on grand and petit juries in federal and state jurisdictions. However, we wonder if too much reliance is placed on the defendants or litigants to initiate action on discrimination in selection of jurors.

We suggest consideration be given an "automatic" triggering device similar to that enacted in the Voting Rights Act of 1965 where, as you know, federal examiners, or registrars, are authorized to be sent into any state where that state's voter registration or total vote in the 1964 Presidential Election was less than 50 percent of the voting-age population. This has proven to be a most

effective way of getting the desired goal achieved as witness the registration of thousands of new Negro voters in the Deep South.

Federal action to insure representative juries should be triggered upon a finding that, over a certain period of time, the jury selection failed to adequately reflect a cross-section of the population of the district.

An acceptable formula is found in the Douglas-Case Bill, S. 2923, providing federal action "whenever it is shown that over a period of two years the ratio which the number of persons of any race or color within the county or other political subdivision bears to the total population of said county or other political subdivision exceeds by one-third or more the ratio which the number of persons of that race or color serving on grand and petit juries bears to the total number of persons serving on such juries, or the ratio which the number of persons of that race or color registered to vote bears to the total number of persons registered to vote . . ."

TITLE III—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

We are delighted that the administration is providing better enforcement tools for achieving desegregation of public schools and public facilities by giving the Attorney General power to institute civil actions in these cases. It was placing too heavy a burden on individual persons, subject to extreme community pressures and intimidation, to take the initiative by written complaint as provided in the 1964 Act. And it was a needless time-waster to require the Attorney General to sue only if he determines that the aggrieved person or other interested groups are unable to afford the burden of litigation themselves.

Adoption of Title III should speed up the process of desegregation of the public schools and other public facilities. It is now twelve years since the Brown Decision and according to the U.S. Office of Education, only 7.5 percent of the Negro students in the eleven states of the Deep South are enrolled in school this year with white pupils. This is still tokenism and unfair to a generation of children.

TITLE IV—PREVENTION OF DISCRIMINATION IN THE SALE OR RENTAL OF HOUSING

President Johnson has thrown down a challenge to all of us to break the vicious circle of discrimination and segregation by attacking head-on the problem of the ghettoizing of the Negro and other minority groups. This is a problem of increasing severity in our Northern cities and metropolitan areas. The Negro, the Puerto Rican, the Mexican-American has not generally, been able to participate in the great post-World War II move to the suburbs of his white brother. The move outward from the core city, with its decaying slums and drab neighborhoods into the suburbs with their new homes and with new well-equipped and staffed schools to serve their children, has meant a liberation for many millions of our people. The members of minority groups have not shared in this liberation and instead have been kept confined to the least desirable neighborhoods by a "white noose" around the core cities.

We are impressed with the broad coverage of this title and we think it extremely important that the Congress make manifest, as in Section 401 that "It is the policy of the United States to prevent, and the right of every person to be protected against, discrimination on account of race, color, religion, or national origin in the purchase, rental, lease, financing, use and occupancy of housing throughout the Nation."

We are disappointed that the President did not see fit to do by executive means what he is now asking by legislative means. We would rather have had him extend President Kennedy's Executive Order No. 11063 on Equal Opportunity in Housing to include all mortgage loans made by financing institutions which are regulated or supervised by the Federal Government and to broaden coverage of the Order to include all federally-assisted housing, not just that built after November 20, 1962.

Also, we feel the housing title may have the same defect which is found in the equal employment opportunity title of the Civil Rights Act of 1964; namely, that reliance for enforcement is placed on the courts and no administrative remedy is possible. This title would be greatly strengthened if an administrative agency—a Commission on Equal Opportunity in Housing, for example—were empowered to issue cease and desist orders when it finds cases of discrimination in housing. Of course, to safeguard rights of all parties, judicial review of administrative actions should be provided.

TITLE V—INTERFERENCE WITH RIGHTS

This title is, perhaps, the most urgently needed civil rights reform at this time. Tragically, as the advances in civil rights and equality under the law have been made, certain persons, feeling they can no longer preserve the old ways of segregation and subjugation by legal means, have resorted to terror and violence. The night rider and the bomber and sniper have made their reappearance in American life. Striking in the nighttime on a lonely road, or even in broad daylight on a peaceful Sunday morning, these terrorists have sought to cow the Negro into acceptance of the second-class station in life which has been his for so long. And the white person who tries to aid the Negro in his cause finds that he, too, is in danger of life and limb from these same cowardly terrorist elements.

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Many more killings, physical assaults and bombings could be listed. Most of these crimes are unsolved, and the killers and assailants have gone unpunished. It goes without saying that much of the violence has taken place because the perpetrators thought they could commit these acts with impunity—they knew that southern white juries would acquit regardless of evidence and they knew there is no federal crime for murder, and penalties under the old Reconstruction statutes are light.

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This terror hit home to those of us of the Unitarian Universalist movement in the past year. James J. Reeb, a dedicated young man who worked hard in this city and in Boston to help the poor and defenseless and to bring the races together, was one of our ministers. Donald A. Thompson, minister of our church in Jackson, Mississippi, active in the Mississippi Council on Human Relations, was struck down in a shotgun ambush last summer within a few days of the Jonathan Daniels slaying. Luckily, Mr. Thompson survived this unsolved shooting.

Title V will do much to strengthen the defects found in both Sections 241 and 242 of the U.S. Criminal Code, in that it specified the rights protected by the Constitution and the 14th Amendment. Furthermore, it makes violations of these rights punishable by penalties that fit the crime. Whereas, Sections 241 and 242 carry maximum sentences of ten years and one year, respectively, this new title will carry a maximum sentence of life imprisonment for taking a life.

Coupled with the jury reforms in this bill, these new penalties ought to serve as strong deterrent to the terrorists, and go far toward protecting the rights of Negroes, workers for civil rights and peaceful demonstrators.

We would ask, additionally, that there ought to be provision made for civil indemnification of the victims or surviors of victims of racial assault. Insofar as it is proved in proper hearings that the injury or death resulted in whole or in part from action taken under color of law, the political subdivision and/or the state under whose authority such action was taken should be held liable along with the person or persons committing the act of assault.

EQUAL EMPLOYMENT OPPORTUNITY

We believe an additional title ought to be created in this bill, to correct deficiences in Title VII of the Civil Rights Act of 1964, dealing with equal employment opportunity. As mentioned earlier, one of the great defects in the employment title of the 1964 Act was that it did not provide the administrative agency,

in this case the Equal Employment Opportunity Commission the power to issue cease and desist orders upon making a finding of an unfair employment practice. Instead, the 1964 law, on the one hand, relies heavily on mediation and conciliation (certainly important first steps) and, on the other hand, upon bringing suite into court as a last resort.

The Commission should have an administrative enforcement powers as other federal regulatory agencies and as already exist in 27 state fair employment agencies.

Also, it would be desirable for the equal employment opportunity title to cover public employees on state, county and municipal levels. Federal employees are covered presently by Executive Order but the administration of justice in many parts of our land is distorted by all-white officials and personnel in state and county courthouses and police forces.

We therefore recommend that a new Title VI incorporate the excellent provisions of H.R. 10065 (Hawkins Bill) which passed the House on April 27 by overwhelming vote and that these provisions be amended to cover state and local public employees.

I think President Johnson expressed it well in summing up his Civil Rights Message to Congress of April 28th when he said:

"We are engaged in a great adventure—as great as that of the last century, when our fathers marched to the western frontier. Our frontier today is of human beings, not of land.

"If we are able to open that frontier, to free each child to become the best that is in him to become, our reward—both spiritual and material—will exceed any that we gained a century ago through territorial expansion."

The Unitarian Universalist Association strongly supports the Civil Rights Act of 1966, with strengthening amendments, and urge this committee and the Congress to speedily enact it into law.

TEXT OF RESOLUTION ADOPTED BY THE BOARD OF TRUSTEES OF THE UNITARIAN UNIVERSALIST ASSOICIATION ON OCTOBER 12, 1965 AT BOSTON, MASSACHUSETTS:

PROTECTION AGAINST RACIAL ASSAULT

Whereas enactment of the Civil Rights Act of 1964 and of the Voting Rights Act of 1965 has made possible great advances toward equality of rights and opportunity for all Americans in the areas of education, public accommodations and facilities, employment, Federal-aid programs, and the exercise of the franchise; and

Whereas the full and free exercise of these new rights and opportunities is dependent on the safety of the individual from intimidation, coercion, and bodily harm, or threats of bodily harm; and

Whereas many brave men and women, including ministers of this free faith, working to secure these rights and opportunities for themselves and their fellow men, have suffered bodily harm and even death in the effort; and

Whereas the Board of Trustees of the Unitarian Universalist Association is mindful of its responsibility to those of its own ministers and laymen who are risking their lives in the cause of racial justice and brotherhood, and is mindful of its concern for the safety and well-being of all those engaged in the movement for equal rights and opportunities; Be it therefore

Resolved, That the Board of Trustees of the Unitarian Universalist Association urges the Justice Department to press with renewed vigor the prosecution under existing law, of those guilty of the beatings, the shootings, the bombings and the killings; and further

Resolves, That the Board of Trustees of the Unitarian Universalist Association urges the President to recommend and the Congress to enact new Federal legislation at the earliest moment to protect the security of the individual from assault or threatened assault upon his person or property, where that assault has a racial purpose or effect; and to provide civil damages for the victim of such assault.

OPEN OCCUPANCY

Resolved, That Unitarian Universalists be urged to work for comprehensive "open occupancy" legislation at all levels and that such legislation embody firm and unambiguous enforcement procedures: Be it further

Resolved, That the President of the United States be encouraged to extend the federal executive order against discrimination in housing because of race, religion or national origin to include all mortgage loans made by financing institutions which are regulated or supervised by the federal government; and be it further

Resolved, That more adequate funds be appropriated for the vigorous enforcement of the executive order; and be it further

Resolved, That members of our churches and fellowships be urged to support such legislation at the state, provincial and municipal level; and be it further

Resolved, That in order to make such legislation effective, individual members of the Association be urged to introduce into every phase of the acquisition, purchase, building, mortgage loans and occupancy of real property the banning of discrimination due to race, religion or nationality; and be it further

Resolved, That our churches and fellowships and their members undertake active efforts with others in their own communities for the integration of their own neighborhoods; and be it further

Resolved, That our members be urged to scrutinize off-campus or sorority and fraternity student housing in colleges and universities as it affects minority students or foreign students and other students and seek to eliminate discrimination.

(Adopted by a greater than two-thirds majority vote.)

Adopted at the Fourth Assembly of the Unitarian Universalist Association, Boston, Massachusetts, May 28, 1965.

The CHAIRMAN. Any questions?

Thank you very much, Doctor.

That will conclude the testimony for this morning. We will resume next Tuesday morning when we shall hear from our distinguished Representative from Alabama, Representative Selden; Mr. James W. Rouse, president of James W. Rouse & Co., Baltimore, Md.; Mr. John C. Williamson, director of the National Association of Real Estate Boards; Mr. W. B. Hicks, executive secretary of the Liberty Lobby; Mr. Andrew Biemiller, director, Department of Legislation, AFL–CIO; and Mr. Joseph L. Eichler, of Eichler Homes, Inc., of California.

The committee will now adjourn, to resume next Tuesday morning at 9 a.m.

(Whereupon, at 11:35 a.m. the hearing was adjourned, to reconvene at 9 a.m., Tuesday, May 24, 1966.)

CIVIL RIGHTS, 1966

TUESDAY, MAY 24, 1966

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

The subcommittee met at 9:05 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rogers, Donohue, Kastenmeier, McCulloch, Cramer, and Mathias.

Also present: Representatives McClory and Edwards.

Also present: William R. Foley, general counsel; Benjamin L. Zelenko, counsel; Martin R. Hoffmann, associate counsel.

The CHAIRMAN. The committee will come to order.

Our first witness is one who is always welcome before this committee, our distinguished colleague from Alabama, Mr. Armistead I. Selden. He has always made good contributions to the work of this committee.

I will be glad to hear you, Mr. Selden.

STATEMENT OF HON. ARMISTEAD I. SELDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. SELDEN. Mr. Chairman, I appreciate the opportunity to again appear before the subcommittee today to voice my opposition to H.R. 14765, a bill which, among other things, would make the American homeowner a vassal of the Federal Government—a government which, under our Constitution, is prohibited in time of peace from quartering even its soldiers in any house without the consent of the owner.

This legislation is the latest in a line of Federal force bills, the end result of which has not yet been fully realized by the people of this country. But this much we know: The effect of these bills, separately and severally, is to undermine and radically alter the basic constitutional system under which our country has existed and flourished since its founding.

First, we witnessed the undermining of State and local responsibility for voting and voter registration; then the freedom of businessmen to exercise their best judgment and discretion as to their own customer relations. All along, it was the chipping away at State and local responsibility over our schools, with the prospects of shifting children from school to school to achieve some sort of balance satisfactory to some theoretician in the Office of Education.

Each time we were told: Pass this or we'll have a "long hot summer" and there will be rioting in the cities. Pass this and then everything will be righted and the civil rights movement will shift from Congress. But the passage of each force bill has simply increased the appetite of the irresponsible elements of our society. And each time another bill has come down to appease these elements.

In the time available, Mr. Chairman, I cannot discuss all the objectionable points of the pending bill. Generally speaking, my strongest objections are to titles IV and V, but there are serious questions to be raised about the other titles as well.

All reasonable persons, I think, would agree with efforts to improve the quality of Federal juries and to provide for a sound, workable means to select such jurors. But it does seem to me that in the one area of "blue ribbon" juries to try difficult fact questions—such as in antitrust cases—the effort to remove all discretion from the selectors is unwise.

Certainly, we have not reached the point of egalitarian philosophy so as to be blinded to the fact that some people are specifically qualified and better able to absorb, digest and draw conclusions from complicated or highly technical evidence. It seems to me that the drafters of this title have let untested theory override every sound, realistic exception or qualification that should be made under such circumstances.

Similarly, under the proposed title II we must ask ourselves whether to give the Attorney General of the United States carte blanche to proceed in Federal court to take over, in effect, the jury selection procedure of any State court. Under section 203, the potential exists for a complete eradication of State or local control. Notice if you will that subsection (a) permits the suspension of any qualification for jury service or any basis for excuse or exemption if, mind you, the Attorney General is able to prove to the Federal judge's satisfaction that this qualification or basis not only violates the nondiscrimination principle but—and this is the frightening part—if the qualification or basis is susceptible to being applied in violation of the nondiscriminatory principle.

Likewise, I see absolutely no need or justification for title III. As one can see from the plethora of suits, there is no absence or timidity of private litigants in civil rights matters. What is revealed here is that the master planners of the so-called civil rights movement want a centralized litigation source so that a comprehensive restructuring of our society can take place. They are not content to allow the problem to be worked out at the local level, where all interests can be accounted for. They are frightened of diversity and prefer a centralized, monolithic movement.

Before speaking of title IV, let me address myself to title V. This section proposes a wholesale development of Federal policing power even under circumstances in which adequate State and local police services are provided. It would effectively federalize a major portion of criminal law.

There is a question regarding the constitutional authority for the Federal Government to do much of what it seeks to do in this title. It is supported by a kind of bootstrap illogic which would ultimately

give the Attorney General of the United States boundless legislative authority.

In turning to title IV, Mr. Chairman, it strikes me as mere fantasy and sheer subterfuge to attempt to reach the great amount of private housing—no matter how long it has been standing—under any concept of the Federal commerce clause. The ludicrous nature of any commerce clause claim is revealed by the fact that the title would reach "any vacant land that is offered for sale or lease" for the building of housing.

But the fact that the Federal Government does have the power to reach at least some of the housing it attempts to cover causes me to forbear any such argument. Rather, I much prefer to argue the power of the Federal Government, of any government, to interfere with the rights of citizens to exercise their rights over their property as this bill seeks to do. And although we are going to be bombarded as never before with propaganda about the conflict between "property rights" and "human rights," in truth there is no such conflict. Property is simply a thing. But the ownership of property by human beings in our society and practically every other brings with it a myriad of rights and responsibilities which are indisputably "human rights." Among these rights is the right to manage and sell and rent and use that property in the manner which the individual's conscience and nature tells him will bring him the fullest satisfaction of and expression of his character and self.

I realize, of course, Mr. Chairman, that this right of the property owner, like every other right, is not absolute. Society necessarily imposes some limitations upon it, in the instance of zoning, in the area of nuisance, health restrictions, and the like. But all those are instances in which society has determined that a particular use would so harm a man's neighbors or his community that a reasonable limitation may be placed upon that use.

The question, then, is not whether the State has a right to limit the use of property, but when that limitation becomes so pervasive and far reaching as to constitute deprivation. That point at which deprivation occurs comes into conflict with the fifth amendment's guarantee that one may not be "deprived of life, liberty, or property, without due process of law." It seems to me too late in the day to argue that by "due process" is meant only procedural fairness; rather, as Mr. Justice Harlan recently wrote, due process encompasses "a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions."

What this title would do, Mr. Chairman, constitutes a substantial arbitrary imposition on the homeowner. It constitutes the use of force to vest ownership against the owner's consent. It gives a preference to one party to a proposed transaction by denying to the other his freedom of choice.

I can think of very few things that constitute a more substantial arbitrary imposition on someone than legislation which denies the freedom to exercise personal preference with whom one would privately deal with reference to private property. For those who clamor so loudly for Federal action to correct what they regard as a wrong should reflect that this same Federal action may some day be used against them.

In conclusion, Mr. Chairman, let me reassert my belief that under our system no citizen, or group of citizens, should be provided special privilege under the law. The so-called Civil Rights Act of 1966—like its predecessor bills of recent years—is not truly an "equal rights" bill. It is a special privilege bill—legislation which would give one group of our citizens special privilege at the expense of the freedom of choice of other groups.

I am opposed to the "special privilege bill of 1966." It is constitutionally questionable and will not serve the true interests of our society or our free institutions.

The CHAIRMAN. Any questions, Mr. McCulloch.

Mr. MCCULLOCH. No questions.

The CHAIRMAN. Thank you very much, Mr. Selden. You have stated most adequately the opposition to this bill and you have couched it in very good language.

Thank you very much.

Mr. SELDEN. Thank you very much, Mr. Chairman.

The CHAIRMAN. Our next witness is Professor Mark de Wolfe Howe of Harvard. Our distinguished Representative of this committee, Representative Don Edwards, I understand, wishes to introduce you, Professor Howe.

Mr. EDWARDS. Thank you very much, Mr. Chairman.

I did not ask to introduce Professor Howe because I might have been so fortunate as to have been either his classmate or his student, but I wanted to introduce him because of my keen appreciation for the work that he has done and for his attributes as a legal scholar.

Mr. Chairman, Professor Howe is a graduate of Harvard College and Harvard Law School. He for a time was in private practice in Boston. He was law professor and then dean of the law school at the University of Buffalo, and he is also noted throughout the country as the biographer of Mr. Justice Holmes.

He was for a time the clerk to Mr. Justice Holmes. Professor Howe has been at Harvard Law School since 1945. His title is Charles Warren professor of history of American law.

Mr. Chairman, I present Professor Mark de Wolfe Howe of Harvard Law School.

STATEMENT OF MARK DE WOLFE HOWE, HARVARD LAW SCHOOL

Professor HOWE. Thank you, Mr. Chairman. Thank you, Mr. Edwards.

The first responsibility of those who seriously, and not merely obstructively, question the constitutionality of H.R. 14765, is that they recognize as significant some forgotten facts of American history and accept as true some familiar axioms of constitutional law.

The history that needs to be remembered tells us that in 1865 the 13th amendment was adopted. Its emancipating words proclaimed that neither slavery nor involuntary servitude should exist in the United States. Its second section empowered the Congress to make the outlawry effective.

In April 1866, 2 months before the 14th amendment was adopted by the Congress or submitted to the States for ratification, the first of our Civil Rights Acts was enacted. It went on to provide that "such

citizens of every race and color shall have the same right to purchase, lease, sell, hold, and convey real and personal property as is enjoyed by white citizens." (14 Stat. 27).

Of this statute Mr. Justice Bradley spoke the following words:

> It was supposed that the eradication of slavery and involuntary servitude of every form and description required that the slave should be made a citizen and placed on an entire equality before the law with the white citizen, and, therefore, that Congress had the power under the amendment, to declare and effectuate these objects.
>
> The form of doing this, by extending the right of citizenship and equality before the law to persons of every race and color * * * although it embraced many persons, free colored people and others, who were already citizens of several of the states, was necessary for the purpose of settling a point which had been raised by eminent authority, that none but the white race were entitled to the rights of citizenship in this country.
>
> As disability to be a citizen and enjoy equal rights was deemed one form or badge of servitude, it was supposed that Congress had the power, under the Amendment, to settle this point of doubt, and place the other races on the same plane of privilege as that occupied by the white race.

These matters I call to your attention not to establish a constitutional proposition, but to remind you of a crucially important fact of history. Exactly 100 years ago the Congress of the United States saw racially motivated exclusion of Negroes from the occupancy of houses that were available to white Americans as a badge of servitude. The Congress believed that it had the constitutional power to do something about the injustice and the inequality.

How did Mr. Justice Bradley of the Supreme Court of the United States look upon that congressional belief? This is what he said:

> If in a community or neighborhood composed principally of whites, a citizen of African descent * * * should propose to lease and cultivate a farm, and a combination should be formed to expel him and prevent him from the accomplishment of his purpose on account of his race or color, it cannot be doubted that this would be a case within the power of Congress to remedy and redress. It would be a case of interference with that person's exercise of his equal rights as a citizen because of his race.

These simplicities of historic fact and constitutional law seem somehow to have been forgotten. I take it that the principal cause of our forgetting has been the tendency to assume that the 13th amendment became a dead letter when the more sweeping assurances of the 14th became the law of the land.

The most unfortunate aspect of that assumption lies in its suggestion that the power given to Congress in the 2d section of the 13th amendment—the power, that is, to take action against racially motivated private conduct that revives the outlawed caste system—has been extinguished.

The CHAIRMAN. Professor, was that opinion of Justice Bradley a minority opinion?

Professor HOWE. No, sir; this was his opinion on the circuit, an opinion which was affirmed by the Supreme Court of the United States. This was the opinion that he delivered. In the end it said the indictment did not adequately allege a defense. But the properties of law stated by Justice Bradley on the circuit where, I do not believe, under any doubt when it was decided by the Court in the final decision.

This false assumption has led us to suppose that all civil rights legislation must find its justification in the 14th amendment and must,

therefore, be directed towards the control of State action. To a considerable extent these misleading presuppositions derived from the fact that President Andrew Johnson, denying the constitutional power of Congress to decree that Negroes born in the United States were citizens, questioned the validity of the congressional assurance that racial discrimination should not destroy the essential equalities implied in American citizenship.

The thesis of Johnson was repudiated by the Congress that adopted the act of 1866 over his veto, was treated as false by many Federal Judges, and was never endorsed by the Supreme Court of the United States. Surely it would be a tragic irony if the 89th Congress in 1966 were to endorse by inaction the political timidities and constitutional errors of Andrew Johnson—timidities and errors which the 39th Congress renounced a century ago.

The relevance of these reflections to the congressional power to deal with racial discrimination in housing will be obvious. Let me suggest that they also have bearing upon the power of Congress to take appropriate steps to reach racially motivated acts of violence.

Once more I must remind you of things that were said by Mr. Justice Bradley when he considered the scope of congressional power to enforce the 13th amendment.

The war of race—

He said—

Whether it assumes the dimensions of civil strife or domestic violence, whether carried on in guerrilla or predatory form, or by private combination, or even by private outrage or intimidation, is subject to the jurisdiction of the Government of the United States; and when any atrocity is committed which may be assigned to this cause, it may be punished by the laws and in the courts of the United States.

The Justice, I might add, went on to point out that his recognition of this national power did not mean that the Congress and the Federal courts could exercise jurisdiction over ordinary felonies and misdemeanors. He was not, in other words, approving a revolution in the principles of American federalism, but merely insisting that the 13th amendment could be made effective by the Congress when racial terror and violence sought to frustrate its assurances.

The reminder that I have so far emphasized comes to this: The 13th amendment empowers the Congress to prevent the establishment anywhere in the United States of a caste system conceived in racial hatred. That power may be made effective by all appropriate means against the States and their subdivisions, against private combinations, and against private individuals.

The later grant of congressional power to deal with State action that impaired the privileges of U.S. citizenship, that deprived persons of liberty without due process of law, or denied them the equal protection of the laws was not intended to annul and has not been interpreted to extinguish the previously granted power to outlaw the servitudes and disabilities that flow from racial enmities.

The forgotten roots of power that I have called to your attention may, I suspect, be linked both in logic and in time to another source of congressional authority. The importance of this other source of power

has very recently been called to our attention by Mr. Justice Stewart in the *Guest* case.

The portion of the opinion that I have in mind is that in which eight Justices concurred, holding that a private conspiracy to intimidate Negroes from interstate travel is punishable by the United States as a conspiracy to injure or threaten, in the language of the statute, "any citizen in the free exercise or enjoyment of [a] right or privilege secured to him by the Constitution or laws of the United States."

I do not mean to suggest that the Court in the *Guest* case traces the congressional authority to punish conspiracies to keep Negroes from traveling freely throughout the land to the second section of the 13th amendment. I would suggest, however, that the Court's willingness, first, to treat interstate travel as a privilege of citizenship, and, second, to allow the Congress to safeguard the privilege against racially motivated action of private persons marks the revival in our own day of an attitude of mind that was reflected in the pronouncements of Justice Bradley that I have quoted.

The opinion of Justice Stewart is, furthermore, somewhat reminiscent of that portion of the classic dissent of the first Justice Harlan in the *Civil Rights* cases, in which he insisted that the 13th amendment justified the congressional prohibition of racial discriminations by carriers against Negro travelers:

It would seem—

Justice Harlan said—

that the right of a colored person to use an improved public highway, upon the terms accorded to freemen of other races, is as fundamental, in the state of freedom established in this country, as are any of the rights which my brethren concede to be so far fundamental as to deemed the essence of civil freedom.

I suggest that the opinion of Justice Stewart in the *Guest* case should be read as a reminder that the Congress has ample power, if it chooses to exercise it, to safeguard the privileges of citizenship against private discriminations and brutalities that are racially motivated.

It may be wondered why the words "citizen" and "citizenship" have so often appeared in these reflections. The 13th amendment says nothing of citizens and the 14th safeguards the privileges of U.S. citizenship against State abridgments only.

The reason why the language of citizenship is called for and natural is that the 39th Congress, when it adopted the Civil Rights Act of 1866, made its opening declaration the pronouncement that all persons born in the United States were citizens thereof. The Congress then proceeded, quite naturally, to specify those privileges of citizenship as to which the principle of racial equality must govern.

Although the language of citizenship survives in many of our civil rights statutes, there is nothing in the nature or language of the 13th or 14th amendment to limit the scope of congressional powers thereunder to the safeguarding of American citizens.

It is natural, however, that the Congress should assume that among the implied legislative powers of the Nation, none can be more important than that of advancing the welfare and safeguarding the interests of those persons who are something more than citizens of the States in which they reside—who are also citizens of the United States.

The 39th Congress in its ardor, its wisdom, or its innocence evidently assumed that a byproduct of citizenship was equality. Time had taught us that decency is not as near at hand as the logic and humanity of the 19th century supposed.

One element in my thesis deserves an emphasis that I have not given it. It is a familiar fact, of course, that the Court and the Congress have always recognized that even before the adoption of the Civil War amendments there were privileges of American citizenship that could be protected by national authority against either State action or against private action. In the area of free transit this was shown in the Court's decision that a State could not impose a tax upon the carriage of passengers from within its borders to the National Capital.

In the area of political action the principle was recognized in the cases allowing Federal prosecution of those who sought to impair the electoral processes of the Nation. In the area of criminal law it was shown in the decision that the lynching of a prisoner held by Federal authorities for Federal trial was punishable as a conspiracy to deprive a citizen of the United States of a right or privilege secured by the Constitution.

In the area of race relations it was shown, even before the Civil War, in the decision that the slaveholders' right to claim the fugitive slave could be secured by the Congress not only against State action, but against private action as well.

In *United States* v. *Waddell*, it was held that private violence directed against an American citizen who had made a homestead entry under Federal law was punishable as an offense against the United States.

These decisions—reinforced as they recently have been by the *Guest* case—make it wholly clear, I think, that the Congress is equipped with ample power to protect interests borne of other assurances than those of the 14th amendment. Once that fact is recognized, it becomes easy to disentangle analysis from the metaphysics of State action.

There may still be appreciable difficulty in identifying upon the frontiers of national policy those interests that can be labeled "privileges of American citizenship." It may not be easy, furthermore, to define with sweeping generality the scope of congressional power validly to create or conclusively to identify those particular privileges of citizenship or those specific rights of persons that are independent in their origin of the 14th amendment.

I submit, however, that a Congress that remembers the 13th amendment and the legislative powers that the amendment confers need have no doubt of its constitutional authority to control specifically directed to the perpetuation by private means of those racial inequalities which the State by virtue of the 14th amendment, may not preserve.

If the Congress should be unwilling to recognize that it has at hand forgotten powers derived from the 13th amendment, it would not, by that unwillingness, establish its disability to do the things that sorely need to be done. Until this term of the Court there was, perhaps, some reason to wonder whether the Congress may secure, as such, rights given by the 14th amendment against private action.

In the *Guest* case, however, it was made wholly clear that six Justices recognize that Congress may, and I quote Justice Clark, "enact

laws punishing all conspiracies—with or without State action—that interfere with 14th amendment rights."

This generality does not mean, of course, that all conspiracies to murder, rob and burn may be made into Federal crimes. It does, however, eliminate all lingering doubt whether Congress may make punishable threats or acts of violence that are directed toward the frustration of the 14th amendment's command that the States must not deprive persons of liberty without due process or deny them the equal protection of the laws.

If one accepts the principles to which a majority of the present Court has committed itself, there can be no doubt whatsoever that the Congress may constitutionally enact title V of H.R. 14765. Although I believe that a more inclusive title would be desirable, I think it wholly clear that there is no basis any longer to question the constitutionality of its provisions.

I would call your particular attention to the fact that the majority of its provisions deal with acts of violence directed to the frustration of rights not derived from the Civil War Amendments—rights which Congress was empowered from the very beginning of our national existence, to safeguard against either private or public injury.

The press has recently suggested that some persons in Government question the constitutional power of Congress to outlaw racial discrimination in the selection of juries in State courts. If constitutional doubts are seriously entertained, they must, I think, relate to detail rather than fundamentals.

I had supposed that all questions with respect to basic power had been laid to rest in 1880 by the Court's decision in *Ex parte Virginia*—the decision that sustained as constitutional the provision in the Civil Rights Act of 1875, providing that "no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude."

What the statute in effect did was to identify and safeguard with criminal sanctions a privilege of U.S. citizenship additional to those which the Congress had enumerated in the Civil Rights Act of 1866. The statute stands on the books today as section 243 of title 18, and thus keeps alive the privilege of citizenship which the Congress and the Court together have recognized.

These undeniable facts of history and law lead me to suppose that what constitutional doubts may exist concern the particularities of H.R. 14765 and some alternate proposals. I realize, of course, that title II—the title that deals with State juries—in some respects extends the reach of the act of 1875.

Surely there is no constitutional objection to the proposal that equitable remedies for safeguarding the established privilege, should be added to the more severe criminal sanctions now available for its protection. Perhaps it should be noted that the bill speaks in terms of persons, rather than in terms of citizens—a rephrasing that seems, perhaps, unnecessary, but which surely presents no question of constitutional dimensions.

The discriminations outlawed by section 201 also go beyond those of race and color and reach discriminations on account of religion, sex, national origin, or economic status.

In view of the Court's recent decision in the *Poll Tax* case, it can hardly be doubted that the Congress under section 5 of the 14th amendment may outlaw from the processes of jury selection a means test which the Court has held to be outlawed from the electoral processes by the amendment's own force. With respect to the power of Congress to extend the existing prohibitions of jury discrimination to those based on sex, national origin, and religion there can be no need for argument.

In the back of the minds of those who question the constitutionality of the proposals with respect to the selection of juries in the State courts, there may lie the general feeling that somehow, and for some indefinable reason, the power of States to fix the qualification of those who are engaged in the administration of justice must be beyond the reach of Congress.

I do not suppose that the doubters would hesitate to say that a State statute providing that no Negro could be elected or appointed to the bench would be unconstitutional. Nor would they defend as constitutional a statute prohibiting qualified Negroes from serving on juries. What they object to must, accordingly, be the processes which title II of H.R. 14765 makes available to the Federal courts when the prohibited exclusions are found to prevail.

Their objections, I suggest, are in essentials no different from those that governed the minds of critics of the recent progression of enactments concerning racial discrimination in the electoral processes of the States. With respect to that issue, there was, of course, a special barrier to national power in the specific provisions of article I recognizing the power of States to determine the qualification of voters.

Yet the Court has recently sustained the constitutionality of the Voting Rights Act of 1965—a statute which goes far beyond the moderate intrusions into areas of State responsibility proposed by title II of H.R. 14765.

The critics of that proposal will urge, I assume, that the extensiveness of the congressional power to deal with racial discriminations in the electoral processes is derived from section 2 of the 15th amendment. It was, of course, both natural and proper for Congress and Court in dealing with the Voting Rights Act of 1965 to find justification for the enactment in specificities of the 15th amendment.

I submit, however, that there is no doubt whatsoever that under the long-settled interpretation of the equal protection clause of the 14th amendment the rights conferred upon Negroes by the 15th amendment are also guaranteed by the 14th. From an earlier day such cases as *Nixon* v. *Herndon*, *Nixon* v. *Condon*, and *Smith* v. *Allwright* make this abundantly clear.

The recent *Poll Tax* case merely confirms, in our own day, the truth of the proposition that whatever State practices are outlawed by the provisions of the 15th amendment are also condemned by the provisions of the 14th, and that whatever powers the Congress may exercise over electoral processes under section 2 of the 15th amendment also find their justification in section 5 of the 14th.

In this connection it will be well, once more, to remember the facts of history. Those facts tell us that after the 13th amendment, the Civil Rights Act of 1866, and the 14th amendment has been adopted there were some statesmen who asserted and others who denied that the equality of privilege and right which the amendments promised the Negro included, or by valid statute could be made to include, rights of suffrage.

In order permanently to outlaw racial discrimination in the suffrage and to put that indecency upon a par with all others that were condemned by the earlier amendments, the 15th was adopted. There is absolutely nothing in the history or the law of the 15th amendment suggesting that the Congress intended its 2d section to grant the Congress a broader power to outlaw racial discriminations in the electoral processes than it already possessed to condemn such discrimination in other aspects of government.

It is, I believe, abundantly clear that the Voting Rights Act of 1965 would be no less constitutional than it unquestionably is had the second section of the 15th amendment never been enacted. That being so, the decision in *South Carolina* v. *Katzenbach* establishes, beyond possibilities of doubt, that title II of H.R. 14765 is constitutionally warranted.

One concluding generality seems important. We Americans much too often translate questions of public policy into questions of constitutional law. It is natural, of course, that those who oppose an urgent progression should seek to put the blame for inertia upon a higher ground than their own preferance. It is, however, a most wasteful expenditure of congressional time for its committees perennially to become engaged in essentially academic disputes about the scope of congressional power.

Is it not time for the Congress to recognize and act upon a sound and settled principle which the court and the people have for a long time taken for granted?

The principle to which I refer tells us that the Congress is a participant in the making of constitutional law. A legislature that waits for the judges to tell it what equality and freedom mean, what justice requires, and what federalism permits, abandons its constitutional responsibility.

If it sometimes seems that we have too much government by judiciary, I wonder whether the excesses that trouble us are not, to a very considerable extent, the fault of a Congress that allows itself to linger too long in the twilight of doubt and hestiation.

The CHAIRMAN. Professor, I just want to say that this committee does not wait for the judges to tell us what equality of freedom means, because we have acted on innumerable occasions in connection with civil rights, and we do develop new paths and we found that the courts agreed with us. But we did not wait until the judges told us what to do.

Professor HOWE. I appreciate that, Mr. Chairman. I am not sure that is true of all committees of the Congress or always in both Houses of the Congress, but certainly it is true of this committee.

The CHAIRMAN. I just have one question and before I ask it. I wish to compliment you on the very splendid argument you have presented here this morning.

Would you say also that the title concerning housing is well grounded in the interstate clause also?

Professor HOWE. I believe a justification under the commerce clause can be developed. It does not, to me, seem as natural a basis for justifying the title as does the 13th amendment or possibly the 14th. I take it, though this may be a misimpression, that the administration, and the Department of Justice in particular, seems currently convinced that it is not wise to specify the grounds for constitutional action, and that their silence about this source of power here is the result of a conscious decision that it will free the courts to choose any source of power that may be available.

I happen, myself, to question the wisdom of that policy, at least, when you are exercising the powers to regulate commerce. It does seem to me that a congressional opinion with respect to the relationship between housing and commerce would help the courts when the time comes.

I suppose that the relationship between discrimination in housing and commerce among the several States can be established and could be shown. I think without that showing being part of the bill, it is more natural to say that the problem concerns the equality of the rights of citizens and that a Congress that has been empowered ever since the 13th amendment to assure no racial discrimination is empowered, therefore, to take this kind of action.

Mr. ROGERS. Professor Howe, do I understand that, under your interpretation, the 13th amendment gives Congress the power to pass certain laws other than those dealing with slavery or involuntary servitude?

Professor HOWE. I believe it empowers the Congress to deal with conduct that in the eyes of Congress, confirmed by the Justices, imposes badges of servitude and badges of slavery upon one race on the assumption of the inferiority of that race. This has been said by the Court over and over again.

Mr. ROGERS. Could you give us some illustration of what that may imply?

Professor HOWE. I think I could give you the provisions of the Civil Rights Act of 1866, which in very explicit terms define the equalities which the Negro citizen should share with the white citizen. And those included, as I have said, the rights to own, occupy, purchase, and sell real estate.

Mr. ROGERS. Well now, you do not mean that the nature of certain conditions that have developed like ghettos and poor or inadequate housing, that those conditions constitute either slavery or involuntary slavery.

Professor HOWE. I endeavored to emphasize the passage in Justice Bradley's opinion in which he acknowledges—and I, of course, acknowledge—that it is the racially motivated inferiority that Congress may deal with, and that as I understand the bill is all this bill seeks to deal with. It deals with the racially motivated denial of occupancy.

Mr. ROGERS. I take it from your answer that in certain of the States, where we confront ghettos and inadequate housing, because that constitutes slavery or involuntary servitude to have live there, and that we

have authority under the 13th amendment to pass legislation dealing with that situation.

Professor HOWE. I return to the point I have been trying to make, that I am not urging that the Congress has the power to deal with housing and ghettos. What the bill purports to deal with is denial of housing on grounds of race, and this is, I take it, a very different thing from saying that Congress is going to try and move the poor into the prosperous sections of town.

You will notice that the title on housing does not have that assurance with respect to economic discrimination.

Mr. ROGERS. I am trying to get you to envision and tell this committee your thoughts as to the type of condition that would constitute a violation of the 13th amendment on which we should pass legislation?

Professor HOWE. I should agree that, as Justice Bradley stated, if a combination of persons in any community so governs their affairs and their control of that community as to exclude Negroes on grounds of race from occupancy of houses in that area, that that is subject to congressional regulation and prohibition.

Mr. ROGERS. Now, do you know of any conditions of that type which exist now?

Professor HOWE. I think there surely have been and continue to be such conditions in many parts of the country. I am quite sure that such situations do prevail. I think a great many States have found it desirable to enact laws to prevent such combinations operating.

Mr. ROGERS. Well now, of course, what I am trying to explore, is the right of Congress to pass legislation dealing with housing, and particularly this open occupancy provision, title IV. I am trying to see if there is evidence or testimony to the effect that this constitutes a violation of the Constitution and that as a result we have the authority to pass legislation.

Is it your contention that we do have that authority?

Professor HOWE. I take it that the existence of open occupancy laws throughout the land indicate that there has been and still is considerable amount of discrimination against the Negro in housing.

This does, in my opinion, justify legislation, partly upon the 13th amendment, and partly upon the power of Congress to protect and define the privileges of citizenship by outlawing racially motivated discriminations of this nature.

I find that the justification in the 13th amendment has very considerable force. But I do not suggest that Congress ought to confine itself to one power. The commerce clause is available and that will surely justify much of this regulation.

The 14th amendment is available. Remember what the Court has said in the *Guest* case, that Congress may take action to secure against private persons rights that are secured against the States by the 14th. It thus seems to me it is within the power of the Congress to use some 14th amendment power in the area of housing.

I return to my fundamental theme. These are problems that seem to me best discussed not as problems of constitutional law, but problems of public policy. Obviously there are weighty arguments to be made against national action in this area.

My effort is to suggest that there are no insuperable constitutional barriers to congressional action. It is, I think, to mislead the public, to speak as if these problems were really constitutional problems. In fact, they are problems that are not best considered in those terms.

I, of course, believe in the desirability of Federal legislation in this area. This I suppose leads me to think it is constitutional, but I also think we should recognize, and the Congress should more clearly recognize, that the powers that it possesses under the Civil War amendments, under the 13th, 14th, and 15th amendments are very, very great and that their failure to exercise them for a long period of time has not destroyed the powers. They still are there.

Mr. McCulloch. Would the gentleman yield for a question?

Mr. Rogers. Yes.

Mr. McCulloch. Might we understand, Professor Howe, that you would base the constitutionality of this proposed legislation on the 13th amendment as it affects discrimination on account of religion, sex, national origin or economic status, upon the same logic as it applies to the Negro?

Professor Howe. No, I think obviously one has to recognize two stages in the analysis. What the 13th amendment did, and what the Civil Rights Act of 1866 did, was to take action to assure that henceforth, as between the white citizen and the Negro citizen there should be equality. It is up to Congress, I believe, from time to time, and undoubtedly within some limits, to define the areas where equality between white and Negro citizens is essential.

Beyond that lies the next question: How are we going to deal with other discriminations that are not discriminations between the white and the Negro? There one has to acknowledge, I think, as I have said already, that the Congress has implied power over and beyond that recognized by the Court, to define privileges of national citizenship, to make these good in favor of any citizen against private persons. If it is the fact as the Court has told us it is this material, that it is a privilege of U.S. citizenship to travel from one part of this country to another, I find it hard to see why Congress cannot make it a privilege of U.S. citizenship to live without racial discrimination or without discrimination on grounds of sex in a particular community.

Mr. McCulloch. Yes, Professor, I was not delving into that particular question. I wanted to be sure that you were not basing the authority, the constitutional authority of this legislation insofar as it affected the other minority groups that I have described on the 13th amendment. I go indirectly back to the proposal that there is always danger in describing the constitutional authority upon which we base the legislation, particularly until we are completely all powerful. We do well to cover every possible constitutional ground and source of legitimate power.

A main difficulty if not the single difficulty of the civil rights legislation following the War Between the States arose from failure to describe the source, did it not?

Professor Howe. There were many difficulties with that legislation. I do not think, in the first place——

Mr. McCulloch. There was one finding made by the Court at that time that the legislation was based narrowly upon one constitutional provision, which had been the declaration of the Congress, as I recall it.

Professor HOWE. There was a special problem in the *Civil Rights Cases*. The Court was unwilling to sustain the statute as applied to an interstate carrier on the basis of the commerce clause because there was no indication that Congress was seeking to regulate interstate commerce.

Mr. MCCULLOCH. Thank you.

Mr. ROGERS. Now may I direct your attention to the 14th amendment which we are discussing quite thoroughly here, which provides:

> No state shall make or enforce any law. . . .

Professor HOWE. Yes, sir.

Mr. ROGERS. Well now, is that not a limitation upon a State? How does that empower the Federal Government when it says, "no State shall?"

Professor HOWE. I would like to remind you of the opening sentence in the 14th amendment: "All persons born in the United States are citizens therof," and then jump to section 5, that Congress shall have power to enforce this article.

Mr. ROGERS. It says they are citizens. The first section says:

> All persons born or naturalized are citizens of the United States in the states wherein they reside.

Professor HOWE. That's right, and my suggestion is that there is a congressional power to define and protect privileges of U.S. citizenship given by section 5 of the 14th amendment.

Mr. ROGERS. But the next is the limitation that no State shall——

Professor HOWE. That's right.

Mr. ROGERS. Well now, does the fact that certain prohibitions apply to the States, does that inherently give authority to Congress under section 5 to enact laws that deal with anything as it related to the privileges or immunities?

Professor HOWE. No, sir; I have not attempted to suggest that. I have based my principal assertions, first, on the theory that the 13th amendment has something to say to this problem, and secondly on the theory there is a congressional power either to be implied or to be found specifically in the 5th section of the 14th amendment, the power that is, to define and safeguard the privileges of U.S. citizenship. It seems to me unquestionable that the Congress may say that among the privileges of U.S. citizenship are those of not being denied equality on racial grounds.

Mr. ROGERS. Then you do not contend that by prohibiting the State from doing these things, that that covers any authority upon the Federal Government to move?

Professor HOWE. No, I have not contended that, and I do not contend that.

Mr. ROGERS. And your analysis of the 14th amendment is based upon the first sentence of thereof, rather than the second one?

Professor HOWE. Not entirely. In addition, I would remind you of what the Court has recently said and held in the *Guest* case, that the Congress is empowered to deal with private action directed toward the frustration of the State's responsibility to fulfill its obligations under the 14th amendment. If the State has taken steps, let us say, to assure equality—let us say they opened up the swimming pools to

all persons regardless of race, and private persons appear on the scene and seek to prevent the Negro citizens from enjoying that right, the Court tells us that the Congress may make that private action seeking to frustrate the State's fulfillment of its responsibility criminal.

Mr. ROGERS. Even it be by custom?

Professor HOWE. Law, rule, regulation, custom, or practice. That is what the Congress has always said. I would remind you that the act of 1866, which is the first of the civil rights statutes, speaks not merely of discriminations under color of law. It did not have to, because the 13th amendment was the basis for the legislation. The act of 1866 speaks not only of law, statute, and regulation, but it speaks of custom, and it says if by custom these equalities between citizenships are being denied, they are outlawed by the statute.

Mr. ROGERS. As they held in some of the "sit-in" cases?

Professor HOWE. That's right.

Mr. ROGERS. Where they did not have a statute, as in the *New Orleans* case, but they segregated by custom.

Professor HOWE. The Court never quite reached the point of saying custom alone, not sustained by official action, was enough. It came very close to saying that, but I think I am right in saying that there is no case in which the Court said pure custom made the action of the proprietor unlawful.

Mr. ROGERS. But in the *New Orleans* case?

Professor HOWE. You had the mayor and police chief saying he requested people not to engage in any more of the sit-ins——

Mr. ROGERS. They construed that to be State action?

Professor HOWE. Yes.

Mr. ROGERS. Well, if you arrive at a situation where no State action is involved whatsoever, either by custom or action by the chief of police or mayor, or what have you——

Professor HOWE. Then I do not think there is yet anything in the constitutional law that we have had that would allow the Federal Government to deal with that. I am not asserting that the murder of every Negro is a Federal crime and should or could be made a Federal crime.

Nobody is suggesting that, though he has lost his life without due process of law. We have not established that kind of federalism as yet, and I hope we will not. But I do suggest that a racially motivated act of violence directed toward the frustration of our constitutional objectives is within the reach of congressional power. That is why I believe there is no doubt but that the provisions of this bill that deal with private acts of violence are constitutional. I suggest that it is high time for the Congress to take some action against the racially motivated acts of violence, even though done without any approval and against the law of the States in which those acts are done.

Mr. ROGERS. Thank you, Professor.

The CHAIRMAN. Mr. McCulloch?

Mr. MCCULLOCH. Yes.

Professor Howe, I take the quotation at the bottom of page 1 and the top of page 2 of your statement is from a circuit court case?

Professor HOWE. That's right, circuit court opinion of Mr. Justice Bradley in the *Cruikshank* case.

The CHAIRMAN. Will the gentleman yield?

Mr. MCCULLOCH. Yes.

The CHAIRMAN. At the bottom of page 2 when you speak of Mr. Justice Bradley of the Supreme Court and you cite a portion of what he said——

Professor HOWE. I am sorry——

The CHAIRMAN. Was Justice Bradley then sitting as a member of the court of appeals?

Professor HOWE. I should have made it clear. It is from the same opinion on circuit. Every quotation here from Justice Bradley is from his opinion on circuit in the *Cruikshank* case. I should have made it clear. I am sorry I failed to do that.

The CHAIRMAN. Thank you.

Mr. MCCULLOCH. I wanted to ask a question about selection of jurors in State cases. If any State in the Union has a law which has unlimited peremptory challenges, would that be reached by this legislation; and could it be reached by this legislation?

Professor HOWE. There is, as your question clearly indicates, a very serious problem, and I cannot answer specifically of the language of this bill. There is a very serious question, participation in jury services will not in the end be frustrated by peremptory challenge.

This is a possibility. I believe, however, that the chances of all Negroes being excluded as jurors through peremptory challenges will be significantly reduced if the number of Negroes allowed to serve on juries is increased.

If I may, let me make another point: We must never forget that at the heart of our concern to have Negroes be made eligible for jury service is our desire to give them the rights of American citizens to participate in the affairs of government.

Too often, I think, we have approached the problem of the exclusion of Negro jurors from the standpoint of a Negro defendant who is denied equal protection of the laws if Negroes are excluded from the jury which tries him. That is certainly true. Is it not perhaps important that we begin to think about the right of the Negro citizen to be treated as elgible to participate in the affairs of government? For that reason, whether we get him off the jury in the end by peremptory challenge or not, we have made a significant step forward by making a congressional pronouncement that he is qualified to be a participant in the affairs of government and that we will take steps at the national level to assure him that he is an equal as a prospective juror.

Mr. MCCULLOCH. Do you think that Federal legislation limiting peremptory challenges would be constitutional?

Professor HOWE. I would question it. I certainly would question it. I think perhaps peremptory challenge on racial grounds would be within the reach of congressional prohibition.

How you determine the ground of peremptory challenge is very, very hard to say. I think that if you can establish a persistently discriminatory practice and produce evidence with respect to the ways in which the peremptory challenge has always been exercised by the State, the peremptory challenge may be invalidated.

But I think there is grave doubt here, very grave doubt.

Mr. McCULLOCH. Well, the decision in the recent case that you mentioned was to this effect, that the unlimited peremptory challenge was in accordance with constitutional laws?

Professor HOWE. That's right. It seems to me, however, that if our concern is not so much with the criminal defendant as it is with the Negro as a citizen participating in public affairs, whether every citizen sits on the jury is less important than whether he is excluded from that possibility.

Mr. McCULLOCH. Yes.

Is it our opinion, Professor Howe, that it serves no good or useful purpose to constitute juries as so-called "blue ribbon" juries for the trial of certain cases?

Professor HOWE. I certainly would acknowledge that there are some cases in which highly qualified jurors, and I am thinking primarily of civil cases, would seem to be quite appropriate. I am not sure of the details of these proposals in that respect or of the extent to which it would make impossible the selection for certain kinds of cases of jurors with special qualification.

I would myself not be reluctant to see special juries being used for certain kinds of cases. I think there is grave danger of using blue ribbon juries in most criminal cases.

That troubles me, but I think in the civil area there is legitimacy if demanding certain kinds of qualifications for certain very technical kinds of cases.

I happen myself not to feel very strongly about the importance of jury trials in civil cases, so I may be a little biased in that matter.

Mr. McCULLOCH. Thank you. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. Professor, I find your testimony very interesting, too. In your answer to the last question, of course, you recognize that title I and title II are not limited to criminal juries?

Professor HOWE. That's right; I realize that.

Mr. CRAMER. So, as drafted, it would not take into consideration your suggestion that blue ribbon juries could be retained in certain circumstances. The intention and purpose is to outlaw them specifically according to the statement of the Attorney General.

Professor HOWE. Yes.

Mr. CRAMER. And you would disagree with that?

Professor HOWE. I, myself, would think that was not necessary or desirable, though I think I would exclude them from criminal cases. But I do not think I would advocate their exclusion from civil cases.

Mr. CRAMER. Very briefly, Professor, your discussion of the *Cruikshank* case and Justice Bradley's statements, that involved an official violence; did it not?

Professor HOWE. No; I think not.

Mr. CRAMER. 118 U.S. Code, 242.

Professor HOWE. This was a massacre in Louisiana, large killings by private warfare, essentially. The difficulty with the indictment both in the Circuit and in the Supreme Court of the United States was that there was no allegation, no sufficient allegation that the conspirators were moved by racial hatred to engage in these acts of violence. It was not, however, a case of State action. It was a case

of conspiracy by private groups to kill and terrorize. I am quite sure of my recollection.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes.

The CHAIRMAN. It was a very complex case; was it not?

Professor HOWE. Yes, sir.

The CHAIRMAN. The question arose whether the indictment was too vague?

Professor HOWE. That's right, and the only decision we ever had was that the indictment was inadequate and it could not be sustained. Justice Bradley did, however, take the opportunity on Circuit to set forth a very helpful and very important analysis of the three Civil War amendments and the different powers which those amendments gave to the Congress. I think I am right in saying that the statements that he made about the 13th amendment in particular have never been questioned by the Supreme Court of the United States.

What happened, as you all realize, was that we began shortly after that to forget this amendment and to talk always as if all congressional action in these matters must be based on the 14th or 15th, and we forgot there is a power that has never been destroyed by anything that subsequently has happened, to legislate, to preserve equal rights of citizens against racial discrimination.

Mr. CRAMER. In any event, the 13th amendment was not the subject matter of creed, religion, or national origin?

Professor HOWE. Certainly not.

Mr. CRAMER. So if the legislation included that relating to title IV, open housing, you could not use the argument of the 13th amendment regardless of what——

Professor HOWE. No, you could not. As I tried to suggest earlier, it seems to me that Congress, having secured equality between the white citizens and the Negro citizens under the 13th amendment may, quite naturally, seek to achieve a broader equality to buttress the national commitment toward equality. I do not find any lack of congressional power if they are going to treat Negro and white citizens as equal to say that others must get no less.

Mr. CRAMER. But not under the 13th amendment.

Professor HOWE. You are quite right.

Mr. CRAMER. The *Cruikshank* case upon which you heavily relied is one involving racial terror, violence, and conspiracy and could hardly be considered comparable to the single sale of property—there is no intimidation, no overt act to forcefully prevent a person from attempting to do this.

This is an individual, to permit him to do so. There is no correlation between the two?

Professor HOWE. I do not myself see in logic or in constitutional principal any broader reach of congressional power over acts of violence that destroy constitutional rights than in other acts that destroy them.

Violence is no more within congressional authority than other forms of destructive action.

Mr. CRAMER. But there are no cases holding on that subject matter relating to the 13th amendment?

Professor HOWE. There are not that I know of.

Mr. CRAMER. All right. With regard to the 14th amendment you cite largely the *Guest* case which again is a case of conspiracy and not that of a single individual selling, for instance, a vacant piece of property without intimidation or otherwise.

Do you really feel the 14th amendment, as construed essentially by the Court and even in the *Guest* case, would include a private sale of a piece of property as proposed under title IV?

Professor HOWE. I think my answer would be, yes. Remember, they talked about conspiracy in the *Guest* case, because the only relevant congressional statute now on the books is the one dealing with conspiracy.

Mr. CRAMER. The Court did not, therefore, hold on matters outside of conspiracy?

Professor HOWE. No, they did not. But I see no constitutional difference between an individual who kills Colonel Guest while traveling through Georgia and a group of Klansmen who conspire to kill him if the death is a crime punishable by death.

Mr. CRAMER. I am talking about refusing to sell, an act of violence to an individual, a piece of property. There are no cases holding on that?

Professor HOWE. It is probably because we have no legislation to deal with that sort of matter.

Mr. CRAMER. All right.

Now, you suggest in coming to your conclusion that the 14th amendment might be used as a vehicle for this legislation, even where no State action is involved.

I believe that is your thesis, is it not, using the first sentence of section 1, and the enacting portion of section 5?

Professor HOWE. I should have made it clearer than I evidently did that. I believe that there are implied congressional powers to deal with rights of citizenship not derived from the 14th amendment.

Crandall v. *Nevada* was a case in which the Court, at least against State action, secured rights of national citizenship—and this was before the 14th amendment.

Mr. CRAMER. But are there no cases holding on that point? Can you cite any cases holding on that point?

Professor HOWE. The specific point being which?

Mr. CRAMER. Being the application of the first sentence of section 1 as a basis for congressional action.

Professor HOWE. This was stated by Justice Harlan in dissent as an acceptable principle. It was not accepted by the Court.

Mr. CRAMER. There are no majority holdings on that?

Professor HOWE. That's right. Nothing I have said in that area purported to be based upon existing doctrine, save to the extent that the *Guest* case indicates that today private action directed toward the frustration of the State's obligations may be governed by Congress. Congress, however, has not yet done some of the things I am urging that it should and can do.

Mr. CRAMER. I bring you back to the fact that the *Guest* case dealt with conspiracy.

Professor HOWE. I understand that, but that is because the statute punished conspirators——

Mr. CRAMER. It was not necessarily a holding on that specific point either?

Professor HOWE. No, but I do not think holding should be used in such a narrow sense.

Mr. CRAMER. There was dictum?

Professor HOWE. No, there was not. But it does not seem to me there is any sound basis for suggestion that though Congress can deal with conspiracies to kill, it may not deal with killing. Surely if Congress can deal with preparations to destroy constitutional rights, it can deal with the act that is destructive itself.

Mr. CRAMER. It is virtually subject, as a matter of fact, to an act of violence. You are talking about title V and I am not arguing about that and not discussing it at this point. I am talking about the private sale of a vacant piece of property by an individual without any inclination or act of violence or otherwise.

Professor HOWE. You are entirely right. I suggest that you have also been throwing in the individual action from time to time as well as the action of violence and suggesting, at least, that there may be no congressional power to deal with anything but conspiracy.

I am attempting to say that they are the same, and I agree there is no case as yet holding that Congress may deal with refusals of individuals to sell vacant land as regards the 14th amendment or other power.

The CHAIRMAN. Is it your opinion that the *Guest* case could stand for the proposition of safeguarding the privilege of citizenship against private discrimination which is racially motivated?

Professor HOWE. Yes. I find it in that portion of the opinion that deals with the interstate travel.

What Mr. Justice Stewart and the majority hold is that there is a privilege of interstate travel which may be protected not merely against State action, but against racially motivated individual action.

Mr. CRAMER. That is precisely the point. You cannot rest individual action prohibition on solely the 14th amendment, under present cases unless it involves, as in the *Guest* case, a conspiracy or State action. If you are going to try to bring the individual in—assuming there is a reason for doing so—under the commerce clause, then the question becomes one of whether it is a proper exercise of congressional power under the commerce clause to proscribe the sale of vacant land by a private individual.

Professor HOWE. I believe I am right——

Mr. CRAMER. You tell me you rely on the commerce clause when you get to the private individual?

Professor HOWE. I believe the opinion with respect to the interstate problem was not based upon the commerce clause; it was based upon citizenship. In *Crandall* v. *Nevada the* privilege was that of having free access to the National Capitol.

What the Court has now done is that relatively narrow privilege to the broader one of traveling throughout the Nation. Whether this is strengthened by the commerce clause or whether it is built upon that inherent power that the Congress possesses to protect all kinds of privileges of citizenship, we cannot be sure.

Certainly the things that Mr. Justice Brennan says in his concurring opinion in the *Guest* case indicates that in his judgment the con-

gressional power to protect any privilege of citizenship is no better because interstate commerce is involved than if some other constitutional interest and power is involved. I do not, accordingly, think it is fair to read the opinion of Justice Stewart as limited to the commerce clause as the source of congressional power to safeguard this right.

Mr. CRAMER. I am reading from Justice Brennan's views on page 9 in the *Guest* case. It says:

> * * * Section 5 authorizes Congress to make laws—

the 14th amendment—

> that it concludes are reasonably necessary to protect a right created by and arising under that Amendment; and Congress is thus fully empowered to determine that punishment of *private conspiracies* interfering with the exercise of such a right is necessary to its full protection.

Then, going on a few pages, it says:

> And I can find no principle of federalism nor word of the Constitution that denies Congress power to determine that in order adequately to protect the rights of equal utilization of *state facilities*, it is also appropriate to punish other *individuals*, neither state officers or acting in concert with the state officers who engage in the same conduct for misguided purposes.

Professor HOWE. Yes, sir. I do not have the official report here. I only have the U.S. Law Week, so I cannot use the pagination. It is on page 4433 of the U.S. Law Week. In it he insists:

> Nor has this Court construed Section 241 in such a restricted manner * * * many of the rights that have been held to be encompassed with Section 241 are not additionally the subject of protection of specific Federal legislation or of any provision of the Constitution addressed to private individuals.

Then he gives examples that deal with interferences with the right to vote in Federal elections, primaries, the privilege of citizenship, discusses the right under Federal statutes, the right to be protected from violence while in the custody of a Federal officer. They have nothing to do with the 14th amendment.

Mr. CRAMER. We get back to the point that no specific holding under the 14th amendment would in effect provide congressional power to act in the case of an individual selling a private piece of property.

Professor HOWE. That is right. I come back to what I said at the end of my prepared remarks. It seems to me it is too bad if Congress only acts when it has the Supreme Court saying it may act.

Mr. CRAMER. Part of that judgment has to be on the basis of what the Supreme Court has indicated the constitutionality of respective laws have been in the past and what the thrust might be in the future.

Professor HOWE. That is true.

The CHAIRMAN. Will the gentleman yield?

Mr. CRAMER. Yes, go ahead.

The CHAIRMAN. I would like to call your attention at that point to a footnote in the *Guest* case, footnote on page 13. It is in connection with the decision of the Court written by Mr. Justice Stewart:

> As emphasized in Mr. Justice Harlan's separate opinion, Section 241 protects only against rights secured by other Federal laws or by the Constitution itself. The right to interstate travel is a right that the Constitution itself guarantees, as the cases cited in the text make clear. Although these cases in fact involved governmental interference with the right of free interstate travel, their reason-

ing fully supports the conclusion that the Constitutional right of interstate travel is a right secured against interference from any source whatever, whether governmental or private.

Professor HOWE. Yes, sir.

The CHAIRMAN. Mr. Mathias?

Mr. MATHIAS. Thank you, Mr. Chairman.

Professor Howe, I find it very refreshing and very welcome that you can find some portion of the Constitution other than the commerce clause on which to base our power to act in this matter.

I certainly would like to embrace your views on the 13th amendment, if I could. I would like to ask you to comment very briefly, though, on the fact that the 13th amendment was adopted in 1865 at which time there was a fairly recent line of cases in the Supreme Court, all holding that a Negro—as a freed slave—may not be a citizen by virtue of the constitutional provisions providing that a person born in this country was a citizen. The fact that that "citizenship" has been specifically denied and, that it was not touched upon in the 13th amendment would seem to negate what Justice Bradley has implied in the *Cruikshank* case.

In other words, with this line of cases standing and not having been repudiated by the 13th amendment, does it not seem to undercut Justice Bradley's decision?

Professor HOWE. Remember that the first thing that Congress did in the act of 1866 was to enact what was later made the first sentence of the 14th amendment, the provision that is that all persons born in the United States are citizens thereof. There was in the mind of Johnson and in the mind of some others a question whether the Congress could, by that enactment in 1866, undo the *Dred Scott* decision, and they therefore confirmed the congressional grant of citizenship by the first sentence in the 14th amendment.

So when you take the first sentence of the 14th amendment as what it really was, the constitutional enactment of the first provision in the act of 1866, you are back with the provision that not only in a sense served to abolish slavery, but to provide that all persons born in the United States are citizens of the United States.

Mr. MATHIAS. What you are saying really is that the 14th amendment supplements the 13th amendment?

Professor HOWE. Yes. I myself should think there was very little question today if one could consider the question in a purely academic atmosphere but that the act of 1866 was constitutional, that though the Chief Justice held in the *Dred Scott* case that Negroes were not citizens of the United States that would not disable the Congress from making them citizens of the United States.

So, I don't think we needed the first sentence of the 14th amendment to give the Negro citizenship.

Mr. MATHIAS. Therefore, you reach the conclusion, as you have said, that this provides within the scope of the 13th amendment, as supplemented, the power to take action against racially motivated private conduct that revives the outlawed caste system?

Professor HOWE. That's right.

Mr. MATHIAS. So it is the combination of the 13th and 14th amendments on which you base that statement?

Professor HOWE. That is correct.

Mr. MATHIAS. Thank you very much.

Mr. CRAMER. In that you are attempting to help us exercise our judgment here, how would you exercise yours relating to double-family dwelling houses, or Mrs. Murphy or the roominghouse situation, which was specifically excluded under the 1964 Civil Rights Act?

Do you think there is any room for exclusions? Take, for instance, the religious organizations, for instance, that establish retiree homes, which have been discussed rather lengthily during these hearings, that have the objective for providing specific religious refuge as well as retiree facilities under the sponsorship of religious organization? How about sororities and fraternities? Are there any exceptions, do you believe?

Professor HOWE. I am willing to recognize the legitimacy of certain exclusions. I can see there are many problems of judgment with respect to advisability of particular applications of this proposal and there might be reasons to think one should not ask for everything at this juncture.

I am urging that there is constitutional power to seek what this bill seeks to achieve, but whether or not it would be wiser to take a little less at this stage is essentially a question not of constitutional law, but congressional judgment.

Mr. CRAMER. I am concerned about "at this juncture." Mrs. Murphy should be out now, but brought under later on?

Professor HOWE. I think these matters are a matter of public attitude. I think it may be that 20 years from now Mrs. Murphy will not have any objection to having itinerant Negroes stop in her roominghouse overnight.

Mr. CRAMER. We are not talking about that——

Professor HOWE. I know, but the existing protection of Mrs. Murphy, I think, may not be very important 20 years from now, and the existing protection of Mrs. Murphy's own house, that may be important. Maybe 20 years from now, if this law is enacted, it will seem less important. Time does change attitudes and law changes attitudes, fortunately.

The CHAIRMAN. Thank you very much, Professor.

Your testimony has been very, very helpful. We appreciate your coming.

Professor HOWE. Thank you very much.

The CHAIRMAN. Our next witness is Mr. James W. Rouse, president, James W. Rouse & Co., Baltimore, Md.

Mr. Rouse.

Mr. MATHIAS. Mr. Chairman, as Mr. Rouse comes to the witness chair, I would like to advise the committee that he is one of the most distinguished businessmen of Maryland, that he has a business experience relating to the housing field which goes far beyond the borders of Maryland. It is nationwide in its scope. He has taken a very active community role in Maryland and I think he brings exceptional qualities of experience and judgment to this hearing today and I believe his testimony will be of unusual value.

I might say, Mr. Chairman—off the record please.

(Discussion off the record.)

Mr. ROUSE. Mr. Chairman, I have handed in a statement. I would proceed informally if that suits you, sir.

The CHAIRMAN. Whatever way you wish. Your statement is short. You might read it.

Mr. ROUSE. All right.

STATEMENT OF JAMES W. ROUSE, PRESIDENT, JAMES W. ROUSE & CO.

Mr. ROUSE. My name is James W. Rouse. I am a mortgage banker and real estate developer, president of James W. Rouse & Co., Inc., a mortgage banking firm with offices in Baltimore, Washington, Pittsburgh, and Chicago.

During the 27 years we have been in business we have financed more than 25,000 single-family houses and apartment units and now service over $500 million in mortgages for the 45 life insurance companies and savings banks which we represent as mortgage loan correspondents. I am also president of Community Research & Development, Inc., a real estate development corporation with more than $100 million in real estate developments in eight States.

I appear before you to support the open housing provisions of title IV of H.R. 14765. This presents a difficult issue for Congress, for the real estate industry, and for people throughout the country. So it has been with each step we have taken along the road toward affirming and securing the full freedom and dignity of all our people.

The assurance of equal opportunity for employment, of equal right to be served in restaurants and to be housed in hotels, motels, and inns—each of these was a difficult step to take because it unseated established practices and seemed, to many, to threaten the successful operation of the facilities as well as the rights of those who owned them. But now we have lived under these laws and most of us have come to know that the anxiety over the "open door" has proved unjustified by the actual experience that has followed.

Once an open market was established in employment, eating, and innkeeping, business proceeded relatively normally—no massive inundation, little violent reaction. Certainly there have been some dislocations, but for the most part there has been a calm and firm acceptance of the new dignity and new freedom which these laws have secured.

Now we face the same issue and the same old anxieties with respect to housing.

Can it be argued that it is a more sacred right to discriminate in the rental of an apartment than in the rental of a hotel room, or the serving of a meal or the employment of fellow workers? Or is it more sacred to be able to designate the race of the family that will occupy the dwelling one leaves behind as he moves somewhere else? Is the apartment house owner any less in business than the hotel owner or the restaurant operator? Why should he seek or why should he be granted any special right to exclude some people from occupancy of his apartments because of the color of their skin?

The continuance of segregation in housing raises special problems and causes special damage because it stimulates abnormal concentra-

tion of pressures on particular parts of the housing market. In our urban centers where there is the greatest growth in the Negro population, colored families moving out from the central city ghetto exert extreme pressure on the limited housing market available to them.

This is typically the next adjacent white ring and each new breakthrough then stimulates panic, flight, and disorderly transition. Thus, millions of families—millions of white families—are subjected to the unnecessary threat of disorderly conditions in the housing market in which they live because we tolerate segregation in the housing areas beyond.

Similarly, the purchase of a house by a Negro family in an all-white area—often brought about by foreclosure of a VA or FHA mortgage—creates similar panic and distortion in the market because that particular neighborhood becomes an island that has lost the protection of segregation practices. People without prejudice or desire for discrimination find the value of their houses severely jeopardized by the distorting impact of segregation.

American families seeking to buy a new house are widely denied the use of Government-sponsored financing assistance, because homebuilders fear that the use of FHA financing will cause their particular developments to become islands subjected to abnormal market pressures.

Many, many homebuilders and apartment developers would welcome the opportunity to offer their houses and apartments to the full housing market without discrimination, but are unwilling to do so for fear their particular projects will be subjected to the abnormal pressure of a distorted market.

The public accommodations law may have been more important for the protection it gave those who wanted to open up their facilities to all the market than for the pressures it imposed upon unwilling operators. Such is the case in housing. It is my honest belief that the preponderance of real estate developers and homebuilders would prefer to operate in a fully open market, but they fear the results of going it alone.

It is argued that an open occupancy law invades private property rights in some specially damaging and threatening way. But the right to own property in America is no free, unhampered right. The ownership of real estate is subjected to many rights which are regarded as of prevailing importance in the public interest—to taxation, of course, and to condemnation, to planning and zoning laws, to density controls, use controls, sanitation controls, and many others.

What is at stake in the legislation before us now is the simple choice of whether it is more important for the owner of real estate to have the right to discriminate against millions of our citizens in its rental and sale or whether it is more important to take one more essential step in support of the freedom and dignity of all our people regardless of the color of their skin.

The CHAIRMAN. This is practically the same as the testimony of Mr. Levitt, who testified here last week, who I presume you will agree is also a very substantial operator in the real estate industry. I take it the thrust of your remarks is that the open-housing provision acts as a sort of shield and protection to those who want to desegregate in the housing industry; am I correct?

Mr. ROUSE. Yes, sir; and we have had a very interesting experience in Baltimore. We are in the midst of it right now. This is a clinical case illustrating this point.

Baltimore, I would remind you, sir, is a city with 400,000 Negroes, a larger population of Negroes than any city in the South, I think, and a higher percentage of Negroes than any city in the North, except perhaps for the city of Washington in both cases, so we live with the racial problems as much as any city in the country.

There has been picketing of housing in Baltimore periodically over recent months. This reached the point where the mayor called a group of developers in his office to talk about possibility of voluntary desegregation. Around the room, without any exception, there was no one who advocated the continuance of segregated housing, despite the fact that virtually everyone there was operating segregated housing—but the view around the room was that no one could afford to desegregate unless everyone did.

There were some who said if you could just get everybody in my market area to agree, then I would go along. But then there was always some person in this fellow's market area who also reached into another market area. At almost no place could you effectively draw the line around a market.

We have just been through the same problem with the city council. A proposal for an open occupancy bill in the city council was defeated after enormous debate by a vote of 13 to 8. The major reason for the defeat of the bill was that this would put Baltimore at a disadvantage in relationship to the area around it. The counties surrounding Baltimore would not be subject to the provisions of this bill and would, therefore, be in a position to take advantage of Baltimore's situation by virtually advertising segregation across the line.

The CHAIRMAN. Maryland has no fair-housing statute?

Mr. ROUSE. It does not. The Property Owners and Managers Association of Baltimore testified against open occupancy at the city level, then testified for it at a State level. But when we attempted to produce a State law, then we ran into the urban-rural problem.

This is essentially an urban problem, because this is where the growth of the Negro population is. It is in the major urban areas. It was impossible to get the law through because of the urban-rural conflict.

In circumstances in which we have a large Negro population and a heavy growth in the Negro population, we have housing desegregated constantly, areas are desegregated by irresponsible thrusts of the market and with people seeking to take advantage of the market. When there is a breakthrough, there is the old story of blockbusting and of frightening people into selling their houses.

It is my considered guess that a preponderance of the responsible homebuilders, real estate brokers, and apartment house operators in the Baltimore area would favor open occupancy—if it could apply to everyone in the entire market area.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. No questions.

The CHAIRMAN. Mr. Donohue?

Mr. DONOHUE. No questions.

The CHAIRMAN. Mr. Kastenmeier?

Mr. KASTENMEIER. No questions.

The CHAIRMAN. Mr. McCulloch?

Mr. MCCULLOCH. Yes.

Do you have housing in other States besides Maryland?

Mr. ROUSE. Our company?

Mr. MCCULLOCH. Yes.

Mr. ROUSE. We have financed housing in other States. We do not own any housing that we own and operate ourselves.

Mr. MCCULLOCH. And that includes operation as well as owning? You do not——

Mr. ROUSE. We do not own or operate housing in any other States but Maryland.

Mr. MCCULLOCH. Do you know anything about the experience in the States where there is open housing as it affects the value of units in those projects which you build?

Mr. ROUSE. I can say that as a mortgage banker the existence of an open occupancy situation in a State or an area has never exerted an adverse effect on the mortgage financing of such property. That, therefore, the thoughtful but objective judgment of the great lenders has been that this was not adverse to housing values.

I can make a secondhand report, which is always dangerous, but it happened to be important to our Baltimore situation. The mayor appointed a committee to examine the status of discrimination in housing in Baltimore and this committee turned in a very thoughtful report.

In the course of their work they studied other cities, and what had happened in other cities. One of the members of that committee was a former president of the Real Estate Board of Baltimore, who had been outspokenly opposed to any form of open occupancy and particularly opposed to any form of open occupancy in the city of Baltimore alone.

When the committee visited St. Louis and saw the actual experience with an open occupancy law in St. Louis, it completely changed the mind of this man, William C. Wilson, and he became a strong supporter of an open occupancy law in the city of Baltimore based primarily on his look at what had happened in St. Louis, where there had been no adverse effects and where, furthermore, he found that one by one the political subdivisions outside of St. Louis, judging the satisfactory effects of the law within the city, were in turn passing fair housing laws.

Mr. MCCULLOCH. Do you know anything about the statistics of the ownership of open housing, for instance, in St. Louis that you just spoke about?

Mr. ROUSE. No, I do not, sir.

Mr. MCCULLOCH. Do you know anything about the statistics as to the ownership of housing in open housing areas anyplace else in this country?

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

Mr. MCCULLOCH. You know that neither as a builder nor as a mortgage banker?

Mr. ROUSE. No, and I think the statistics would be very difficult to assemble in any objective way to prove that the existence of open oc-

pancy could be singled out to measure its impact on values. It would be a very difficult thing to prove.

Here in Washington we financed the first apartment project in the huge southwest redevelopment area, Capitol Park. This was a very difficult project to finance because the conventional wisdom of the Washington market area all said it could not be successful, that you could not go into that old slum area which had been a Negro slum and build fine housing and rent it to the market.

I might say that we submitted that financing 27 times unsuccessfully before we finally were able to finance it. But we believed in it and it was a great success and it was integrated by Jim Scheuer, now a Member of Congress. The whole area then proceeded with orderly integration. In that area it has certainly not had an adverse effect on values.

Mr. McCULLOCH. I think perhaps you misconstrued the reason for my question. Your conclusion is not quite accurate. I was not trying to find out about the financial impact: I was trying particularly to find out the result of open housing in other States and communities.

We had some interesting figures from Mr. Levitt and you have no such figures?

Mr. ROUSE. No, sir.

Mr. McCULLOCH. That's all, Mr. Chairman.

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. No questions.

The CHAIRMAN. Mr. Mathias?

Mr. MATHIAS. No questions.

The CHAIRMAN. Thank you very much, Mr. Rouse. We appreciate your coming.

Our next witness is Mr. Alan L. Emlen, chairman of the Realtors' Washington Committee, National Association of Real Estate Boards.

Mr. Emlen is accompanied by his counsel, Mr. John C. Williamson.

You may proceed.

STATEMENT OF ALAN L. EMLEN, CHAIRMAN, REALTORS' WASHINGTON COMMITTEE, NATIONAL ASSOCIATION OF REAL ESTATE BOARDS

Mr. EMLEN. Mr. Chairman and members of the subcommittee my name is Alan L. Emlen and I am a real estate broker with offices in Philadelphia, I have been engaged in the residential real estate brokerage business in the Philadelphia metropolitan area for 21 years. My firm maintains five offices in Philadelphia and contiguous suburbs. I am also a former member of the Pennsylvania Real Estate Commission.

I appear today as chairman of the Realtors' Washington Committee of the National Association of Real Estate Boards to present the views of the association in opposition to title IV of the pending Civil Rights Act, H.R. 14765.

Our association consists of more than 83,000 realtors who are members of more than 1,500 local boards of realtors in every State of the Union.

I am submitting for the record a copy of the policy statement adopted by our last convention, which serves as the basis for this appearance in opposition to title IV. The key to this policy statement is in the first sentence which I shall quote:

> We reassert our support of the principle of equal opportunity in the acquisition and enjoyment of real property and the right of individuals to determine the disposition of that property.

We are here to raise our voice against the injection of the element of legal compulsion, of the police expedient, in the relations of a homeowner or any other residential property owner and the one who seeks to buy or rent his property.

We concern ourselves only with the private action of an individual property owner in an area where the State is not involved. We are concerned with the attempt in title IV to proscribe private action in private dealings between private individuals in the disposition of privately owned property.

The Attorney General in his testimony of May 4 said that he had no doubts whatsoever as to the constitutionality of title IV. Time may prove that he is correct, although we respectfully suggest that this is no cause for rejoicing on the part of more than 36 million homeowners, each of whom must have assumed that the right to own property carries with it a right to dispose of it to the persons of their choice.

I have some doubts as to the wisdom of discussing the relationship of this bill to the Constitution, but I cannot refrain from reciting what others, more learned than I in this matter, have said about the home. For example, Justice Douglas, concurring in the fairly recent opinion in *Lombard* v. *Louisiana*, said:

> If this were an intrusion of a man's home or yard or farm or garden, the property owner could seek and obtain the aid of the state against the intruder. For the Bill of Rights, as applied to the states through the Due Process clause of the Fourteenth Amendment, casts its weight on the side of the privacy of homes.
>
> The Third Amendment with its ban on the quartering of soldiers in private homes radiates that philosophy. The Fourth Amendment, while concerned with official invasions of privacy through searches and seizures, is eloquent testimony of the sanctity of private premises. For even when the police enter a private precinct they must, with rare exceptions, come armed with a warrant issued by a magistrate.
>
> A private person has no standing to obtain even limited access. The principle that a man's home is his castle is basic to our system of jurisprudence.

Yet in title IV the Congress would authorize the omnipotent arm of the Attorney General to reach into a private home, unlatch the door, and proclaim to the owner that he must rent a room or sell the home to a person with whom he does not choose to execute a rental or sales agreement. The very breadth of the implications of the Attorney General's position casts doubt upon its validity.

We insist that nothing in the Federal Constitution gives to one citizen the right to acquire property from another citizen who does not wish to sell it to him regardless of the reason. In legal usage a right involves a legal relationship between people. The capacity to create enforceable legal relations by one's voluntary act such as contract rights, property rights, the marriage relation, and so on, is an essential ingredient to citizenship.

Federal constitutional guarantees, implemented by the Congress, prevent any State from denying these "rights" on racial grounds, but these rights are enforceable only against State officers and not against private persons.

A may desire to buy B's home, but A does not have a "right" to buy B's home unless there is a valid contract—that is to say, a legal relationship. The Congress, in title IV, is being asked to assert the coercive power of the State to give A this right and this cannot be done without depriving B of a right that is deeply rooted in our traditions as well as in the common law.

Compelling the homeowner or rental owner of real estate to enter into a contract with one not of his choice is an affront to the American tradition of freedom of contract, the very underpinnings of which rest on the proposition that no American, without his consent, need become an unwilling contractor with any other person.

The Attorney General on page 17 of his testimony referred to the *Shelley* v. *Kraemer* case which held that racially restricted covenants were not enforceable in either State or Federal court. A statement from the majority opinion in that case is most pertinent to consideration of title IV.

The opinion says:

> * * * the principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the state. That amendment erects no shield against merely private conduct, however discriminatory or wrongful.

The Attorney General also cites the commerce clause as a constitutional basis for forcing homeowners and rental property owners to contract with persons other than those of their choice. The Attorney General is, of course, predicting the attitude of the U.S. Supreme Court toward this new role for the commerce clause and he has ample basis for the optimism.

However, if the Congress enacts title IV and thereby fails to exercise some restraint on the U.S. Supreme Court, then I doubt that there is any element of private human endeavor, social, political, or economic, that can escape the commerce clause. Even the 1954 school cases could have been decided under the commerce clause.

Private schools, private clubs, yes, even housekeeping would fall within the all-encompassing grasp of the commerce clause—everything and everyone that makes use of an article that possessed an element which at one time flowed in commerce. We hope that the Congress by rejecting title IV will thereby sound a note of caution that there are reasonable limits beyond which the Congress will not tempt the Court to so "rewrite" the commerce clause.

The moral end advanced by title IV cannot justify the means through which it is sought to be attained. The obliteration of the distinction between public and private affairs, a necessary consequence of title IV, represents a sharp erosion of individual liberty. If individual freedom is worthy of preservation, it behooves all Americans to mark well the distinction between public and private affairs and to employ most sparingly the force of law to coerce human conduct in the area of private affairs.

At this point I would like to add that referring to the last witness, Mr. Chairman, the St. Louis open occupancy program is not a statutory one, but it is a voluntary program and it is working very well.

For the remainder of my testimony I would like to discuss some rather serious obstacles to the enforcement provisions of title IV. As an association of licensed real estate brokers we are, of course, concerned with the effect of title IV on the sale of homes. We have studied title IV and we are convinced that the language is not only destructive of the rights of property ownership, but attempts at its enforcement are certain to adversely affect the sale and transfer of homes.

Under section 406 of the bill, a plaintiff has within 6 months after an alleged discriminatory housing practice or violation has occurred, to file suit in a Federal, State or local court.

Assume that a contract for the sale of a home was executed on January 20th and final title search preliminary to recording of the deed occurred on April 20. On April 19 a complaint was filed against the seller alleging an act of discrimination in the sale of the house the previous November or December.

Because the suit is *quasi in rem*, that is, it relates to the house which is the object of the title search, the title attorney will not certify title, thereby preventing disbursement of the mortgage proceeds and bringing the sale of the home to a grinding halt. And we have in the last several days talked to several title company officials, both in Maryland and Pennsylvania, on this subject and they back up this statement.

As a real estate broker I can comprehend of no legislative proposal more destructive of home ownership than title IV.

Let me cite another example of the mischief that this legislation may generate. A suit for preliminary injunction is filed and on the basis of the pleadings and without the taking of testimony the injunction is issued. The seller would have to wait from 1 to 3 years in many jurisdictions for an opportunity to prove that his refusal to contract with the complainant was based on grounds other than racial or religious discrimination. During the interim the house must remain off the market.

Under the common law, a contract does not come into existence until a legally binding offer has been "accepted." The offerer may withdraw an offer at any time prior to such acceptnce. Unless specifically worded so as to constitute an offer, an advertisement for sale of a piece of property is merely an invitation to receive offers. The seller in this case retains the right to reject any and all offers or to withdraw the property from sale for any reason whatsoever.

Title IV would seriously impair this freedom of action of the seller of a home. It would, in effect, convert an advertisement into a legally binding offer with respect to any person who alleges violation of section 403. The action by such person, however, would not be for breach of contract, but for violation of an entirely new right—that of the right to buy real property which is advertised for sale.

Thus the placing of an ad incurs legal consequences hitherto unknown to the common law. It not only restricts the seller's freedom to bargain and negotiate with a number of offerers, but it also restricts his right to withdraw the property from sale.

Assume, for example, that a homeowner lists his home with a broker for sale. The seller expects to list at the FHA-appraised value. This appraisal may take up to 2 weeks or more, so the seller lists at an arbitrarily high price pending the results of the appraisal, for example, $25,000.

Two days later he turns down an offer for $23,000. The FHA appraisal comes in at $23,000 and the listing contract is so amended. Can the first offerer claim a violation of section 403 if the house is then sold at the listed price?

Suppose seller accepts a later offer of $23,000. Must he in either case check with the first offerer prior to acceptance of later offers which are equal to or lower than the first? In other words, does the first offer on a property fix minimum terms, or a floor, under which the seller goes at the peril of legal action by the first offerer?

Does the 6 months' provision of section 406(a) mean that a prudent buyer must "search the record" for the prior 6 months to see if there are any potential actions under section 406 prior to signing? And what record could he search?

We note also that the damages for "humiliation and mental pain and suffering" are without limit, and no standard or criterion for gaging such damages is even suggested in the bill. Section 406(d) allows only the prevailing plaintiff a reasonable attorney's fee as part of the costs. The entire bill, including the authority of the Attorney General to intervene on behalf of the plaintiff, is heavily weighted against the homeowner. The most frivolous harassing complaint could wipe out an owner's equity in his home even were he to prevail ultimately.

Section 403(d) would even prohibit reference in an advertisement to the proximity of a parochial school for even this would, under the terms of the bill, be held to indicate a preference for a purchaser of a particular religious faith.

We urge the subcommittee to reject title IV. We make this plea not in the interests of the segregationist, but in the interests of the homeowner and the owners of rental property. We are convinced that the cause of improved race relations will be retarded, not enhanced, by the enactment of this measure. In every case where a similar law has been submitted to a referendum of the people, it has been overwhelmingly rejected.

The people, in our considered opinion, still cling to the centuries-old doctrine that "a man's home is his castle." Title IV is an ominous drawbridge that once let down would provide access for a force that will destroy a basic human right of private property ownership.

That concludes my statement, Mr. Chairman.

(Appendix to statement follows:)

PROPERTY OWNERSHIP

We reassert our support of the principle of equal opportunity in the acquisition and enjoyment of real property and the right of individuals to determine the disposition of that property. This principle does not and should not establish special privilege for any particular group.

Government should not deny, limit, or abridge, directly or indirectly, the fundamental right of every person to sell, lease, or rent any part or all of his real property, or to decline to sell, lease, or rent such real property.

We deplore the trend toward abandonment of responsible citizenship in allowing property destruction to occur. Riotous and irresponsible disrespect for law

and authority results in additional costs to society in law enforcement and compensation for property loss or damage.

We urge all citizens to communicate to their duly elected public officials their alarm and concern with such acts, to the end that the human right to own property is maintained and strengthened; for with every right there is a duty and with every privilege there is a corresponding responsibility.

The CHAIRMAN. Mr. Emlen, your organization has members, I take it, in California, have they not?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. They have members in Colorado?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Connecticut?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Illinois?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Indiana?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Maine?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Massachusetts?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Michigan?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Minnesota?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Montana?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. New Hampshire?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. New Jersey?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. New York?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Ohio?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Oregon?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Pennsylvania?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Rhode Island?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Washington?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Wisconsin?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Alaska?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. District of Columbia?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Puerto Rico?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Virgin Islands?

Mr. EMLEN. I don't know about the Virgin Islands.

The CHAIRMAN. In those States that I have enumerated there are State fair housing laws for public housing.

Do not the real estate brokers and the real estate operators suffer the same inconveniences and so-called difficulties, annoyances that you have mentioned in your statement in those States that have these fair housing laws?

Mr. EMLEN. Well, Mr. Chairman, in many of these States, some of the States at least, the laws do not apply to owner-occupied, single-family dwellings.

The CHAIRMAN. But aside from owner-occupied dwellings, those inconveniences and difficulties would apply?

Mr. EMLEN. Oh, yes, some of them. We have had some in Pennsylvania.

The CHAIRMAN. And you have lived with them, have you not?

Mr. EMLEN. Of course, it has not been very active in Pennsylvania where my experience is limited.

The CHAIRMAN. The fair housing provisions have been generally accepted in those States, have they not?

Mr. EMLEN. Well, some of us do not enjoy working under them, but it is a State law.

The CHAIRMAN. I have inserted in the record also the State fair housing laws covering discrimination in private housing. There are some 16 States, together with the District of Columbia, Puerto Rico, and the Virgin Islands, and some of the States have criminal penalties for violations and some of the States listed cover real estate brokers.

Would not all those States cause the real estate industry to suffer what you call these disadvantages, and they have lived with them?

Mr. EMLEN. Well, we live where we have the laws; yes, sir.

The CHAIRMAN. You refer to the case of *Lombard* v. *Louisiana* and quoted from the concurring decision of Mr. Justice Douglas, but you did not quote all the decision.

You quoted a portion of the decision on page 274. On page 282 we find the following:

State licensing surveillance of a business serving the public also brings its servants into the public domain. This restaurant—

This was the case of a sit-in in a restaurant. It had nothing to do with real estate—

This restaurant needs a permit from Louisiana to operate and during the existence of the license the state has broad powers of visitation and control.

Justice Douglas noted that during the existence of the license the State has broad powers of visitation and control. Would that not also apply to a license of a real estate broker?

Mr. WILLIAMSON. May I answer that, Mr. Chairman?

The CHAIRMAN. Yes, sir.

Mr. WILLIAMSON. First, I would like to say that while the *Lombard* case did relate to public accommodations and Justice Douglas' statement we quoted was dicta, it was nevertheless a very eloquent statement on the sanctity of the home.

A public accommodation does have a license, but we are talking about the owner of a home and the owner of a home is not a licensee of the State.

The CHAIRMAN. I am just adverting to the licensed broker where you quote from that decision and suggest that the reasoning of the judge would be applicable also to a broker in the real estate business?

Mr. WILLIAMSON. Mr. Chairman, I would like to make one statement about the list of States. You did name several, I am not sure of all; I recall Michigan and Illinois that do not have fair housing laws.

I would like to put into the record a list of the States which do have such laws, the properties that are covered, the exemptions and how they are enforced.

Mr. EMLEN. We have it all here.

The CHAIRMAN. We will be glad to have it.

(Summary follows:)

SUMMARY OF STATE FORCED HOUSING LAWS WHICH COVER PROPERTY OWNERS

ALASKA

Statute covers sale and rental of all housing. Law states that "a person" is entitled to equal enjoyment of housing facilities. Language is broad enough to cover lenders as well as owners and brokers.

Exemptions: None.

Enforcement: Commission on Human Rights. Complaints may be filed by aggrieved party or by Commission. Violation punishable by maximum fine of $500 and/or 30 days.

CALIFORNIA

Rumford Act covers sale or rental of both "publically-assisted" and private housing. Unruh Act prohibits discrimination privileges, and services of business establishments. Also housing operated by religious charitable or fraternal groups.

Exemptions: Owner of a one-to-four family dwelling is exempt if not "publically-assisted", i.e. if not financed by FHA or VA, or state agency, built on urban renewal land, etc. (Unruh Act has been held applicable, however, to rental of a private dwelling which is *not* owner-occupied and in which there are three units for rent.)

Enforcement: Fair Employment Practice Commission. Complaint filed by aggrieved party. Penalty: *Rumford Act:* for willful violation of order; $500 and/or six months; if unable to comply with order, damages up to $500. *Unruh Act:* actual damages plus $250.

COLORADO

Statute covers sale or rental of all housing and vacant land.

Exemptions: Rental of rooms in an owner-occupied single family dwelling; also housing operated by nonprofit fraternal, educational, or social organization or club.

Enforcement: Anti-discrimination Commission. Complaint may be filed by the aggrieved party, the Attorney-General, or the Commission. Statute gives court specific power to order sale of house to complainant. Penalties include actual damages if any. Injunction or restraining order requires posting of adequate bond by complainant.

CONNECTICUT

Statute covers sale and rental of all housing, and membership in *boards or associations* of persons whose profession requires a state license.

Exemptions: Rental of a unit in a two-family, owner-occupied dwelling, and rental of rooms in an owner-occupied dwelling.

Enforcement: Civil Rights Commission. Complaint may be filed by aggrieved party or Commission. Penalties: $100 and/or 30 days, but $1000 and/or one year for any person depriving another of state or federal constitutional or statutory rights. For discrimination as to *board membership* $100–$500.

INDIANA

Statute covers all housing.

Exemptions: Sale or rental of "residential building" with up to three "housing units."

Enforcement: Civil Rights Commission. Complaint may be filed by aggrieved party or Commission. Penalties set by court in contempt action. Commission directed to prepare a comprehensive educational campaign.

MAINE

Statute covers *rental* of housing accommodations, by owners or agents.
Exemptions: Rental of one unit of an owner-occupied two-family dwelling, and the rental of up to four rooms in a single-family owner-occupied dwelling.
Enforcement: No administrative remedy provided. Provision is in Maine Criminal Code. Violation incurs fine of up to $100 and/or imprisonment for up to 30 days.

MASSACHUSETTS

Statute covers sale and rental of all housing accommodations by owners, real estate brokers, and their agents. Separate statute prohibits discriminatory practices by lenders.
Exemptions: Rental of unit in owner-occupied two-family dwelling.
Enforcement: Commission Against Discrimination.
Penalties: Fine of up to $300 and/or imprisonment for up to one year, and in addition, damages to petitioner of up to $1,000.

MINNESOTA

Prohibits discrimination in all categories of housing. Real estate brokers, salesmen, and lenders are also covered.
Exemptions: Sale or rental of owner-occupied dwelling, rental of a unit in an owner-occupied two family dwelling, and rental of rooms in an owner-occupied one-family dwelling.
Enforcement: Commission Against Discrimination. Complaints may be filed by aggrieved party or by the Commission. If conciliation fails, Governor appoints 3-man panel for public hearing.

NEW HAMPSHIRE

Prohibits discrimination in the rental of housing accommodations.
Exemptions: Rental of a unit in an owner-occupied two- or three-family dwelling, rental of a room in an owner-occupied dwelling, and accommodations owned by a religious group where selection of tenants furthers the religious purpose of the group.
Enforcement: Commission for Human Rights. Action may be brought by aggrieved party or by the Attorney General. Violation of Commission order punishable by fine of up to $500 and/or imprisonment of up to six months.

NEW JERSEY

Statute covers sale or rental of all types of housing. Real estate movers and lenders also covered.
Exemptions: Rental of rooms in an owner-occupied single-family dwelling, and rental of a unit in an owner-occupied two-family unit.
Enforcement: Division on Civil Rights, Department of Law and Public Safety. Complaint filed with Attorney General. Maximum penalty: $500 and/or one year.

NEW YORK

Prohibits discrimination in the sale of lease of all housing accommodations, including housing to be constructed. Separate sections cover lenders, real estate brokers, and real estate salesmen.
Exemptions: Rental of unit in an owner-occupied two-family dwelling, or the rental of rooms in a single-family dwelling if the renting is by the occupant.
Enforcement: Commission for Human Rights. Fine of $500 and/or one year in prison. Complaints may be filed by aggrieved individual, Attorney General or Commission.

OHIO

Statute prohibits discrimination in the sale rental or financing of housing. Lenders are covered by a separate section.
Exemptions: Sale or rental of owner-occupied one- or two-family residence. Specific language provides that residence shall be deemed owner-occupied after vacated by owner until sold to or occupied by, another part. Religious, charitable, fraternal groups.
Enforcement: Civil Rights Commission. Action brought by aggrieved individual.

OHIO

Statute covers discrimination on the sale or lease of all types of housing. Separate section covers lenders, and real estate brokers.

Exemptions: Sale or rental of owner-occupied one- or two-family residence. Specific provision states that home shall be deemed to be owner-occupied until it is sold or occupied by another party, even if owner has actually vacated premises. Religious, private or fraternal groups, where selection furthers the purposes of the organization.

Enforcement: Civil Rights Commission. Complaint brought by aggrieved party. No person shall be witness against himself. Commission required to state conclusions of fact and law in issuing order. Bond required to be posted by party taking an appeal from Commission order to state court, where relief sought is temporary restraining order. Testing is prohibited.

PENNSYLVANIA

Statute covers discrimination in the sale and lease of housing. Definition of "person" includes owner, real estate broker and salesman and lending institution.

Exemptions: (Same as Ohio).

Enforcement: Human Relations Commission. Action may be brought by individual, Attorney-General or by Commission. Commission need not state conclusions of law in issuing order. Order enforced by filing with Court of Common Pleas.

RHODE ISLAND

Statute covers the sale or rental of housing. Owners, brokers and lenders are covered.

Exemptions: Rental of a unit in an owner-occupied two- or three-family dwelling, or the rental of rooms in the dwelling of an owner-occupant.

Enforcement: Commission Against Discrimination. Complaint may be filed by aggrieved party of by the Commission. Commission directed to undertake an educational program in cooperation with the Department of Education to emphasize harmful effects of prejudice against minorities.

WISCONSIN

Statute covers sale, lease, contracts to construct, financing and inspection of housing.

Exemptions: Building containing living quarters used by owner-occupant, owner-occupied one- to four-family dwelling, or owner-occupied dwelling in which no more than four rooms are rented.

Enforcement: Industrial Commission. No language indicating that the filing of a complaint is limited to the aggrieved party. "Testing" specifically prohibited. Fine of up to $200.

The CHAIRMAN. I want to call attention also to the fact that I have a list of States—California, Massachusetts, Michigan, Oregon, District of Columbia, and the Virgin Islands, having State fair housing laws authorizing the suspension or revocation of brokers and/or salesmen's licenses for noncompliance with the fair housing provisions; that is, where they discriminate on the basis of race, color, or national origin.

Mr. WILLIAMSON. I was under the impression in Michigan an attempt was made to do this by regulation and that the act of the regulatory action was held invalid.

The CHAIRMAN. These are the State laws themselves. The Michigan penalty applies to public housing.

Mr. WILLIAMSON. I believe the Michigan Real Estate Association asked to testify and I am sure they are more qualified than we are to discuss the Michigan law, if they have such a law, and how it functions.

The CHAIRMAN. Mr. Rogers?

Mr. ROGERS. Reference is made to the various States, like my own, which have these fair housing State laws.

In response to a question that was put to you, you said that most of them exempted the premises maintained by the owner or lessee?

Mr. EMLEN. Some of these, in Pennsylvania, for instance, the law is not applicable to owner-occupied dwellings. Our law does apply in Pennsylvania if the owner moves out and puts it up for sale. The law applies there, but not when he is living in it.

Connecticut, exemption: rental of a unit in a two-family, owner-occupied dwelling and rental of rooms in an owner-occupied dwelling.

Many of the States have exemptions in the single-family or two-family unit. Alaska has no exemptions. As a matter of fact I think the only one here that—the whole list here, Mr. Rogers, Alaska is the only one with no exemptions of any kind.

Your State—exemption is rental of rooms in an owner-occupied family dwelling; also housing operated by nonprofit fraternal, educational, or social organizations or club.

Mr. WILLIAMSON. There are 7 of the 16 that have no exemption.

Mr. ROGERS. Is there any indication of how they operated in any of these States?

Mr. WILLIAMSON. I believe that all of these State associations or most of them requested an opportunity to testify so they could discuss the details of the operation of these laws and their inequities, if any. Some of the States—I understand their requests have been accepted, but others, like Rhode Island and Michigan, have been declined. That is, I think they have been declined.

Mr. ROGERS. They asked for permission——

Mr. WILLIAMSON. They asked for permission to testify here primarily to discuss their State laws on how they function, what results have taken place, their inequities and so forth.

Mr. ROGERS. You are the attorney for the——

Mr. WILLIAMSON. For the national association.

Mr. EMLEN. Mr. Rogers, we represent the national association and these are constituent State associations who wish to be heard, particularly in the area of the fair housing laws that they have, and I am speaking for all of them.

Mr. ROGERS. Do you not have some information about those particular State laws and how they have operated? Have you even been in touch with counsel out in Colorado?

Mr. WILLIAMSON. I think based on the information that we have, the forced housing laws are not accomplishing what they are supposed to accomplish and I think the New York association will have a witness here tomorrow. They will discuss the New York fair housing law, which is an all-encompassing one and I believe that their comments might very well be applicable to the others.

Now, the Illinois association will testify, but they have no fair housing law, and Texas has no fair housing law.

Mr. EMLEN. The Pennsylvania association, I know, requested to be heard and I would much rather have our State association president testify on the operations of our fair housing law than to have me do it.

Mr. ROGERS. Do you not think with the New York situation and the others that we would get a cross-section operation of these State laws?

Mr. EMLEN. I think the New York witness ought to——

Mr. ROGERS. Without the necessity of each appearing separately?

Mr. EMLEN. I think you have accepted the request of, I think, California, New York and Texas——

Mr. WILLIAMSON. New York, Texas, and Illinois.

Mr. EMLEN. That's right, so the New York witness ought to be able to help you out pretty much, I think.

Mr. ROGERS. I understood from counsel here that all of these associations were given an opportunity to submit statements.

Mr. WILLIAMSON. Yes, they have, those who have requested.

Mr. FOLEY. And none have been received to date.

Mr. EMLEN. I know of some you are going to get very shortly, Mr. Rogers.

Mr. ROGERS. Now, you point out in your statement the question of the uncertainty of the title of real property, the search they may make in connection with it. Has not most of the title examination gone into insurance in various States? They have done away with the title search altogether?

Mr. WILLIAMSON. We contacted a title attorney from Suburban Title in Montgomery County and he said that immeditaely prior to recording of the deed, he makes the last title search and that if an action had been filed the previous day pursuant to title IV, he would not record the deed and he would not issue title insurance, which would prevent disbursement of the mortgage proceeds.

Now——

Mr. EMLEN. Mr. Rogers, I asked the president of a large title company in Philadelphia the other day exactly the same question, and he said if they could not possibly let the proceeds of a sale be distributed at closing, the mortgage proceeds, the check is there for the mortgage, the mortgagee's check, they have to hold the whole thing up to be sure that no complaint had been filed against the owner of this property.

Mr. ROGERS. Does that mean they have to hold it up for 6 months after the offer is made?

Mr. EMLEN. That is the problem we are raising.

Mr. ROGERS. Even though no complaint had been filed?

Mr. WILLIAMSON. No, no complaints. Our example was where a complaint had been filed immediately prior to the final search or the final—immediately prior to the recording of the deed.

Mr. EMLEN. There is a bigger problem, and this is what bothers me, the language of title IV. It says, anytime within 6 months.

Suppose the seller sold to somebody on Monday and he was able to have a closing by Wednesday, which is physically possible to do. It is done, and the deed is recorded and the transaction is completed and the proceeds distributed.

Is the 6 months up in that 48 hours, or can this complainant 4 or 5 months later, hearing that that house had been sold ask the court to unrecord the deed and set aside the sale?

Mr. ROGERS. Well, does title IV give them $500 damages?

Mr. WILLIAMSON. Yes, in that case he could go into court. He could ask the court to set aside the sale of the property and have the property conveyed to him. Probably the court would not grant that

type of relief, but the court would grant the punitive damages and assess damages against the seller, that is, where the house was purchased to a person without notice or where no action was pending.

Mr. EMLEN. We are trying to raise some questions, as a practicing residential real estate broker, and I know the average settlement time of the agreement for sale and the closing is anywhere from 30 to 45 days, and I think we would probably be faced with a situation where the sellers of houses will start accelerating their deals very greatly.

You will find 1 week and 3 day closings to get transactions done and get them, and the house will never appear to have ever been on the market. You have some very, very serious problems of enforcement here that I do not think were taken into consideration.

Mr. ROGERS. Do you feel that you are faced with undue delay in transactions if there is no complaint filed? Do you think that the real estate broker or the realtor would delay pending to see whether any were to be filed?

Mr. WILLIAMSON. Only delays would follow if a complaint were filed prior to the recording of the record. Any action that is filed prior to recording of the deed could delay the sale of that property for years in some jurisdictions.

Mr. ROGERS. You very often have litigation over the terms and conditions of the contract for the sale and vice versa.

Mr. EMLEN. Sometimes, but we have more sales that are uninterrupted than are interrupted. I am more concerned not with the filing of a complaint so much right after this house is sold but after the house—the agreement for sale has been signed, then that hiatus between the agreement and the recording of the deed, the action that can follow the recording of the deed.

The owner has moved into the house; he has sold the other house; he is there for 4 or 5 months. The former owner has a complaint filed against him for not having sold to the complainant.

Is the court going to make the former owner sell this house to the complainant?

Mr. ROGERS. There is nothing in this legislation that authorizes that.

Mr. EMLEN. It says within 6 months——

Mr. ROGERS. Well, that is a statute of limitation. I construe this to mean that even if these acts took place unless something is filed within 6 months, cannot be brought. But there is nothing in here—if there is, I want to find it out—that would say that if you as a real estate broker sell me a house and I put up my money and we finish the transaction, and then it turns out that the fellow who sold it to me forgot to ask somebody whether they wanted to buy it, and that somebody filed a lawsuit against the former owner, that that puts my title in jeopardy.

Mr. WILLIAMSON. No, it would not if title had already passed. Mr. Emlen was talking about the action being filed between the execution of the sales contract and the recording of the deed, but if title had actually passed and the deed recorded and then the act of discrimination was complained of and action was filed, the action would go ahead, but——

Mr. ROGERS. How would you get at discriminatory action unless you went at it in that manner?

Mr. EMLEN. I think the action would have to be restricted between the time of the signing of the agreement and the actual closing.

Mr. DONOHUE. Will the gentleman yield?

Mr. ROGERS. Yes.

Mr. DONOHUE. Is that not very common where a person has a claim against the owner and he files, he starts suit, files a lien or an attachment? That does not impede the sale if the prospective seller just posts a bond to remove the attachment or the lien, pending the hearing of the case on the merits.

Mr. EMLEN. Yes, sir.

Mr. DONOHUE. That is very common, is it not?

Mr. EMLEN. But it could make a very unnatural delay——

Mr. DONOHUE. I mean, what delay would be entailed if he felt that the suit was groundless? He would not have any difficulty in obtaining a bond to remove that attachment or that lien?

Mr. WILLIAMSON. But the relief sought in an action filed would be for injunction to enjoin the seller from disposing of the property, and if the seller insisted that he did not discriminate, it would be 2 or 3 years in some jurisdictions before he could even give testimony on that point.

Mr. DONOHUE. Of course, you go into a court of equity to obtain the injunction. Now, the judge hearing a request for the injunction would be assured that the seller would say, "We have not discriminated, but to insure that this person shall not suffer, we will post a bond."

Do you think any court of equity would issue an injunction if those conditions were met that I have recited?

Mr. WILLIAMSON. I do not think title, even if he provided bond, the title could ever pass. He would not be able to get any title insurance. The title just would not pass once the action is filed, even though the seller did post bond that the purchaser would not—or, the complainant would not be aggrieved. It is just the idea that the sale of the home would come to a grinding halt.

Mr. DONOHUE. Even though a bond were provided?

Mr. WILLIAMSON. That is right. The title company will not insure title if the action is——

Mr. DONOHUE. The bond would not necessarily come from the title company. It could come from an outside insurance company.

Mr. WILLIAMSON. They might file a bond, but the transaction could not go ahead if it depended upon mortgage financing and title insurance.

Mr. EMLEN. The mortgagee would never allow his proceeds to be distributed.

Mr. DONOHUE. If the prospective buyer was protected by a bond——

Mr. WILLIAMSON. I believe the title company still would not record the deed.

I think that perhaps some of the big title companies might provide some enlightening information on that subject, but this is what——

Mr. DONOHUE. Let me ask you again: Is it not quite common that just about the time a transaction is closed, the title examiner discovers that there is a lien, there is a cloud on the title?

Mr. WILLIAMSON. That's right.

Mr. DONOHUE. That does not impede the completion or the finalizing of the transaction if the seller posts the bond?

Mr. EMLEN. My own experience with the title companies in Philadelphia is that if anything turns up on the title report at the last minute, they always have a bring-down search just before you have a closing in Pennsylvania. The seller has got to have somehow or other get that title removed before they will allow the closing to go on.

Mr. DONOHUE. How is it usually removed?

Mr. EMLEN. It depends on what it is. If the Federal-State tax is unpaid, they either show proof they have paid it or pay it or show a letter of intent or something. Some step has to be taken.

Mr. DONOHUE. They must do further than merely present a letter of intent that they will pay it.

Mr. WILLIAMSON. Mr. Donohue, if the action goes to the transfer of title, then I don't think there is anything that could—the injunction is issued because of the irreparable damage. Money damages will not compensate. Only the transfer of title will compensate, so I don't think that any bond could be filed that would cause the transaction to go ahead that would satisfy the buyer.

Mr. DONOHUE. Can you envision a situation where irreparable damage might be caused an individual because he was not permitted to purchase a particular piece of property?

Mr. WILLIAMSON. The reason that he is in equity and he is asking for an injunction is because of irreparable damage. He wants to buy the home.

Mr. DONOHUE. Not necessarily.

Mr. EMLEN. That is what title IV——

Mr. WILLIAMSON. That is one of the inherent bases for issuing the writ, for issuing the injunction. It is an equitable injunction and the only basis is irreparable damage. He is not being compensated at law, so he is in equity to ask for injunction.

Mr. DONOHUE. I am sorry I do not agree with you.

Mr. MCCULLOCH. Will the gentleman yield?

Mr. ROGERS. Let me ask one more question.

Now, you make reference to the fact that there is something in title IV that would compel a person to sell to anybody his property? Is there any requirement in there that that be done?

Mr. WILLIAMSON. The court has the authority to issue an injunction.

Mr. ROGER. No; but in the first instance.

Mr. WILLIAMSON. Or any order.

Mr. ROGERS. In the first instance, I own a home and I am not compelled to sell it to anybody unless I want to, am I?

Mr. EMLEN. If you put it up for sale and you put it on the market and you are compelled——

Mr. ROGERS. When I put it up for sale on the market, I want to sell it. Now, I am not compelled to do that. That is my voluntary act, is it not?

Mr. EMLEN. That's right. Suppose you withdraw it from the market, Mr. Rogers, and this has happened thousands of times, that a man advertises his house in the Sunday paper for sale and for $30,000 and subsequently he is not going to move out of town, or he decided he liked the house after all. Already nine offers have come in on this thing and two or three of them were from a Negro family.

He takes it off the market and you are going to have one heck of a time explaining to that court and that Negro family why you took it off of the market. You did not take it off the market because you decided not to sell it. You didn't want to sell to the Negro.

Mr. ROGERS. Wouldn't he have to prove I withdrew it because he was Negro?

Mr. EMLEN. You are going to have a hard time convincing the contrary.

Mr. ROGERS. Look at that.

Mr. EMLEN. I say you are going to have a hard time convincing the judge that you took it off the market for other than discriminatory reasons.

Mr. ROGERS. You would have a hard time probably proving it. That is No. 1. You would have the proof in connection with it, but what I am trying to get at, what so much of the criticism has been about title IV is it compels somebody to sell their house to somebody they do not want to.

Mr. WILLIAMSON. It does.

Mr. ROGERS. I want you to point that out in title IV where it would compel me to sell my home to you or anybody else.

Mr. WILLIAMSON. It is very clear if A puts his house on the market and B wants to buy it and A does not want to sell the house to B, he would rather sell it to C, who submitted an offer the next day. B then goes into court and asks for an injunction to enjoin the seller from selling the house to anybody but B.

Mr. ROGERS. On what grounds?

Mr. WILLIAMSON. On the grounds that A discriminated on the basis of race, religion, or national origin.

Now in that case A will then be forced by law to enter into a sales contract with B and he does not want to enter into a sales contract with B.

Mr. ROGERS. Well now, he must prove that the reason for refusal to accept B is based upon race or color.

Mr. WILLIAMSON. B has to prove that?

Mr. ROGERS. Yes.

Mr. WILLIAMSON. That's true, he has to establish that.

Mr. ROGERS. Is that any different? You as a lawyer know that—is that any different than proof in any other case that may be submitted to a court?

Mr. WILLIAMSON. I think the presumption in this type of emotional case is a very, very strong one and I would like to cite an example of what the FHA did recently in a similar case.

A realtor in Wilmington, Del., was selling houses in a development. He sold houses to two Negro families in the development and the third Negro family was rejected. This third Negro family tried to get FHA insurance and did not qualify creditwise.

Then the Negro family went to another lender and they put up the house they wanted to buy and their present house as a security for a $20,000 mortgage and the $20,000 was the little bit in excess of the price of this home.

The realtor said that this family did not make enough money to carry a $20,000 mortgage. Under FHA standards they were not eligible. The FHA ruled yesterday that a realtor may not exercise

a judgment independent of the lender, that if the lender wanted to make a commitment for $20,000, $30,000, the family is only making $6,000, the realtor had to sell the house.

Now, it is this type of ruling that worries us.

Mr. ROGERS. Well, then, the man who set out to sell the house for the $20,000 gets his $20,000, does he not?

Mr. EMLEN. He has done irreparable harm to the purchaser who cannot possibly——

Mr. ROGERS. Irreparable harm?

Mr. EMLEN. He is going to lose his house.

Mr. ROGERS. As I understood, this was a lender that is loaning the money.

Mr. WILLIAMSON. Yes; but the discrimination in this case was clearly an economic discrimination. It was not a racial discrimination.

Mr. ROGERS. Then you would not come under the provisions of this law.

Mr. WILLIAMSON. I cite that as an example of the emotion and mischief that can be generated in actions of this type.

Mr. ROGERS. Thank you. Pardon me, Mr. Chairman.

The CHAIRMAN. Mr. Kastenmeier?

Mr. KASTENMEIER. No questions.

The CHAIRMAN. Mr. McCulloch?

Mr. MCCULLOCH. No questions.

The CHAIRMAN. I would like to ask you gentlemen the following:

As I understand it, your statement is only addressed to title IV of the bill?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. It has nothing to do with the other titles concerning selection, qualification of jurors or protection of constitutional rights or the pursuit of constitutional rights?

Mr. EMLEN. No, sir. We preferred to confine our testimony to title IV.

The CHAIRMAN. You say that your association consists of 83,000 realtors who are members of 1,500 local boards.

Do your views represent the 83,000 realtors?

Mr. EMLEN. I think the best—the best way to explain this, Mr. Chairman, is just in a couple of seconds explain the structure of the national organization.

The national association has a board of directors made up of members from every State in proportion to the number of members in the State. California has the greatest number of directors and New York maybe has the next, because of the number of members, and this national board of directors is about 220, and the position of title IV emanated from my committee, the Realtors' Washington Committee, which is the national legislative committee. We took a position on Title IV in our committee, which is about 70 members——

The CHAIRMAN. How many members appeared on title IV in your council?

Mr. EMLEN. About 300.

The CHAIRMAN. 300.

Mr. EMLEN. Representing the entire board of directors and the legislative committee.

The CHAIRMAN. Any dissenting opinion?

Mr. EMLEN. Oh: yes, sir.

The CHAIRMAN. What was the vote?

Mr. EMLEN. It was, percentagewise I would say the directors, 90 percent, something like that. I don't think—it was done by a voice vote.

Mr. WILLIAMSON. As the directors' meeting I do not recall any recorded vote in opposition. But the policy statement in our statement that served as the basis of our opposition to title IV was adopted by our convention. In our convention we have from 5,000 to 6,000 at our convention.

The CHAIRMAN. Was there a ballot taken at the convention?

Mr. WILLIAMSON. But there was no recorded opposition.

The CHAIRMAN. Was any dissent voiced at all?

Mr. WILLIAMSON. No dissent at all.

The CHAIRMAN. You heard, for example, Mr. Rouse testify here this morning. He testified the contrary to your views, and the other day we had Mr. Levitt testifying to the contrary.

Would you say those two gentlemen are rather important in the real estate industry, are they not?

Mr. EMLEN. Yes, sir.

The CHAIRMAN. Were they present at the convention?

Mr. EMLEN. No, sir.

Mr. WILLIAMSON. I do not believe Mr. Levitt is a realtor. I think Mr. Rouse is a realtor, but Mr. Rouse I do not think has attended any of our conventions.

The CHAIRMAN. What is the difference between a realtor and a builder?

Mr. EMLEN. Mr. Chairman, a realtor is a member of the National Association of Real Estate Boards. It is a trademark. The realtors is an artificial word made up as a designation for membership in the National Association of Real Estate Boards and it is licensed real estate brokers who belong to this association.

The CHAIRMAN. When was this convention held that you came to this conclusion?

Mr. EMLEN. In Chicago in November.

Mr. WILLIAMSON. In Chicago in November, but it reiterated policy statements——

The CHAIRMAN. November 1965?

Mr. WILLIAMSON. Yes.

The CHAIRMAN. That was before the bills were offered.

Mr. EMLEN. Mr. Chairman, this is the policy statement I read to you earlier, because this bill had not been introduced, and then we had a meeting in Chicago of the board of directors and the legislative committee in May and that is where we——

The CHAIRMAN. How many members on the board of directors?

Mr. EMLEN. About 220.

The CHAIRMAN. Was there any discussion at that board meeting concerning the bill that we are discussing now?

Mr. EMLEN. There was discussion, a great deal of discussion, 4 days.

The CHAIRMAN. Any minority views expressed?

Mr. EMLEN. Some.

The CHAIRMAN. What was the percentage of minority views as to majority views?

Mr. EMLEN. I would say it was about 90 to 10, 95 to 5, in that proportion.

The CHAIRMAN. I see.

Now you call attention to the difficulty that you have in some of these real estate transactions. Of course, you conjure up a great many inconveniences and probably legal snarls, but do we not always have a situation like that developing? Whenever Congress passes a statute that might interfere with hardened practices, that might interfere with settled practices; there is always that happening.

For example, we passed provisions concerning antitrust laws. Sometimes they are misconstrued. It takes years, sometimes, before the courts will finally interpret the statute. They are still interpreting the antimerger clause of section 7 of the Clayton Act, which happened to be the Celler-Kefauver Act.

They have not even finalized the interpretation of that yet. There have been several inconveniences created. The customs courts are just filled with cases as a result of our passage of various types of customs laws due to misinterpretations of those provisions of the customs laws, so what you are calling our attention to is nothing new.

Whenever Congress passes a bill that interferes with business relations, you always have that difficulty.

Mr. WILLIAMSON. Mr. Celler, with respect to our criticism and discussion of the enforcement problems, let me assure you that they are not fatal. They represent just a very small fraction of our protest against this bill. Our protest is based on much more fundamental grounds. If we did not object to it from the fundamental or philosophic standpoint about the rights of property ownership, we would not be here just to discuss the enforcement headaches that would ensue.

The CHAIRMAN. Thank you very much, gentlemen, we appreciate your giving this testimony.

The Chair wishes to place in the record the following statements: A telegram received from Roy L. Reuther, the director of the Citizenship-Legislative Department of United Auto Workers; a statement of the Leadership Conference on Civil Rights indicating additional members who are supporting the bill; a resolution adopted by the board of directors of the Michigan Real Estate Association; a statement by Hon. Robert P. Griffin, now U.S. Senator from Michigan.

(Documents follow:)

WASHINGTON, D.C., *May 19, 1966.*

Hon. EMANUEL CELLER,
Chairman, House Committee on the Judiciary,
Rayburn House Office Building, Washington, D.C.

MR. CHAIRMAN: The International Union, United Auto Workers, in their 20th convention in the city of Long Beach, California, have under consideration a resolution concerning the issue of civil rights in our continuing efforts to build the Great Society.

The resolution calls for legislation to bar discrimination in the sale and rental of housing; pending its passage, extension of the 1962 housing Executive order, to bar discrimination in all federally assisted housing, including the activities of federally insured lending institutions.

Federal law to secure equal administration of justice by ending the all-white jury system and making it a Federal crime to coerce, attack or murder any person for exercising his constitutional rights.

Public and private measures to assure equal access to justice in our courts, including fair and reasonable bail bond procedures; legal assistance to the poor in protecting their rights against landlords, creditors and others; legal aid for those unable to afford professional counsel and other costs of litigation in their personal affairs as is already applicable in criminal actions, and provision of adequate defense services at all hearings involving the possibility of a serious deprivation of liberty.

The testimony presented by Mr. Roy Wilkins, executive secretary of the NAACP, in behalf of the Leadership Conference on Civil Rights implements the intent of this resolution being adopted by our convention. Therefore, I would like to align our union with the position of the Leadership Conference on Civil Rights and ask that this telegram be made a part of the record.

Respectfully,

ROY L. REUTHER,
Director, Citizenship-Legislative Department,
United Auto Workers.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, D.C., May 20, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: Enclosed is a supplementary list of organizations that endorsed the testimony presented on May 17 by Roy Wilkins, Chairman of the Leadership Conference on Civil Rights. Since the time this list was duplicated, two more organizations have indicated their endorsement: The National Medical Association and the National Urban League.

We would appreciate it if you would see that all these names are made a part of the record of the hearings.

Sincerely yours,

MARVIN CAPLAN,
Director, Washington Office.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, D.C., May 19, 1966.

Attention: House Judiciary Committee.

Other Leadership Conference organizations that endorse the statement by Roy Wilkins on May 17:

Jewish War Veterans.
National Association of Real Estate Brokers.
National Council of Churches, Commission on Religion and Race.
National Council of Catholic Men.
Workers Defense League.
A. Philip Randolph Foundation.
Brotherhood of Sleeping Car Porters.
League for Industrial Democracy.
National Bar Association.
Phi Beta Sigma Fraternity.

A RESOLUTION ADOPTED BY THE BOARD OF DIRECTORS OF THE MICHIGAN REAL ESTATE ASSOCIATION

Whereas, The Board of Directors of the Michigan Real Estate Association are gravely concerned with the threat posed in Title IV of H. R. 14765 and S. 3296 to deprive every American property owner of his right to own, enjoy and dispose of his property without governmental interference in accordance with the dictates of his conscience; and

Whereas, we believe it is the right of all equally to enjoy property without interference by laws giving special privilege to any group or groups; and

Whereas, we believe it is the right of every property owner to determine the acceptability and desirability of any prospective buyer or tenant of his property; and

Whereas, we believe it is the right of every American to choose who in his opinion are congenial tenants in any property he owns—to maintain the stability and security of his income; and

Whereas, we believe it is the right of every American to enjoy the freedom to accept, reject, negotiate, or not negotiate with others; now therefore be it

Resolved by the Board of Directors of the Michigan Real Estate Association, That we hereby urge all Michigan members of Congress to oppose Title IV of H. R. 14765 and S. 3296 as well as all other attempts to deprive or abridge property owners of their rights; and be it further

Resolved, that a copy of this resolution be transmitted to the members of the Michigan delegation in Congress and to each member of the Judiciary Committees of the United States.

Adopted May 18, 1966.

[SEAL] CHARLES W. KIMBALL, *President.*

STATEMENT OF HON. ROBERT P. GRIFFIN, U.S. SENATOR FROM MICHIGAN

Mr. Chairman, members of the subcommittee, Congress has labored long and hard over the last nine years to secure for all Americans, regardless of race, religion, sex or national origin, certain basic civil rights implicit in the U. S. Constitution.

It can be said that the major legislative battles against prejudice have already been won but, unfortunately, the war still is not over. Today, the major concern is not so much with the question of rights, but with the question of remedies.

Regrettably, an offender in some areas of our great nation can still go unpunished for even the most heinous of civil rights crimes.

It is indeed a hollow promise to declare our commitment to equal rights if men and women can be persecuted under color of local law for daring to exercise basic freedoms.

It is insufficient to pass laws for the implementation of the Constitution if men can disobey the letter of those laws and subvert their spirit with impunity. We shall not be successful in the effort to take civil rights controversies out of the streets and into the courts if the administration of justice does not produce justice.

Mr. Chairman, the Civil Rights Law Enforcement Act of 1966, embodied in the bill I have introduced (H. R. 13330), seeks to insure that rights already secured may finally be enjoyed, without fear of intimidation, coercion, open violence or the misapplication of justice.

In its major provisions, the Civil Rights Law Enforcement Act would: (1) provide an objective and equitable standard for the selection of juries in federal and state courts without regard to race, color, sex, etc.; (2) protect civil rights workers from private and official coercion and violence; (3) strengthen federal criminal penalties for those who deprive individuals of their federally protected rights; and (4) make the responsible local governments jointly liable for damages for acts of violence committed by public officials.

TITLE I—JURY SELECTION IN FEDERAL AND STATE COURTS

Present law sets out some basic qualifications for federal jury service, but it leaves considerable leeway in implementation to court clerks and jury commissions. A similar situation exists throughout the various states, where, of course, the laws and practices governing jury selection are not uniform.

There is nothing more fundamental to our legal system than the right to an impartial trial by one's peers. But the hard fact is that the subjective nature of the system of obtaining persons for jury service sometimes provides opportunities for discrimination. For example, many jury officials have compiled their basic list of potential jurors from membership lists, clubs and civic organizations that tend to exclude minority groups. Moreover, some state laws require or allow jury officials to make highly subjective judgments as to a potential juror's "integrity, good character and sound judgment." In other states, women may be completely barred from serving on juries.

To halt discrimination in the selection of juries, Title I of H.R. 13330 would provide objective standards and procedures that could be administered easily and guarantee that grand and petit juries would be impartially drawn from a satisfactory cross-section of people.

In the case of federal courts, the bill would provide as one such standard the use of a master list of qualified voters in each judicial district from which jury selections would be made. The master lists would be compiled from voter lists by the clerks of court, and the system would be supervised by the district judges, under methods approved by the Administrative Office of the U.S. Courts. The act of citizenship required to register to vote is an indication of potentially responsible jury service. The Voting Rights Act of 1965, if properly enforced, contains the necessary tools to prevent the discriminatory deprivation of the right to vote and can insure full representation in federal juries in many areas where—as the Attorney General has noted—the figures indicate that a representative cross-section is not currently present.

In the case of state courts, Title I would establish the presumption that a state may be discriminating if it has a jury selection system which does not assure as broad a cross-section as is provided under federal law. The bill provides that a defendant in a state court who alleges discrimination in the selection of a grand or petit jury would have the right to ask for federal court review of the selection of the state court jury. Upon a finding of discrimination, the case could be removed and tried in federal court.

In addition, the Attorney General is authorized to institute legal proceedings to enjoin discriminatory state jury selection practices. Also, the district courts—operating on a case-by-case basis—are empowered to insure fair administration of nondiscriminatory state procedures.

TITLE II—FEDERAL CIVIL RIGHTS CRIMES

The principal federal sanctions against private and official racial violence are sections 241 and 242 of Title 18 of the United States Code—both enacted during the Reconstruction. Section 241 makes it a federal crime to conspire to deny any person the free exercise of his federally protected rights and section 242 makes it a crime for anyone acting "under color of law" to wilfully deprive any citizen of his federally protected rights.

While seemingly applicable for relief from recent civil rights crimes, there nevertheless are defects in both of these statutes, as they have been interpreted by the courts. For example, courts have ruled it is necessary to prove not only that the accused had the "specific intent" to prevent the free exercise of a victim's rights, but also that the accused was aware of the specific law which he violated.

H.R. 13330 would remove the latter requirement. By amending present law to more precisely define the offense proscribed, it will give adequate notice and provide much-needed new effectiveness to the law.

Title II also proposes a new sliding scale of penalties for civil rights crimes. I was pleased to note that these same provisions have been written into the Administration bill. Currently, violations of section 241 are punished as a felony ($5,000 fine, 10 years in prison) and violations of section 242 as a misdemeanor ($1,000 fine, 1 year in prison). Under HR 13330, the penalties would range from a minimum of $1,000 and/or imprisonment up to 1 year to a maximum—if conviction results from an offense causing a death—of $10,000 fine and/or imprisonment for up to 30 years.

TITLE III—CIVIL PREVENTIVE RELIEF

Title III of H.R. 13330 incorporates the title III provisions that have been proposed by Republicans for every civil rights act since 1957. This title would permit an individual or the Attorney General to institute civil proceedings against those who have interfered, threatened or attempted to interefere—on account of race or color—with an individual's federally protected rights or with the exercise of his basic constitutionally guaranteed rights of free speech, petition or assembly.

TITLE IV—INDEMNITY

Existing law permits civil suits for damages against anyone who under color of law deprives an individual of federally protected rights. At present, the employer of such an official, whether the state or local government, is not liable for

damages in such a suit. Many southern law enforcement officials are judgment-proof—a good number by design. Thus, it is very difficult for an injured person to collect, and the law has proved of no value.

H.R. 13330 would make the state or local government liable for such damages as joint tortfeasors with the law enforcement official.

Mr. Chairman, as the Supreme Court recently stated: The rights secured for all Americans by the Civil Rights Act of 1957, 1960 and 1964 and the Voting Rights Act of 1965 are "present rights—not merely hopes to some future enjoyment of some formalistic constitutional promise."

Not only have many courageous Americans suffered arrest and prosecution in courts for their peaceful assertion and lawful encouragement of efforts to obtain these "present rights," but some have been brutally killed because of their views. We need not recount the cases in which violence, spurred by bigotry, has gone unpunished. The names Liuzzo, Evers, Reeb and Penn, to name a few, are part of a dark chapter in the history of our nation.

Justice is distant when the administration of justice is not everywhere equitable and temperate. Through the Civil Rights Law Enforcement Act of 1966, we seek to bring closer the day when justice will be assured for all Americans.

The CHAIRMAN. Our next witness will be Mr. Andrew Biemiller, director of the Department of Legislation, AFL-CIO.

Mr. MATHIAS. Mr. Chairman, I might also identify Mr. Biemiller as one of the most distinguished citizens in the Sixth Congressional District of Maryland.

A very frequent and welcome witness here.

The CHAIRMAN. I thought he was a citizen of the world.

Mr. MATHIAS. We are glad he makes his home with us.

Mr. KASTENMEIER. Mr. Chairman, I would like to associate myself with the gentleman from Maryland. We claim Mr. Biemiller not only as a former Member of Congress but as a former Member of Congress from the State of Wisconsin.

Mr. MATHIAS. I think, Mr. Chairman, it is just a measure of Mr. Biemiller's broad capability that he can be shared by so many and there is plenty to go around.

The CHAIRMAN. Off the record.

(Discussion off the record.)

The CHAIRMAN. You may proceed.

STATEMENT OF ANDREW J. BIEMILLER, LEGISLATIVE DIRECTOR, AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS

Mr. BIEMILLER. Mr. Chairman, my name is Andrew J. Biemiller. I am legislative director for the American Federation of Labor and Congress of Industrial Organizations. Accompanying me is Thomas E. Harris, our associate general counsel. We appreciate this opportunity to present the views of the AFL-CIO on this important matter.

The proposals which this subcommittee are considering deal with two major problem areas in the functioning of American democracy. The first has to do with the administration of justice; the second with discriminatory housing practices.

In both of these fields there are large and acute evils which must be eradicated; and the AFL-CIO welcomes the determination of the President and the Congress to face and face squarely the difficult issue of how best to remedy the deficiencies which all of us recognize.

We all, I am sure, believe in equal justice under law; and we all, I am sure, believe that no part of our population should suffer dis-

crimination in so vital a matter as a place to live. The question is how to implement these principles.

The AFL-CIO endorses and supports H.R. 14765. We think it provides constructive and effective cures for the evils with which it deals, and we urge its enactment. We believe that the bill could be strengthened in a few particulars which we suggest below, but in general we are for it.

I will discuss successively the various titles of the bill, indicating in each instance what, if any, changes we think might be made.

Titles I and II undertake to end discrimination in jury systems, in, respectively, the Federal and State courts.

Up until now, three different groups have been discriminated against in various areas as respects selection for jury service. These groups are: first, Negroes and perhaps members of certain other minorities; second, women; and third, people with low incomes. The discrimination may be de facto or de jure.

Discrimination against Negroes is unquestionably most acute in the South.

Discrimination against women is also concentrated in the South but is probably also more prevalent de facto in rural and smalltown areas than in cities. Also, both of these types of discrimination are much more prevalent in State than in Federal courts.

On the other hand, discrimination in selection for jury service against people having low incomes is decidely not a peculiarly southern vice, and it is probably more prevalent in Federal than in State courts and in cities than in rural areas.

Mr. Thomas Dewey, when he was a young district attorney, was an advocate of the so-called blue-ribbon jury—in State courts in New York City. But the use of blue-ribbon juries is at least as prevalent in Federal courts as in State courts generally.

Prosecutors have the idea that juries drawn from the upper economic strata are readier to convict. We commend Attorney General Katzenbach for his willingness to forgo this advantage for prosecutors, if it is indeed one, and for his recognition that discrimination on grounds of economic status is just as violative of the equal protection of the laws as discrimination on grounds of race or sex.

There is another reason for banning discrimination on the basis of economic status. It is that if such discrimination were permissible it could perpetuate in a different guise, discrimination against Negroes and other minority groups.

We, therefore, agree with the sponsor of H.R. 14765 that all three types of discrimination—that is, race, sex, and economic status should be ended. Further, we agree that the language of the bill is clear and straightforward:

> No person or class of persons shall be denied the right to serve on grand and petit juries in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status.

The same terminology is used in the provision as to State courts.

However, we suggest that the procedure for enforcing these standards might well be strengthened.

In the case of State juries, the bill authorizes the Attorney General to bring injunctive proceedings against State jury officials. However,

the bill does not contain any such authorization in the case of Federal juries, evidently upon the assumption that Federal judges and jury commissioners will be readier to effectuate the bill's bar on nondiscrimination than will their State counterparts.

Even if this assumption is correct there has been, as the Attorney General acknowledged, some discrimination in the Federal courts, and we see no reason why the provision for suits by the Attorney General should not be applicable to Federal juries as well as to the State.

More important, we are doubtful that the enforcement provisions of the bill are adequate even in the case of State juries. The bill does provide a discovery procedure to make it easier to find out whether unlawful discrimination has occurred in the jury selection process. This procedure is available to the Attorney General in civil suits brought by him and to defendants in criminal prosecutions.

However, for enforcement of its bans on discrimination the bill relies exclusively on adjudications in individual lawsuits, either where the issue is raised by private litigants or in suits brought by the Attorney General.

We are doubtful that this sort of spot policing will be adequate to end jury discrimination. It has not been adequate to end discrimination in other fields.

As respects the right to vote, for example, prior to the Voting Rights Act of 1965 earlier legislation relied for enforcement on suits brought by the Attorney General or by voters.

Suit had to be brought in each election district, and in each separate suit there had to be an adjudication whether there had been an unlawful deprivation of the right to vote. We foresaw that these provisions would prove to be inadequate.

We testified, when the bill was before Congress, that implementing the 15th amendment by lawsuits was like trying to paint a wall with a fountain pen.

Our forebodings proved to be well founded, as testified by the Voting Rights Act of 1965.

The 1965 act utilized several novel devices to counter enforcement difficulties. It provided an automatic triggering test, that is, whether fewer than 50 percent of eligible persons were registered or voted.

It provided for determinations applicable throughout major geographic units, that is, States or counties. It provided for the use of Federal examiners to register voters, and for Federal observers at elections.

These provisions, in contrast to their predecessors, seem to be proving effective.

As respects school desegregation, too, individual lawsuits proved to be a slow and ineffective way of vindicating constitutional rights.

On the basis of these experiences, we suggest that broader scale procedures for the implementation of title II may be needed rather than enforcement through individual lawsuits.

We believe the suggestions on this point made by Roy Wilkins in his testimony for the Leadership Conference on Civil Rights have substantial merit and deserve the attention of this committee.

Title III: This title deals with discrimination in the schools and other public facilities. It eliminates certain existing limitations on

the bringing of suits by the Attorney General, and provides for broadened relief.

We are in favor of the enactment of title III as written.

Since the Attorney General's testimony of this title was rather general, we propose to give a concrete illustration of why this title is needed.

In 1950 some Negro parents brought suit against school officials in Clarendon County, S.C., seeking the admission of their children to the white schools. In 1951 the Federal district court ruled that the schools were very separate but not very equal, and that the plaintiff's rights under the 14th amendment were being violated. However, the court did not order that the children be admitted to the white schools; it ordered that the Negro schools be made equal.

In 1954 the Supreme Court likewise held that the Negroes' constitutional rights were being violated, on the ground that segregation by races is inherently unequal. This case was one of the four decided by the Supreme Court in *Brown* v. *Board of Education*. In 1955 the Supreme Court, on reargument ruled that integration should proceed with "all deliberate speed," and the case went back to the district court.

In the district court the deliberation has been more evident than the speed. It was not until the fall of 1965 that the district court finally required the admission of six Negro children to white schools in Clarendon County.

Of course, these were not the same children whose parents had started the litigation. A child who was 6 years old in 1950 was 21 in 1965. However, one Negro girl whose parents had intervened later, and were parties in 1954 *Brown* cases in the Supreme Court, did finally get into a white school at age 17 after 11 years of litigation.

Incidentally, according to news reports, the whites have been giving her a bad time.

Of course, the litigation isn't over. The court has retained jurisdiction and has ordered further desegregation next fall. Anyway, Negro parents, with the help of the legal defense fund of the NAACP, have been carrying on this litigation for 16 years, and the end is not yet in sight.

The Department of Justice has not brought suit in this situation. The burden of the litigation has been left to the parents and to the legal defense fund. The Department of Justice could bring suit under title III of the Civil Rights Act of 1964 if the Attorney General certified that the parents were unable to maintain appropriate legal proceedings, which means under the statute that they are "unable either directly or through other interested persons or organizations, to bear the expenses of the litigation."

How can the Attorney General determine such a thing as that? The legal defense fund of the NAACP is presumably able to sustain a certain volume of litigation, but what is the basis for saying that it is able to maintain one particular suit and not another?

More broadly, it is our view that the burden of vindicating these constitutional rights should rest on the Federal Government, and that it should rest there regardless of whether particular parents can or cannot afford to sue.

That is one reason why we urge the enactment of title III.

The other reason is the physical and economic intimidation which faces Negro parents in some areas. Title III authorizes the Attorney General to seek injunctions against such intimidation, and we are, of course, strongly in favor of that.

Title IV: The AFL–CIO likewise strongly supports title IV of the proposed Civil Rights Act of 1966.

Organized labor has long been in the forefront in the fight for fair housing legislation. Laws enacted by a large number of States and municipalities to outlaw discrimination in housing have been placed on the statute books with the full backing, and often the initiative of, organized labor.

The sixth constitutional convention of the AFL–CIO, held last December, called for equal housing opportunity in these words:

> A key feature of labor's housing program is its drive for equal housing opportunity for all Americans. There is no place in America for racial ghettos. Equal access, without regard to race, creed, color or national origin, to every residential neighborhood in every American community should be assured for every family in America.
>
> Equal opportunity in housing should be assured in all programs in which housing is provided with Federal Aid or is protected by Federal Insurance of mortgages or guarantee or regulation of mortgage loans.

The national purpose was pledged by Congress in the declaration of national policy set forth in the National Housing Act of 1949 (Public Law 171, 81st Cong.; 63 Stat. 413; U.S.C. 441) which stated:

> The Congress hereby declares that the general welfare and security of the Nation and the health and living standards of its people require * * * the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family, thus contributing to the development and redevelopment of communities and to the advancement of the growth, wealth, and security of the Nation.

This congressional affirmation of the national goal in a basic legislative enactment underlying all Federal housing statutes promulgated from 1949 to date, should be viewed in the light of the Nation's resolve proclaimed by the 14th amendment to the Constitution.

The 14th amendment declares that no State should deny "the equal protection of the laws" to any person, regardless of race.

The Supreme Court has said in *Shelley* v. *Kraemer*:

> It cannot be doubted that among the civil rights intended to be protected from discriminatory state action by the 14th Amendment are the rights to acquire, enjoy, own, and dispose of property.
>
> Equality in the enjoyment of property rights was regarded by the framers of that Amendment as an essential precondition to the realization of other basic civil rights and liberties which the Amendment was intended to guarantee.

And the Supreme Court has held, in that case, that the 14th amendment prohibits the courts, as instrumentalities of the States, from enforcing private racially restrictive covenants.

In another case, *Hurd* v. *Hodge*, the Supreme Court applied similar prohibitions to the Federal Government and its courts, as well.

The U.S. Civil Rights Commission, in its 1961 Report on Housing, reviewed the constitutional problem involved here and arrived at this compelling conclusion:

> * * * it poses the question whether, as a matter of national policy, the Federal Government can permit itself to be involved in the denial of equal opportunity: whether the Federal Government, which has established national hous-

ing programs to achieve a national purpose, should not take affirmative steps to move upward the achievement of equal opportunity in housing for all Americans.

The Supreme Court has recognized that "Equality in the enjoyment of property rights" is "an essential pre-condition to the realization of other basic civil rights." If the achievement of this "essential pre-condition" is not here the explicit command of the Constitution, it is nonetheless its promise.

What opposition there is to the assurance of equal opportunity in housing to all Americans regardless of race, when it is not the result of outright race bias, is usually based on misinformation or ignorance of the facts.

One widely broadcast misconception prompting such opposition is that property values will drop whenever nonwhite families move into a previously allwhite neighborhood. There is absolutely no documentary evidence to support this contention. It is a myth which has been completely exploded.

A comprehensive study of property values was conducted for the Commission on Race and Housing, a distinguished citizens group which included nationally known specialists in the social sciences, by Dr. Luigi Laurenti.

Its findings are included in the volume, "Property Values and Race." Dr. Laurenti's research involved 20 neighborhoods in San Francisco, Oakland, and Philadelphia, where Negroes had entered during a span of 12 years.

With each of the three cities he studied, Laurenti compared price movements in "test" neighborhoods with those in similar neighborhoods which had remained all white over the same period.

The price transactions studied covered a 12-year period from 1943 to 1955. Over 9,900 sales prices were analyzed comprising about 40 percent of all the sales during the study period.

Almost all the neighborhoods consisted of single-family, owner-occupied residences and were not contiguous to other areas of nonwhite population.

In 44 percent of the comparisons, prices showed gains which ranged from 5 to 25 percent. Another 41 percent of the comparisons showed no significant change in price behavior. The other 15 percent showed declines but none were over 15 percent.

Put another way, 85 percent of the cases either showed upward improvement or remained stable.

The results of the studies in these three cities are consistent with those made by other investigators who studied similar areas in Chicago, Kansas City, Detroit, and Portland, Oreg.

In the volume, "Property Values and Race," Laurenti concluded:

The major statistical finding of the present study is that during the time period and for the cases studied the entry for non-whites into previously all-white neighborhoods was much more often associated with price improvement or stability than with price weakening.

A corollary and possibly more significant finding is that no single or uniform pattern of non-white influence on property prices could be detected. Rather, what happens to prices when non-whites enter a neighborhood seems to depend on a variety of circumstances which, on balance, may influence prices upward or downward or leave them unaffected.

Another myth, long since exploded, is that neighborhood standards will go down whenever Negro families become part of the neighborhood.

Extensive studies have shown that Negro homeowners are just as concerned with neighborhood standards as any other citizen. Even a poll conducted more than 20 years ago by the National Association of Real Estate Boards supported the fact that Negro homeowners maintain their properties as well as whites.

There are good standards and bad standards in both white and nonwhite neighborhoods.

Overcrowding, economic exploitation, and neglect of buildings by landlords contribute to the creation of slums, regardless of the color or national origin of the residents.

But the slum areas, with which the Negro stereotype is all too often associated, generally were badly deteriorated before Negro residents fell heir to them.

Equal access to housing, regardless of race, creed, or national origin in a free market, should be a part of the American way of life. Equal opportunity in housing is intimately linked to equal opportunity in schooling and to other civil rights.

The AFL–CIO strongly supports the enactment of title IV because it will remove the obstacles that impede the rights and opportunities of Americans on the unjust basis of their race, creed, or national origin. We support it, above all, because its enactment will broaden the horizon of American democracy and will extend the opportunity to contribute to the strengthening of community life to every citizen of our country.

In addition, we believe the committee would be well advised to explore with care the possibility of adding administrative enforcement procedures to this title. As this committee knows from our previous testimony on civil rights matters, we consider administrative enforcement less cumbersome, more immediate and generally more effective in matters of this kind.

We hope you will consider carefully adding administrative procedures to this title.

Title V: this has to do with crimes against Negroes and civil rights workers.

There have been numerous such crimes in recent years, but very few convictions, particularly in the State courts. Something needs to be done; and if anyone has any doubt of that we suggest that they read the 1965 report on the U.S. Commission on Civil Rights.

The shocking breakdown of law enforcement in the South, as respects Negroes and civil rights workers, is there set forth in horrifying detail.

Certain violent deprivations of civil rights are made criminal by the Federal Criminal Code, title 18, United States Code, sections 241 and 242, but these provisions, which date back to Reconstruction days, contain technical deficiencies which make it very difficult for the Government to prove a case under them.

Title V parallels but does not supplant these existing Federal criminal statutes, and undertakes to cure some of their deficiencies.

The jury selection proposals of title I and title II also, of course, relate to the general problem of the administration of justice, which is most acute in, though it is not confined to, the South.

Title V was drafted in the light of the recent Supreme Court decisions in *United States* v. *Price*, and *United States* v. *Guest*. In those

decisions the Court sustained the sufficiency of the indictments, but it pointed out that the requirements of proof under existing law are difficult to meet, and the Court suggested that Congress enact more specific provisions. Title V embodies such provisions, and we urge its enactment.

Under section 241 it is necessary to have the Government prove in a case like *Guest* that the defendants had a specific, wrongful, intent in two different respects.

In the first place, the Government must prove, as in the case of nearly all criminal statutes, that the defendant intended to commit the prohibited act, as, for example, that the defendant intended to murder or injure the victim, and that the death or injury was not the result of accident.

This sort of intent is a normal and proper prerequisite to conviction in criminal cases. Under section 241, however, the Government must also show a second type of specific intent—that the defendant also intended to interfere with the victim's exercise of some right or privilege secured to him by the Constitution or laws of the United States.

The Government must show, for example, not only that the defendant murdered a Negro, but that he murdered him to keep him from voting, or attending a desegregated school or exercising some other federally protected right.

Proof of this sort is unlikely to be available, and one of the purposes of title V is to obviate the need for it.

Section 501(a) substitutes for the specific intent requirement we have been discussing the requirement that the defendant must have injured the victim (1) because of his "race, color, religion or national origin," (2) while the victim was engaging or trying to engage in the exercise of any of various enumerated Federal rights, such as voting or attending a public school.

Under this provision, it would still be necessary to show that the defendant injured his victim because of his race, et cetera.

In other words, the specific intent requirement is shifted from intent to prevent the victim from voting, for example, to intent to injure him because of his race while he is voting.

Evidence of racial animus is more likely to be available than evidence that the defendant intended to prevent the exercise of some particular Federal right. Even with the new provisions on the books, however, the task of the Federal prosecutor will still be a most difficult one.

In a case like *Guest* it will still be necessary for the prosecutor to show not only that the defendants deliberately killed their victim, but they did so because he was a Negro.

In general, we think the Department of Justice has done a good job in drafting title V. We suggest, however, that the language should be revised to make it clear that traveling on a public highway is a protected type of activity.

That is what was involved in the *Guest* case; it is clearly sufficient as a constitutional basis for a Federal intervention and there will be cases where it may not be possible to prove that the victim was engaging or seeking to engage in any of the other types of activities enumerated in the bill.

Let me conclude with a brief observation. This Congress and its predecessor are certain to go down in history for the trail-blazing

legislation passed in 1964 and 1965 in this field. All of us who played any role whatsoever in achieving the civil rights legislation have a right to be proud.

But so much more remains to be done, Mr. Chairman, that none of us can pause for self-congratulations.

We have all read reports that this Congress is tired of the subject; that this Congress believes this is no time for another civil rights battle; that 1966 should be the year of stock taking, not action.

Well, we just don't believe those reports.

We believe this Congress will recognize—as did the President in the message in which he submitted this bill—that the unresolved problems are many and great but that they can be solved, as indeed they must be solved.

We in the AFL–CIO are dedicated to the belief that true and absolute equality of opportunity is possible in America and we intend to help achieve it.

That, we are confident, is the mood of the American people and we believe it to be the intention of this Congress.

Mr. ROGERS (presiding). Thank you, Mr. Biemiller, for your comprehensive analysis of this legislation.

Any questions?

Mr. DONOHUE. No questions.

Mr. ROGERS. Mr. Kastenmeier?

Mr. KASTENMEIER. I have just one question.

At the bottom of page 2 you cite the type of discrimination under the bill that ought to be ended. We did have testimony by one witness the other day that religion ought not be part of it.

Have you given any thought to whether or not there is a need to, in terms of jury selection, to provide against discrimination on account of religion?

Mr. BIEMILLER. Mr. Harris?

Mr. HARRIS. I don't know of any specific examples of discrimination in jury selection on grounds of religion. Quite conceivably this language is simply taken from other civil rights legislation.

On the other hand, I cannot see any harm in enacting it in this form.

Mr. KASTENMEIER. Well, since the witness cited the fact that he found it objectionable to elicit information regarding one's religion for purposes of the jury questionnaires, he felt that this was private information which would otherwise become necessarily public and was not necessary because it really is a type of discrimination.

Mr. HARRIS. The AFL–CIO really does not have enough information on whether this is an acute problem or not.

Mr. KASTENMEIER. Thank you, Mr. Harris.

Mr. ROGERS. Mr. McCulloch?

Mr. MCCULLOCH. No questions.

Mr. ROGERS. Thank you, again, Mr. Biemiller and Mr. Harris, for your testimony.

Mr. ROGERS. Our next witness is Mr. W. B. Hicks, Jr., executive secretary of the Liberty Lobby, appearing with Dr. Alfred Avins on behalf of the Liberty Lobby.

Mr. Hicks, you have a prepared statement, so proceed in your own manner.

Mr. HICKS. Thank you, Mr. Chairman.

STATEMENT OF W. B. HICKS, EXECUTIVE SECRETARY, LIBERTY LOBBY; ACCOMPANIED BY DR. ALFRED AVINS

Mr. HICKS. Mr. Chairman, members of the committee, I am W. B. Hicks, Jr., executive secretary of Liberty Lobby. I appear today with Dr. Alfred Avins on behalf of the 190,000 subscribers to our legislative service.

As the administrative officer of Liberty Lobby, I am responsible for presenting our testimony to the Congress. However, I am pleased to have Dr. Avins with me today to deliver our statement on the Civil Rights Act of 1966. He is uniquely qualified to present the views of Liberty Lobby.

Dr. Avins is currently professor of law at the Memphis State University. He is a member of the Supreme Court bar. He is a former special deputy attorney general of the State of New York. He is the author and editor of a symposium on antidiscrimination legislation entitled "Open Occupancy vs. Forced Housing Under the Fourteenth Amendment," a book which Liberty Lobby intends to distribute to every member of this committee.

Dr. Avins will now deliver the testimony of Liberty Lobby.

Dr. AVINS. Mr. Chairman, in view of the fact that I notice that the open occupancy book is being distributed, I intend to depart from the prepared statement to discuss, first of all, some of the material discussed by Professor Howe, which I consider to be a rather remarkable statement.

Before I go into that, though, I might indicate that the book contains a number of points. It covers, for example, commerce power; it covers in detail the question of due process; and in view of the fact the committee has had some testimony from Mr. Levitt ——

Mr. ROGERS. May I interrupt for just a moment. You would desire that your statement be inserted in the record at this point and then you proceed ——

Dr. AVINS. Thank you, Mr. Chairman. Yes, I do desire the statement be inserted in the record and I would like to proceed with some additional remarks.

(Statement follows:)

I. INTRODUCTION

Implicit in anti-discrimination legislation in housing is the "conflict between 'reserved private rights such as freedom of association and non-association, and nondiscrimination.'" The traditional rights of freedom of choice and association, long thought so inviolate as not to require formal embodiment in constitutional or statutory guarantees, have now been evaporated by the preemption of laws passed without adequate consideration of the fact that the "rights" they create must necessarily infringe on the freedoms of others, by subjecting them to the exercise of those rights by minority groups.

This statement will deal with the proper identification of those rights, the premises on which they are based, and the persons to whom they properly belong. In so doing, it is hoped that the preservation of these rights may be secured against their prospective demise.

II. FREEDOM OF ENTERPRISE AND PUBLIC UTILITY REGULATION

A. THE RIGHT TO CHOOSE CUSTOMERS

The federal and state due process clauses, which protect liberty and property from governmental deprivation, are meaningless gestures without the underlying assumption of an American economic norm by which yardstick governmental intrusion into private business can be measured. It could hardly be contended

that the word "property" in constitutional phraseology comprehends only goods intended for personal consumption—that the due process clause goes no farther than prohibiting government from giving one man's toothbrush to his neighbor. If that is all the protection the constitution affords, Americans are no better off than Soviet citizens who are also protected in personal consumptive property.

The American economic norm, ingrained through centuries of legal development, has been a free enterprise system, characterized by private ownership and control over property, a free competitive market, and only such governmental control or regulation as is made necessary by distortions in the free market. The whole philosophy of our anti-trust laws is based on the economic norm of free competition; without such a norm they would be absurd.

A necessary corollary of a free market is the right to choose one's customers free from government dictation. The Fourth Circuit has declared: "Absent conspiracy or monopolization, a seller engaged in a private business may normally refuse to deal with a buyer for any reason or with no reason whatever." The United States Supreme Court has consistently upheld the right to refuse to sell when that right has been attacked.

The entire assumption in our economic structure, that economic needs can best be fulfilled by sellers and buyers free to deal with each other, is set at naught when government dictates a choice to either.

B. PUBLIC UTILITY REGULATION

The main characteristic of a public utility is that the public may demand the service as of right. An industry may be closely regulated and yet not be a public utility if it can choose its customers. The true hallmark of public utility is that everyone is entitled to the service without arbitrary discrimination. It is this duty to serve any applicant on equal terms without unreasonable discriminations which constitutes the main difference between public utilities and all other businesses. Accordingly, assuming that discrimination in tenant or vendee selection based on race, creed, color or national origin is arbitrary, it nevertheless follows that an anti-discrimination law converts private dwellings in particular, and the housing industry as a whole, into public utilities.

The United States Supreme Court has repeatedly held that "the state could not, by mere legislative fiat * * * convert (private business) into a public utility * * * for that would be taking private property for public use without just compensation, which no state can do consistently with the due process of law clause of the 14th Amendment." Since antidiscrimination legislation in housing attempts to impose the obligations of public utilities on private businesses, it is unconstitutional.

III. Police Power and Property Rights

A. POLICE POWER AND MARKET DISTORTIONS

Those few decisions which uphold anti-discrimination legislation as against due process arguments rely on a series of generalized cliches about the use of the police power, as "one of the least limitable of government powers."

Traditional exercises of the police power fall into two major categories. The first consists of regulating property so that its use does not injure the health or safety of others, or destroy their use of their own property.

The concept that no person can use his property in such a way as to diminish the health, safety, or use of property of others is basic to any orderly society. Anti-discrimination legislation has no relevance to such enactments since it is not the use but the failure to convey the property which is restricted. No attempt has ever been made to support such legislation on this ground; any such attempt would be frivolous.

The other class of cases involves state legislation which was passed to correct deleterious social or economic conditions arising from a distortion in the normal free competitive market, resulting in an inequality in bargaining power and hence the inability of individuals to obtain the benefits of a free competitive market.

The earliest examples of such laws were public utility regulations. Since utilities are by nature monopolies, they represent a permanent distortion of a competitive market norm, and hence justify permanent economic regulation.

Finally where a temporary economic condition, such as war or depression, distorts the normal economic market, the police power permits the state to correct dislocations produced by this condition through temporary legislation which goes no further than the minimum needed to correct the condition, and lasts no longer that the temporary emergency.

In this connection, rent control is of particular significance because several of the cases which uphold anti-discrimination legislation in housing rely strongly on this precedent. However, rent control is emergency legislation designed to deal with a temporary market imbalance. As Mr. Justice Holmes put it:

"The regulation is put and justified only as a temporary measure * * *. A limit in time to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change."

Anti-discrimination legislation is, of course, nowhere predicated on, or drafted to last for, any purported emergency. Aside from Negro housing, no one has seriously contended that any shortage of housing exists for other groups who are just as much entitled to use the law as Negroes. A look at the New York experience, where the first anti-discrimination law in private housing was passed, shows how utterly baseless is the claim that this legislation is needed to assure good housing to any other segment of the population. Yet the law covers them also.

B. NEGRO HOUSING NEEDS

Those courts which have done any more than enthuse on how un-American racial or religious discrimination is have totally ignored the alleged need to ban such discrimination against anyone else but Negroes. Instead, they have justified this sweeping legislation on asserted Negro housing needs. We can therefore assume that this constitutes a concession, *sub silento*, that the statute is unconstitutional as applied to anyone else, and turn to the law as if it singled out Negroes for protection.

As has been noted above, statutes correcting inequalities in bargaining position and thus restoring a normal competitive market have been upheld as appropriate exercises of the police power. However, the mere fact that the state may have a limited interest at some period in time in the correction of a distortion caused by an absence of a normal market does not give it the power to regulate the whole area indefinitely as to both time and people.

Applying these principles to Negro housing, one would expect to find the following limitations to make the statute valid: (1) The Negro who sought to use the law in fact needed housing. (2) At the time and place the law was in effect, a shortage of Negro housing did in fact exist, similar to the shortage producing rent control, and that this shortage did in fact distort a normal competitive market. (3) Government could find no way consistent with the constitution other than regulation to alleviate the shortage and restore normal market conditions. (4) The regulation was reasonably calculated to restore normal market conditions. An examination of the typical anti-discrimination law in housing shows that it lacks all four of the above attributes.

First, such legislation does not require that the Negro complainant need the housing. In lower-rent housing, into which Negroes who need housing fall, the shortage of apartments prevents anti-discrimination legislation from being effective because there are enough white applicants to fill all vacancies, while in luxury housing, the small number of Negroes who can afford such accommodations can also afford to have new living quarters built for them.

Since anti-discrimination laws in private housing operate in actuality only in higher rent apartments where there are more vacancies than applicants, only a relatively small percentage of Negroes who are in the upper income brackets and can afford to apply are benefited by them. It is these very people, moreover, who can afford to build new Negro housing. Hence, the small Negro minority which these laws benefit is precisely the group not in need of them to secure good housing. In short, this legislation is *pro bono* social climbers and nothing more. Invoking such laws for their benefit is like enforcing minimum wage legislation for Elizabeth Taylor.

Secondly, anti-discrimination legislation is nowhere limited to places where Negro housing is in short supply, nor is it limited to periods of time during which such shortage exists. The cases simply assume the existence of a shortage, and commentators on both sides have followed suit.

The result of Negro housing gains in the last decade is to make the claim of a Negro housing shortage a myth in many areas and a fading problem elsewhere.

If these gains continue at their present rate, the alleged shortage will become fiction in a relatively short time. Like emergency rent control, anti-discrimination legislation in housing is invalid because the emergency is over, and a normal market has been established in many areas.

Thirdly, regulation is not the only way to alleviate what shortage exists. In fact, it is the least efficient. The average Negro needs a house, not a lawsuit.

States can supply housing by building public housing projects for low income Negroes who cannot afford other dwellings, by encouraging private builders to build non-white housing through tax abatement, mortgage reinsurance, and other assistance, and probably most important, by creating a business climate which encourages private building for Negroes. Elimination of restrictions designed to promote integration, such as the ban on newspaper advertisements that indicate that housing is for Negroes, would help, by permitting builders for Negroes to reach their market more directly.

Fourthly, anti-discrimination legislation in housing is not only not calculated to restore normal bargaining conditions, but as a whole further distorts them. This is because it is both ineffectual in adding to the total Negro housing supply, and creates a number of grave, built-in administrative abuses in being enforced. To demonstrate the problem, we may once again refer to the New York experience, which has the oldest anti-discrimination commissions and laws in housing in the country.

Three years ago, this author pointed out the following facts:

"When the law (New York City anti-discrimination ordinance) first went into effect * * * the City Commission on Intergroup Relations, the administrative body charged with administration of this ordinance, received an annual appropriation of $358,050. A year later, only 27 complaints were adjusted to the satisfaction of the complainant or the Commission, for a total cost per dwelling unit obtained via the anti-discrimination law of over $13,000. With this money, the city could virtually have built each of the complainants his own apartment or house."

IV. Compulsory Integration and Freedom of Choice

A. Integration as the Motivation for Anti-Discrimination Laws

The asserted justification for these laws as good housing laws cannot stand close scrutiny because it is not in fact their true motivating reason, but only their ostensible excuse. The evidence is overwhelming that anti-discrimination laws in housing are motivated by the desire to promote compulsory integration.

The attitude of leading Negro proponents of anti-discrimination legislation and of Negro organizations against proposals for good Negro housing unless it was integrated is well known. Their willingness to sacrifice housing for integration is a matter of record. However, probably the most significant evidence that anti-discrimination legislation is really designed to promote integration comes from New York, which had instituted integration policies in housing at the time such legislation was passed, and pursues them with a single-minded purpose.

The New York City Housing Authority admitted keeping an average of at least 65 apartments in public housing in Negro areas vacant rather than rent them to waiting Negroes in order to obtain whites to better integrate them. This resulted in a rental loss, in one reported project alone, of $115,000 in less than a year.

It was further reported:

"Housing authority officials have conceded that advantages might be given to members of one racial group over those of another in renting a particular apartment in a particular project. But, they have argued, without this policy, projects in certain areas would be tenanted predominately by members of one racial group * * * 'Our program * * *' William Reid, chairman of the Authority, said * * * 'is a positive program designed to * * * bring about true integration.'"

B. Compulsory Integration as a Negation of Freedom of Choice

The notion that government can subject people to experiences such as integration to vaccinate them with ideas like it can vaccinate them with medicine must seem a little raw even to the most devoted adherents of an all-powerful state. True, mass brain-washing is not unknown in modern times. In varying degrees, it has been used, and sometimes with remarkable success, in Nazi Germany,

Fascist Italy, Communist Russia, and Communist China. But such seeds seem unable to flourish in the soil of non-totalitarian states, where many people are of the view that government has no business meddling with what is in the minds of people.

In a democracy, people make up their own minds. It is a basic premise that "freedom of the individual in and under a democracy has implicit in it, as an absolute, the freedom of association."

When faced with the fact that anti-discrimination legislation collides head-on with freedom of choice, advocates of compulsory integration lose their glib self-assurance and begin to equivocate by trying to find excuses as to why such rights should not be considered. These excuses, examined *seriatim*, are hardly convincing.

The first such argument is moral preachment. A recent case declared:

"The private ownership of private property free of unreasonable restriction upon the control thereof, is truly a part of our way of life, but on the other hand, we as a people do hold firmly to the philosophy that all men are created equal. Indeed, discrimination against any individual here on account of race, color, or religion is antagonistic to fundamental tenets of our form of government and of the God in who we place our trust."

It is clear that the only antidote to such a visceral reaction is a theological brief. Research of old cases is only a fruitless road to unnecessary eyestrain. The possibility that government could enact through penal sanctions whom one shall associate with or talk to is just as absurd as the notion that it could enforce through positive law good table manners or the Boy Scout Code. The intrusion of particular sectarian religious doctrines into the statute books which the above case would sanction is an alarming innovation for a nation of such diverse customs, ideas, and ideals.

Another line of attack is the assertion that the exercise of freedom of choice so as to discriminate based on ethnic grounds lacks a rational basis. To begin with, this contention is irrelevant. It is no more persuasive than would be the contention that freedom of religion should be abolished unless the worshipper could scientifically demonstrate that his mode of worship had a rational foundation, or that freedom of speech should be eliminated unless the speaker could first prove that his thoughts should be heard, or that the right to listen to the radio station which one wants should not be permitted unless the hearer can demonstrate that he has good taste, or the right to choose one's friends should be curtailed unless the person can show that his choice is rational as a matter of social science. The transferring of choice from the individual to government in the realm of personality is the essence of a totalitarian police state.

The short of the matter is that, for all of its fancy trimmings and wrappings, a law banning discrimination in housing is, and is intended to be, a law compelling people to integrate who do not desire to do so. To thus treat human beings as chess pieces, to be moved at the will or whim of others who would like to plan their lives for them, is as flagrant a violation of basic human rights and dignity as can be found in the worst totalitarian system ever devised. Moreover, such integration for the sake of integration over the obvious objections of the people being integrated is patently violative of their constitutional rights. To hold otherwise is to reduce fundamental human rights to the level of norms which can be changed at each passing fad or fancy in social engineering by self-appointed planners for the lives of others.

All the fancy phrases of "democratic living," "fair housing," "open occupancy," and "equality" cannot substitute for the denial of the right of freedom of association. Infringement of this right makes anti-discrimination legislation in housing violative of fundamental liberties.

Thank you.

Mr. ROGERS. And you have distributed to us copies of your own book?

Dr. AVINS. That is correct. The book is edited by me: I didn't write it all. I wrote some of it.

Mr. ROGERS. Entitled "Open Occupancy Versus Forced Housing Under the 14th Amendment."

Dr. AVINS. That is correct.

Mr. ROGERS. Proceed.

Dr. AVINS. May I call your attention to the fact that there is a little article starting at page 294 with Levitt's experiences. The material for his was obtained via an action under the New York stock corporation law by me, since I am a stockholder in Levitt & Co., and contains their sales figures showing what happened to them when they got an order under the New Jersey law.

I think it is rather interesting to contrast their actual sales figures with the testimony Mr. Levitt indicated, which showed that the bottom dropped out of their sales market in New Jersey.

I leave that for the book, because the figures are there. They came from Levitt's records and they came from the compulsion under the New York law which enables a stockholder to examine the books and records of a corporation.

I would like to go on to a point which I think has been somewhat neglected during the course of these entire hearings, and that is true of all "civil rights legislation," not only of this bill but prior bills. There seems to have developed a rather odd idea that the 14th amendment somehow directs its attention particularly to race, religion, and national origin with occasionally, I suppose, sex or age thrown in, and not to all discrimination of every kind.

Now, Professor Howe brought this point up in a rather curious way this morning. He said he would ground the power under the 13th amendment.

Now, Professor Howe in support of that said that the 1866 Civil Rights Act would support this proposition. Well, the short answer is the 1866 Civil Rights Act was never passed under the 13th amendment; it was passed to enforce article IV, section 2, the old interstate privileges and immunities clause, because it was the radical Republican theory.

That appears throughout Bingham's speeches, who drafted the 14th amendment.

Then in addition to that, he said—there is the fact that he said that this was an enforcement of the right of citizenship. Well, I must say it is a rather remarkable enforcement of the right of citizenship; it is the first and last time I think that anybody has ever heard that a person merely by virtue of being a citizen has a right to buy a house, because if he does he certainly doesn't have to have the money for it. He just has a right by virtue of citizenship.

Mr. ROGERS. Your reference is to the first sentence in the 14th amendment?

Dr. AVINS. Yes.

Mr. ROGERS. What is your interpretation of the meaning of that one sentence?

Dr. AVINS. All it is is declaratory. It is declaratory of the Radical theory that the case of *Dred Scott* v. *Sanford*, is incorrect, and any person born in the United States was ipso facto a citizen, and as soon as the 13th amendment was enacted, the disability was removed. They obtained the citizenship and the rights under article IV, section 2, the older interstate immunities and rights clause.

If you look at the decision in 1823, you will see that one of them was the right to purchase land, provided you had a willing seller, without having the State interfere with purchase of land, which is

designed to overrule the old common law principle that aliens were incapable of purchasing land.

Mr. ROGERS. Then you do interpret the first sentence of the 14th amendment, to have some meaning relating to our present society? You have citizenship with the rights to enjoy citizenship throughout the United States.

Dr. AVINS. Yes. One of the privileges and immunities is that no State may forbid a citizen to enter the State. I might say this: To understand any provision of legislation, it is important to understand what the evil was to be removed. The evil was that a number of the States forbade any free Negro to enter the State, to purchase land, to make a contract, to sue in court, to give testimony.

Mr. ROGERS. Do I take because of that evil being removed by the 13th amendment and the first sentence of the 14th——

Dr. AVINS. He may now enter a State.

Mr. ROGERS (continuing). It then answered the question then and there, and that its application now cannot be interpreted in any other vein?

Dr. AVINS. Do I take it you are asking me whether we are bound by the historical interpretation? Is that the question?

Mr. ROGERS. That's right.

Dr. AVINS. Yes, unquestionably I think that legislative history is absolutely decisive in terms of the interpretation of any legislative document. If it is not decisive, then what will happen is 10 years from now a court may look at the product of this Congress and say, well, we are not going to worry about what this Congress intended to do. We are going to do what we feel like doing.

In my estimation it is destructive of the entire legislative process not to be concerned with what the Congress intended when they passed an item of legislation.

I might say this: I made this argument before the Supreme Court in arguing the constitutionality of 4(e) of the Voting Rights Act and made the point that the 14th amendment was much narrower than its current interpretation by the Supreme Court. Nobody there challenged me. The only point was we will have to overrule some of our recent cases? My answer is, "Of course."

Mr. ROGERS. Do I understand you also then interpret the second sentence of the 14th amendment, which says, no State shall deprive a person of privileges or immunities, due process and equal protection, that does not a grant of any authority to the Federal Government?

Dr. AVINS. No, the fifth section is——

Mr. ROGERS. The fifth section says Congress has the right.

Dr. AVINS. To enforce it, that's right.

Mr. ROGERS. Now, what rights do they have to enforce in the privileges and immunities, equal protection, and due processes clauses? Now, what is your interpretation of what power is given to the Federal Government under that particular sentence, if any?

Dr. AVINS. Power to make certain that no State passes a law to deprive any citizen of what are privileges and immunities of national citizenship. There are certain privileges and immunities of national citizenship.

It has been mentioned that a right to travel is a privilege of national citizenship which is protected against States forbidding people to travel into the State.

Now, it may seem rather peculiar in today's standards to be worried about passing a statute saying that no person may travel into the State, but there were such statutes in 1860, 1865, and this is what the 14th amendment was designed to get rid of.

Mr. ROGERS. How do you get around the Supreme Court in its interpretation of those sections of the 14th amendment, that the due process clause also is imposed so that the State must at least comply with the Federal Constitution as it relates to search and seizures, and other——

Dr. AVINS. I did not suggest that the only privileges of citizens was the right to travel. There are a number of privileges of citizenship. One of the categories of privileges was those in the Constitution already, to wit: those found in the Bill of Rights. Therefore, any State which denies a person the privileges found in the Bill of Rights takes away his life, liberty or property without due process. So it is a straightforward interpretation; namely, one of the privileges of citizens were those found in the Bill of Rights.

There are others: The privilege of citizens not to have a bill of attainder passed, et cetera. The privileges are enumerated in Corfield against Coryell, and they are found in the Civil Rights Act of 1866, which enumerates the various privileges of citizens.

Now, in addition to that, I want to go into this point. There seems to be some misconception that somehow racial and religious discrimination is specially banned under the 14th amendment. I think this to be clearly erroneous, based on the legislative history of the 14th amendment. I think there is no doubt about it.

The 14th amendment was not passed to protect either Negroes alone or Negroes specially. It was passed to protect a considerable category of people, of which (1) were nonwhite travelers traveling in the South, (2)—and I might as far as (1) is concerned cite the Hoar incident in this respect—(2) it was passed to protect what were known as white loyalists, that is to say, white Unionists in the South, and in respect to this I would like to read the remarks, which are just a paragraph, of Representative John A. Bingham, of Ohio, Republican lawyer who was the drafter of the first section of the 14th amendment, and whose words therefore must carry decisive weight.

Bingham said:

> Mr. HALE. It is claimed that this constitutional amendment is aimed simply and purely toward the protection of "American citizens of African descent" in the States lately in rebellion. I understand that to be the whole intended practical effect of the amendment.
>
> Mr. BINGHAM. It is due to the committee that I should say that it is proposed as well to protect the thousands and tens of thousands and hundreds of thousands of loyal white citizens of the United States whose property, by State legislation, has been wrested from them under confiscation, and protect them also against banishment.

Dr. AVINS. I was going to depart from the mimeographed testimony, the citation to that is in Congressional Globe, the 39th Congress, 1st session, page 1065. I have this in my book; there is a long article, I might say, in my book on the 14th amendment which starts at page 68 and this little colloquy is at page 84, footnote 90.

My contention—I am now just discussing this purely from a legal point of view, because I am sure many other gentlemen have discussed this from a practical and many other points of view, and I am con-

fining myself to this rather narrow question of the equal protection clause and the privileges and immunities clause. But I want to focus my attention on this one point.

Our contention is that if either the Congress or the State legislature protects a person against racial discrimination, protecting a certain category of people, it does not protect against, for example, political discrimination.

It denies equal protection of the laws; it is a denial by failing to protect everybody equally. The word "protection" is to be construed in its formal meaning; it is meant to insure that all persons, including aliens, were protected.

In fact, it was the theory of the framers that any protection simply on the basis of race was a denial of equality and I should like to read remarks by Bingham on this point.

Bingham said so in discussing the 15th amendment. He was against this remarkably enough:

> Why, equality is the very rock of American institutions, and the reason why I desire to amend this proposition of the Senate is that as it stands it sweeps away that rock of defense by providing only against State usurpation in favor of colored citizens, to the neglect of equal protection of white citizens. While colored citizens are equal in rights with every other class of citizens before the majesty of American law, as that law stands written this day, I am unwilling to set them above every other class of citizens in America by amending the Constitution exclusively in their interest.

Dr. AVINS. This is to give you the citation to this. It is the Congressional Globe, 40th Congress, 3d session, page 1427.

I have some additional material on this in an article in 18 Stanford Law Review, page 808, which is out, and in the May issue of the Columbia Law Review, which will be out in about 2 weeks, which will discuss the question of State action in public accommodations and the original theory. It is coming out in the May issue and will be out in maybe 2 weeks, imminently.

And I think this clearly shows that far from this legislation being an aid in enforcing equal protection clause, if that is where it is supposed to come from, it is a violation of the equal protection clause, because it does not protect everybody.

There is not a word in the 14th amendment, not a single word, which refers to race, color, religion, sex, or any of the other things that are in this bill. Not a single word in the 14th amendment. Therefore, the question is, Where is the authority to single out these specific items and say, we ban this but we do not ban anything else.

In view of that fact, and in view of the fact that the debates show this, I might say this problem permeates the entire bill, because all the sections of the bill relate to certain—only certain specific kinds of discrimination. Therefore, it must necessarily follow that with respect to each of them, it is a denial of equal protection and for that reason alone, without discussing all the innumerable other actions, such as State action, which I am sure has been argued threadbare; or interstate commerce, which I am sure has been argued threadbare—a couple more innumerable other things.

I have to come to the conclusion on that alone, that this would be the very sections of the statute which would deny equal protection and, therefore, unconstitutional.

That is all I would like to say about that, unless there are any questions and I will be glad to answer them.

The CHAIRMAN. I understand from your testimony that you do not agree with the Attorney General, you do not agree with Professor Howe here this morning, and do not agree with certain recent decisions of the Supreme Court in the interpretation of the 14th and the 15th amendments.

We understand that to be your position and you have stated it from a historical standpoint. Whatever Congress intended when it had this problem to meet, they met it, submitted it to the people and solved it and that is the extent of the 13th, 14th, and 15th amendments; is that correct?

Dr. AVINS. That is correct.

Mr. ROGERS. Thank you so much. We appreciate receiving your thoughts on the matter and since, as you know, the bell has rung, we will need to adjourn.

Dr. AVINS. If I may just say, I have tried to be brief and I hope you will look into the book——

Mr. ROGERS. We appreciate it and know that the time was short and you were to the point and brief in what you had to state.

Now, tomorrow the witnesses will be Mr. Arthur F. Mohl, representing Illinois Association of Real Estate Boards, Springfield, Ill.; Mr. Harry G. Elmstrom, president of the New York State Association of Real Estate Boards, of Albany, N.Y.; and Mr. George A. McCanse, past president of the Texas Real Estate Association of Austin, Tex.

The meeting will now stand adjourned until 9 o'clock tomorrow morning.

(Whereupon, at 12:25 p.m., the hearing was adjourned, to reconvene at 9 a.m., the following day, Wednesday, May 25, 1966.)

03-420—66——103

CIVIL RIGHTS, 1966

WEDNESDAY, MAY 25, 1966

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

The subcommittee met at 9 a.m., pursuant to recess, in room 2141, Rayburn House Office Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rogers, and McCulloch.

Also present: Representative McClory.

Also present: William R. Foley, general counsel; Benjamin L. Zelenko, counsel; and Martin R. Hoffmann, associate counsel.

The CHAIRMAN. The meeting will come to order, please, and I understand our distinguished member wants to introduce the next witness, who is Mr. Arthur F. Mohl, representing the Illinois Association of Real Estate Boards, Springfield, Ill.

Mr. McClory?

Mr. MCCLORY. Thank you, Mr. Chairman. I do have the distinct pleasure this morning in presenting to the committee Mr. Arthur F. Mohl, of Chicago, and Mr. Mohl is appearing here today in behalf of the Illinois Association of Real Estate Boards. He is accompanied by Mr. Bob Cook, a longtime friend of mine, who is executive secretary of that organization.

Mr. Mohl has a distinguished past as far as his work in the field of real estate, but in addition to that he has a reputation in support of equal rights for all citizens as well. I might point out that he was the sponsor of the first Negro member of the Chicago Contract Bridge Association.

Of greater interest and intent, he sponsored and supported the induction into the Chicago Real Estate Board of two Negro brokers, which was another first.

Also, he has initiated contact for a number of years with various church groups in the Chicago area to promote the integration of minority citizens in these church organizations. It is abundantly safe to say that he has a reputation of trying to achieve equal rights for citizens without respect to race or color.

He did testify in Illinois with regard to a similar subject, the subject of open housing, when it came before the Illinois General Assembly in 1961, 1963, and 1965. And Illinois has not enacted any such legislation up to the present time.

I do know that he personally supports as an individual and as a leader of this organization, which he is representing today, the right of citizens to live wherever they want to and to have that basic con-

stitutional right. I am suspicious that he is going to comment with regard to the legislation that we have before us this morning and to express the position of the association with that regard. I am sure that his remarks will be illuminating and constructive and it is a great pleasure for me to present him to the committee here this morning.

Thank you.

The CHAIRMAN. Mr. Mohl?

STATEMENT OF ARTHUR F. MOHL, ILLINOIS ASSOCIATION OF REAL ESTATE BOARDS; ACCOMPANIED BY ROBERT COOK, EXECUTIVE SECRETARY

Mr. MOHL. Mr. Chairman and members of the subcommittee, my name is Arthur F. Mohl, and I have been engaged in the real estate business in Chicago for 30 years. I appear here as spokesman for the Illinois Association of Real Estate Boards. We urge the rejection of title IV of the Civil Rights Act of 1966 for the following reasons:

1. Title IV requires a citizen to unwillingly rent or sell to another citizen. Such a requirement might be just if it were in the public interest, but here it is improperly invoked for the benefit of one citizen against another.

2. Title IV makes no contribution to the problems of the ghettos as evidenced by the fact that New York City—with such a law—has experienced serious riots and had a 65-percent increase in substandard housing units over a 10-year period, while Chicago—without such a law—had no major riots and had a 33-percent reduction in substandard housing units in the same period.

3. Title IV has no means for defining its violation unless the accused admits violation. Most property owners refrain from assigning reasons for refusal to sell or to rent. Inevitably those who prosecute pressure the accused into having to prove his innocence by making him assign a reason for refusal. And if he assigns a reason based on behavior, he exposes himself to character defamation charges.

4. Title IV becomes self-defeating in its application, and this we think is the important part of our argument. The Chicago community of single-family homes known as Marynook has achieved reasonably stabilized integration. Its concern is to persuade as many whites as Negroes to buy and move in—and thus far it has succeeded. With title IV on the books Marynook would become all Negro, because the residents would be prohibited from holding out for a white buyer.

Even though they may not acknowledge it, Lake Meadows and Prairie Shores, which are privately owned urban renewal projects in Chicago and which are successfully integrated, use quotas in order to maintain stable integration, but title IV would make that system illegal. Most successfully integrated communities maintain benign quotas, which title IV would outlaw. We believe, therefore, that the enactment of title IV would contribute to rather than thwart the growth of segregated neighborhoods. For this reason alone we urge the subcommittee to reject title IV.

We submit that any law which attempts to regulate a personal relationship between two individual citizens, where the public interest is not involved, is un-American and undemocratic. It is a device by

which minority rule prevails for the great majority of citizens have opposed such a law each time they were permitted to vote.

Yesterday, we were privileged to hear some articulate testimony on the constitutionality of title IV. I am not a lawyer, but I was taken somewhat aback by the statement of the learned professor of law that discrimination by a seller on racial grounds amounts to a badge of servitude attaching to the buyer and this therefore, he rationalizes, would invoke the 13th amendment as a basis for the constitutionality of title IV.

If this is a badge of servitude, then so is the systematic exclusion of any person from a private social organization. I can imagine no doctrine more calculated to reduce all people to the least common denominator than the one reflected in this testimony invoking the 13th amendment. I am only a layman, not learned in the law, but I understand enough of the professor's testimony to frighten me.

We hope that the subcommittee in its consideration of title IV will weigh carefully the future consequences of enacting into law a concept which prohibits private individuals from exercising some degree of selection in the choice of those with whom they will execute a contract for the sale or rental of property. The American is basically an individualist who guards carefully his inherent right to choose his friends, his associates, and those who desire to share his residence, whether it be a home, a duplex, or a multifamily structure. We are fearful that the injection of the legal force of the state in the making of these choices will generate resistance and bitterness, which would inevitably retard, rather than advance, racial amity.

Progress in race relations has been slow and we make no excuses for the decades when we seemed to stand still. Now race relations are improving; every year sees more and more integrated neighborhoods achieved through voluntary methods. We strongly urge that you do nothing to impede this progress, for progress is being made.

Let us not forget that in California where the people voted 2 to 1 against legislation such as title IV, they have nevertheless through voluntary efforts achieved notable results. For example, for the first 11 months of 1965, of the 286,406 listings in all of the State's multiple listing systems, less than six-tenths of 1 percent contained some racial restriction.

This is an example of voluntary effort toward open occupancy which I am sure is being duplicated throughout the United States. Give this a chance. We hope you will reject title IV.

Let me express appreciation for the privilege of being here.

Thank you.

The CHAIRMAN. Mr. Mohl, on page 2 you speak of benign quotas. You say most successfully integrated communities maintain "benign" quotas.

What do you mean by a benign quota?

Mr. MOHL. By this I mean that the person who has charge of the choice of selection undertakes responsible choices on who will live in the area.

In other words, I refer again to Marynook. There is an organization of citizens in this community; it is roughly 260 single-family houses. It was a project developed by a subdivider. He required that

all of the homeowners become a member of a neighborhood organization. This organization attempts as best it can to maintain an integrated community, to hold reasonable ratios so that it does not become all one type of citizen, or all one race of citizens. That is what I mean.

The CHAIRMAN. Who determines the reasonable ratio?

Mr. MOHL. They do not fix a specific ratio; they try to keep it from becoming overbalanced, and this is done by the leadership of the organization.

The CHAIRMAN. What is the reasonable ratio now?

Mr. MOHL. I don't know the current figures, but I think it is in the ratio of 20-percent Negro.

The CHAIRMAN. Would you provide for benign quotas in connection with jobs?

Mr. MOHL. Would I advise it in jobs?

The CHAIRMAN. Yes.

Mr. MOHL. No, I think that is a different problem.

The CHAIRMAN. Why in housing and not in jobs?

Mr. MOHL. Because I think that the situation in industry is not parallel to the situation in housing.

The CHAIRMAN. How about schools?

Mr. MOHL. What do you mean, how about them? You mean, should there be a quota?

The CHAIRMAN. Would you apply a benign quota in schools?

Mr. MOHL. No, I think that the quota in schools should follow the neighborhood composition.

The CHAIRMAN. So that you would have quotas in education, you would have quotas in jobs ——

Mr. MOHL. No, I did not say that. I said, no.

The CHAIRMAN. You would not have quotas in education?

Mr. MOHL. That's right.

The CHAIRMAN. And you would not have quotas in jobs?

Mr. MOHL. I don't propose quotas in housing; I propose that the community be allowed to run its own show.

The CHAIRMAN. But you would provide for what you call "benign quotas" in certain areas where there is private housing?

Mr. MOHL. No, I did not propose that. I said that the only successful integration is in areas that do have management of quotas.

The CHAIRMAN. Then you have what you call "benign quotas"?

Mr. MOHL. I say the community runs it on a quota basis.

The CHAIRMAN. You call them benign quotas, do you not?

Mr. MOHL. Yes.

The CHAIRMAN. That is what I am trying to get at.

On page 3 you speak of some degree of selection or choice of those with whom they will contract. Who will determine the degree of choice?

Mr. MOHL. Each party to the contract. There are two people on a contract, and if the Government by fiat enters into it, making a determination as to whether I am to enter into a contract with another citizen, you are usurping my rights.

The CHAIRMAN. Do you have that same idea of degree of choice in jobs?

Mr. MOHL. No, I do not.

The CHAIRMAN. You would not have it either in education? A degree of choice as to whether they should take Negro pupils or white pupils?

Mr. MOHL. Well, the choice in schools is made by the school administration, not by an individual citizen.

The CHAIRMAN. I mean, would you have the school authorities exercise a degree of selection as to whether they should take whites or blacks?

Mr. MOHL. No, of course not. That choice is made by the community and not by any individual citizen.

The CHAIRMAN. What is the difference between the community, which is the combining of the citizens, making the decision and the citizens making it?

Mr. MOHL. I say the Government has no right to make a determination for one citizen in his relationship with one other citizen.

The CHAIRMAN. But you say the Government has the right to make the decision but, not for persons to make selections between whites and blacks by way of discrimination in education——

Mr. MOHL. No, I did not say that.

The CHAIRMAN. In employment?

Mr. MOHL. I did not say that. I said that in education the choice is made by the composition of the community and not even by the leadership of the——

The CHAIRMAN. In other words, the reasoning you give us is that in one case it is the community, the other case it is the individual; is that correct?

Mr. MOHL. That is correct.

The CHAIRMAN. Mr. McClory?

Mr. MCCLORY. Mr. Mohl, it has been my observation that in order to have an effective integrated apartment building—I have had more familiarity with an apartment structure—that it really requires a conscious effort and it requires planning on the part of the management in order to effect a balanced integration. Otherwise, as you indicate, if you leave things alone they tend to become all one race or all another; is that your observation?

Mr. MOHL. This is absolutely true, and the Chicago Housing Authority, a public agency, attempted to create an integrated housing unit in an all-white area and within a very short number of years that housing unit in an all-white area become all-Negro because the housing authority had no right to control it.

The CHAIRMAN. I am wondering whether since I have had experience with the fair employment practices law, there has been compulsion with regard to employment. It seems to me it has had a very salutary effect and has facilitated the voluntary action on the part of management, facilitated their actions in providing job opportunities for the Negroes.

Now, I am wondering whether or not such legislation as is proposed in this bill might not facilitate an integrated community or an integrated apartment building. Would it have that effect or do you think it would have the opposite effect?

Mr. MOHL. That is my testimony; it has the exact opposite effect.

If the person who has the responsibility and the right to make choices, referring to an apartment building, if you say to the owner of an apartment building that is already integrated, you may not reject a minority member, the facts of life are that within a reasonable period of time it will become all-minority.

Mr. McCLORY. I have heard that information expressed, of course, with regard to public accommodations and with regard to other facilities and I am just wondering whether or not that would be the result, or would not the effect of such legislation enable the management to, or perhaps require the management to integrate a few Negro families and thus carry out an effective integration, but I suppose that time alone can determine what——

Mr. MOHL. I think that if your question is directed to a community of high income and, therefore, high prices, high rents, that no such development would occur. This is largely an economic problem.

Mr. McCLORY. One of the witnesses testified, I was not here at the time, but he testified that title IV might be used as an economic shield. Do you have any comment on that?

Mr. MOHL. An economic shield?

Well, as I understand it, he referred to the probability that the people in the real estate business would be in better shape if there were such a law.

Mr. McCLORY. Yes.

Mr. MOHL. I would heartily disagree with this. It is not true.

Mr. McCLORY. You do not think realtors are looking for this kind of a law in order to protect them or in order to facilitate sales.

Mr. MOHL. That is correct. The only time a realtor looks for this type of a law is at a time when Government proposes to invoke the regulation on brokers only, and then in self-defense the brokers might naturally say, "Well, if you are going to invoke it against us, invoke it against everybody."

Mr. McCLORY. But you do not find that real estate people are looking toward the enactment of such a law for some economic advantage?

Mr. MOHL. Indeed they are not. As a matter of principle, we believe that a property owner has the right to make this choice and we think that real estate brokers have the obligation to champion the property owners' right.

The CHAIRMAN. Mr. Mohl, the title of the bill you are appearing against says there can be no discrimination in connection with sale or leasing, and so forth, of property based on discrimination as to race, religion, or national origin.

Now, I take it that under your contention not only could you refuse to sell a Negro if you see fit, but you could refuse to sell the property to a Mormon or a Catholic or a Jew; is that correct?

Mr. MOHL. Or a man who has been in jail or a man with too many children or a whole lot of other things.

The CHAIRMAN. That has nothing to do with the bill. The bill speaks of the fact that you cannot discriminate on the ground of race, color, religion, or national origin. There is no prohibition in the bill against refusing to sell your property to a thief or a man who is guilty of moral turpitude.

Under your interpretation then you could refuse to sell or rent the property to a person on the ground of his religion?

Mr. MOHL. Mr. Chairman, I am in the business of running apartment buildings, multiple-housing properties. At no time does my firm say to an applicant, "I am rejecting your application for reason A or for reason B." At no time does a property owner describe his reasons. Therefore, this bill cannot define what the reason is.

The CHAIRMAN. The practices of your firm, I am sure, are of the highest order. I am not speaking of your firm. I am speaking of the possibilities under the title. There can be no discrimination on the ground of religion. Yet, if we do not have this title, there could be discrimination on the ground of religion; you could conceivably, if you wish, your own firm and many others, refuse to sell to a person who happens to be of a religion other than your own.

Mr. MOHL. At no time does the normal operation of leasing and selling property involve description of a reason for discrimination, and discrimination is practices, and it may be reason of race or it may be reason of something entirely different.

Now, this bill in effect says, you better have some other reason besides race.

The CHAIRMAN. This bill says you cannot discriminate on the ground of national origin, for example; therefore, you could not discriminate on the ground that the prospective purchaser or the prospective tenant was a Pole or Yugoslavian, or a German or an Irishman or a Welshman.

Mr. MOHL. There is no way for the Government to determine what was the reason for his refusal.

The CHAIRMAN. Under the bill if there is a complaint, it goes to the court and the court determines it.

Mr. MOHL. The only way the court can determine is by making the defendant make a confession.

The CHAIRMAN. No, the man aggrieved brings the complaint. He has the burden of proof that you discriminated on the ground of race or religion.

Mr. MOHL. I have had too much—and my contemporaries have had too much experience to believe that.

The CHAIRMAN. Now, Illinois has a statute which prohibits discrimination in public housing; is that correct?

Mr. MOHL. In public—no; there is no law on the State books.

The CHAIRMAN. Did you hear me—I said Illinois prohibits discrimination in public housing?

Mr. MOHL. No; the Federal Government prohibits it; Illinois does not.

The CHAIRMAN. There is a citation, Illinois' Annotated Statute, chapter 38, sections 13–2 to –3. That's the Public Housing Act of Illinois and it prohibits discrimination on the grounds of race or religion.

Mr. MOHL. This probably then was to make it parallel to the Federal act. I am not familiar with public housing.

The CHAIRMAN. Then you could not have so-called benign quotas in public housing?

Mr. MOHL. That is correct; that is what I said. You do not have benign quotas in public housing and that is what happened to them.

The CHAIRMAN. Why should there be a difference between public housing and private housing?

Mr. MOHL. There is a lot of difference.

Mr. MCCLORY. If the chairman will yield, the effect of the proposed law, as I understand from the witness, is that instead of having integrated housing in public housing, we would have all-black housing with regard to part of the public housing, and probably some all-white public housing. But there would be very little all-white housing as a result of this statute against discrimination.

The CHAIRMAN. Forgive me for countering, I would say the reason why you have all-black housing is because you do not have a law like that which we are trying to pass now. In other words, we have Harlem and we have Stuyvesant-Bedford sections in New York and Los Angeles has Watts, because we have no laws which fully prevent the discrimination in housing and in the real estate industry.

I think the cause of that is because we do not have these restrictions against these ghettos and these slums. However, I am not going to go into a philosophical argument with you, sir.

Any further questions?

Mr. MCCLORY. No, sir.

The CHAIRMAN. Thank you very much, Mr. Mohl.

Mr. MOHL. Thank you.

The CHAIRMAN. Our next witness is Mr. Harry G. Elmstrom, president of the New York State Association of Real Estate Boards.

Mr. Elmstrom?

Mr. ELMSTROM. Mr. Chairman, I have with me other representatives from our New York State association. I would like to have the privilege of introducing these gentlemen to you.

The CHAIRMAN. Go right ahead.

Mr. ELMSTROM. On my right is Richard Dunn of Tonowanda, and Ralph Borchard of Rochester. Both these men are past presidents of our association.

On my left is William Magel, who is the executive vice president of our State association.

Thank you.

STATEMENT OF HARRY G. ELMSTROM, PRESIDENT, NEW YORK STATE ASSOCIATION OF REAL ESTATE BOARDS; ACCOMPANIED BY WILLIAM R. MAGEL, EXECUTIVE VICE PRESIDENT; RICHARD E. DUNN, PAST PRESIDENT; AND RALPH R. BORCHARD, PAST PRESIDENT

Mr. ELMSTROM. My name is Harry G. Elmstrom, of Saratoga County, N.Y. As president of the New York State Association of Real Estate Boards, I speak in behalf of the 58 local real estate boards in New York State and their over 35,000 licensed real estate brokers and sales people, in addition to the hundreds of thousands of property owners we serve each year.

Let me express my appreciation on behalf of our organization for having been granted this opportunity to appear before you.

You currently have under consideration a piece of legislation which we feel strikes a piercing blow at the heart of the fundamental rights of an individual citizen to own and enjoy real property without coercion or intervention. I am making reference to title IV of the 1966 proposed civil rights law.

Under the guise of civil rights, proponents of this bill undoubtedly feel that if enacted, this law would strengthen property rights and insure equal opportunity in housing. I submit to you, however, it would not only fail to achieve its intended purpose, but it will sacrifice one of the most treasured rights of all property owners—the right to determine the disposition of his property without legal coercion on the part of his Government.

Indeed, at stake is the basic principle of freedom of contract. The right of an individual to enter into or refuse to enter into a contract in the disposition of his property based entirely upon his own judgment.

The laws of our land are historically made in the public interest and I submit to you that this is not only against the public interest in that it deprives individual citizens of their rights, but is, in fact, against the will of the people of this great country.

In every instance that the voters have had the opportunity to express their desires on this very question, this type of legislation has been rejected by an overwhelming majority. The most recent poll on the national level conducted by the National Broadcasting Co. indicated that an overwhelming failure on the part of the people to support this legislative concept was ascertained.

I should like to make clear that our association is dedicated to equal opportunity in the housing field. Our policy states that we will support and promote the right of an individual to own real property and to exercise and enjoy the freedom of this ownership. We recognize that this is not a privilege of any particular group, but one that is possessed by all of our citizens. However, we also recognize that this freedom of ownership includes the right to determine the disposition of one's property.

New York State property owners have been encumbered with a similar law to the one before you for a number of years now and even the outspoken proponents of this legislation admit that the law has failed its intended purpose and has in many areas of our State done little more than to create chaos in the housing market.

Since some of our local communities in New York State have also enacted laws, property owners are confused and bewildered since three or even sometimes four agencies are involved, each with a different set of regulations. A Federal law would only add another agency, further confounding the property owner.

It is literally impossible, as has been proven in New York State, to eliminate, by use of legislation and police tactics, prejudice and discrimination. The curtailing of rights of all citizens is not the answer to insuring equal opportunity for our Nation's minorities. Americans living in a free democratic society will not, through the use of legislative coercion, be forced into an unwilling or unwanted position concerning the disposition of their property.

Legislation of this type will not only impede the progress already underway, but almost assuredly will set us back in our quest for complete freedom of opportunity in the housing field. The gains in this area that have been recognized to date have come about primarily due to the influence of churches, schools, and men of good will through the use of the educational process and voluntary acceptance by the public.

A forced housing law such as this that tramples on a fundamental right will not advance this extremely important cause. In addition

to the fundamental right that this proposed law would destroy, I wish to point out that it is, in every sense, contrary to our entire system of laws as we know them today in this country.

It, in a sense, places a citizen in a position of being guilty until he has proven himself innocent and makes him subject to virtually unlimited penalties and, in addition to all this, it puts at the disposal of his accuser all of the machinery and assistance of the Federal Government and, indeed, calls upon him to stand alone in his own defense.

It imposes penalties in the way of injunctive restrictions on the disposition of the property, even before the accused has had his constitutionality guaranteed "day in court," let alone having been adjudged guilty of infractions under the law.

It is our solemn belief that the individual American property owner, regardless of race, color, or creed, must be allowed, under law, to retain:

1. The right of privacy.
2. The right to choose his own friends.
3. The right to own and enjoy property according to his own dictates.
4. The right to occupy and dispose of property without governmental interference in accordance with the dictates of his conscience.
5. The right of all equally to enjoy property without inteference by laws giving special privilege to any group or groups.
6. The right to maintain what, in his opinion, are congenial surroundings for tenants.
7. The right to contract with a real estate broker or other representative of his choice and to authorize him to act for him according to his instructions.
8. The right to determine the acceptability and desirability of any prospective buyer or tenant of his property.
9. The right of every American to choose who, in his opinion, are congenial tenants in any property he owns—to maintain the stability and security of his income.
10. The right to enjoy the freedom to accept, reject, negotiate or not negotiate with others.

Loss of these rights diminishes personal freedom and creates a springboard for further erosion of liberty.

In summary, the proposed law is a bad law. It is contrary to the public interest and is being offered in direct opposition to the expressed will of the people.

The members of our association and the thousands of property owners that they service ask you to protect and safeguard the human rights of all citizens and reject this legislation.

The CHAIRMAN. The thrust of your argument is only against the title referring to real estate; is that correct?

Mr. ELMSTROM. Title IV, yes; just that.

The CHAIRMAN. You have no expression or views on the other titles?

Mr. ELMSTROM. No, sir; we do not.

The CHAIRMAN. Now, New York State has had a fair-housing law for some time now, has it not?

Mr. ELMSTROM. Yes.

The CHAIRMAN. Has it affected your business, for example? Has it reduced your profits? Has it reduced the business that you do?

Mr. ELMSTROM. No, it has had no effect.

The CHAIRMAN. In other words, there have been no cessations of sales or sales continued as heretofore?

Mr. ELMSTROM. No.

The CHAIRMAN. There have been no diminution of sales of real estate in your business? It is prospering as before; is that not correct?

Mr. ELMSTROM. Yes, that's right.

The CHAIRMAN. So you have felt no real difficulties financially from the new law in New York, have you?

Mr. ELMSTROM. When you say "me," you mean personally, and I have not; no.

The CHAIRMAN. I am just asking you the question.

Mr. ELMSTROM. I see. My answer would be that there are probably some brokers that have, but I have not.

The CHAIRMAN. Are you aware that Mr. Levitt, who builds in New York and sells in New York, testified here previously?

Mr. ELMSTROM. Yes, I am.

The CHAIRMAN. And says that this particular title would be of extreme value to the real estate industry. Are you aware of that fact?

Mr. ELMSTROM. Yes, I am aware of the testimony Mr. Levitt, has given, and I can only disagree with him. We do not feel the same as he does.

The CHAIRMAN. Have the real estate boards of your State sought to change the New York State law?

Mr. ELMSTROM. We have made efforts. I don't believe we have proposed specific legislation, but we would like to see changes in the law, yes, very definitely.

The CHAIRMAN. Now, there are many communities in New York State which have adopted fair-housing laws. Do you know of a single community that has repealed its fair-housing laws in New York State?

Mr. ELMSTROM. No, I do not.

The CHAIRMAN. So they still continue those fair-housing laws, as far as you know, in New York State in these various farflung communities?

Mr. ELMSTROM. Yes; that is right.

The CHAIRMAN. Is that not something in the nature of the proof that the public wants these fair-housing laws?

Mr. ELMSTROM. No; I would not believe that, Mr. Chairman. Many of these laws are put on the books and actually the citizens themselves would have no way directly of changing those laws.

The CHAIRMAN. Don't the members of the community elect officials who are responsible for those statutes? The remedy is very simple; like they refuse to return him to office.

Mr. ELMSTROM. The voter always has that remedy if he has a choice in the people that are being elected. In some cases the choice is not there.

The CHAIRMAN. How many years has New York State had the fair-housing law?

Mr. ELMSTROM. I believe it is 4 years.

The CHAIRMAN. Four years?

Mr. ELMSTROM. Originally enacted in 1955 and then amended.

The CHAIRMAN. 1955, that is more than 4 years.

Mr. ELMSTROM. Yes, the amendment is about 4 years, I believe—maybe 3 years.

The CHAIRMAN. You do not know an attempt made by any of the members of the real estate community to converge on Albany to change the statute, do you?

Mr. ELMSTROM. When you say "converge on Albany," I presume you mean through the normal channels and the real estate community has been doing this; yes.

The CHAIRMAN. Apparently the members of the Assembly and the members of the New York State Senate have lent a deaf ear, because they have refused to change the statute.

Now, they act in response to the wishes of the people of the State of New York, do they not? Otherwise, they would not be returned to office.

Mr. ELMSTROM. I would personally like to feel that every man in that position acts in response to the voters, but this is not always the case.

The CHAIRMAN. Frankly, I have heard no attempts, and I am a New Yorker, and I don't know of any real attempts to change the fair housing statutes of New York, and I do not think it would ever be successful as far as I know, and I know a little bit about it.

Mr. ELMSTROM. Well, in New York State, of course, it is hard to compare New York State with any other State. We are still a great Empire State. It was successful in California: however, we do not have the machinery to change our laws such as other States do.

The CHAIRMAN. In California, of course, the State supreme court held that the action—the referendum was unconstitutional.

Mr. ELMSTROM. One court has held that. There are still further recourses that can be taken.

The CHAIRMAN. As a matter of fact, in New York State in 1964 the law was even strengthened.

Mr. ELMSTROM. This is right; this is the amendment.

The CHAIRMAN. Since the law was strengthened since its inception in 1954, I would say that New York undoubtedly wants a fair housing statute.

Now, if New York wants a fair housing statute, why should it not be applicable to other States?

Mr. ELMSTROM. Mr. Chairman, it has been the experience of many of us in talking to the voters that even as of this date we question that 50 percent of the voters in New York State have any concept of the true provisions of the Metcalf-Baker law and we can submit a great deal of proof on this. They do not realize what is in the law even today, even with the tremendous publicity that has been given it.

The CHAIRMAN. That is a rather severe condemnation of the voters of the State of New York. I think the voters in my district are a little smarter than that; otherwise, I would not be returned to power all the time. [Laughter.]

Any questions?

Mr. ROGERS. No questions.

The CHAIRMAN. Any questions, Mr. McClory?

Mr. MCCLORY. No questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. ELMSTROM. Thank you, Mr. Chairman.

The CHAIRMAN. Is Mr. George A. McCanse, past president of the Texas Real Estate Association of Austin, Tex., here?

Mr. MCCANSE. Yes, sir.

STATEMENT OF GEORGE A. McCANSE, CHAIRMAN, LEGISLATIVE COMMITTEE, TEXAS REAL ESTATE ASSOCIATION

Mr. MCCANSE. Mr. Chairman and members of the subcommittee, my name is George A. McCanse and I am engaged in the business of real estate brokerage in Houston, Tex. I am past president of the Texas Real Estate Association and am presently chairman of its legislative committee. I appear here today as the spokesman for the Texas realtors.

During the year 1964 I had the privilege of addressing 96 of the 100 real estate boards in the State of Texas. These groups included not only realtors, but also mayors, county officials, chamber of commerce presidents, property owners and civic leaders.

In each instance I pointed out to the audience the grave dangers inherent in any type of legislation that would erode away the rights that go with the ownership of property. My remarks were directed specifically to the matter you are considering here today—forced, or if you prefer, fair housing—title IV of the act.

I pointed out that each time we citizens of this country lose any of the rights that go with the ownership of property, we are moving that much closer to a centralized government in which ultimately the right to own property would be denied. In not one instance were my statements challenged nor were they commented on in any manner but one of enthusiastic endorsement.

I believe, therefore, that the statements I make to you at this time reflect the thinking of the majority of the 11 million people of the State of Texas, and I am well aware, Mr. Chairman, that we have one very prominent Texan who resides here in Washington, who does not share the same views that I share.

I have read very carefully his statement to Congress at the time this bill was introduced, and it is my personal opinion that he was derelict in not pointing out to the Congress that this bill takes away one of the rights that goes with the ownership of property. I think Congress should have been made aware of this by the President.

Nevertheless, I do think, sir, that I do reflect the thinking of the majority of Texans. The majority of Americans and Texans are seriously concerned about the difficulty experienced by some minority groups in achieving social acceptance, and I am aware of a growing desire on the part of majority groups to change their archaic attitudes toward the long-oppressed minorities. The Austin Board of Realtors, for example, has recently admitted two Negroes to membership.

The trend toward voluntary social acceptance of minorities is gaining momentum, and rightfully so, for all the peoples of this great country are entitled to everything it has to offer—and the greatest thing it offers is freedom—freedom to be an individual and to enjoy the rights of the individual, including the right to own property.

It is desirable that the minority groups which title IV is designed to aid should achieve the goals they seek and to which they are en-

titled. However, the minority groups would be the losers if in achieving them they lose the freedoms that all property owners now enjoy.

Erosion of property rights contained in title IV will adversely affect all property owners—not just those of the majority because if these provisions should be enacted, persons who own or acquire property after that time will have a measurably smaller "bundle of rights" than they now have.

This is our central concern. We see no logical limit to the gradual erosion of this bundle of rights that goes with the ownership of property. For example, if the Congress can enact legislation which touches upon the individual's choice in disposing of property, what would prevent legislation establishing certain standards for neighborhood composition and prohibiting sales which would result in nonconformity to those standards? Where would it stop?

The history of our country shows that Government does not relinquish any of the rights which it acquires from the people, but rather that it continues to take more and more. The right to own property is the individual's bastion against the inroads of Government and any assertion of power which abridges these rights is a step towards the ultimate loss of all of them.

I thank you, Mr. Chairman and members of the subcommittee, for the privilege of presenting these views to you, and I urge you to uphold the rights of all property owners by rejecting title IV in its entirety.

Thank you, sir.

The CHAIRMAN. Any questions, Mr. Rogers?

Mr. ROGERS. No questions.

The CHAIRMAN. Mr. McClory?

Mr. MCCLORY. No questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. McCanse.

Mr. McCanse is the last witness and this will conclude the hearings on the Civil Rights Act of 1966; namely, H.R. 14765, offered by myself, and the other bills bearing on the same subject.

The record will be kept open for additions until and including June 6.

The committee will now adjourn, to meet tomorrow morning in executive session at 10:30.

(Whereupon, at 9:55 a.m., the hearing was concluded.)

STATEMENT OF CONGRESSMAN DON EDWARDS BEFORE THE HOUSE JUDICIARY COMMITTEE ON THE CIVIL RIGHTS BILL OF 1966

Mr. Chairman, as a member of the Committee on the Judiciary I am extremely proud of the record of this Committee in producing the historic Civil Rights Act of 1964 and the Voting Rights Act of 1965. Like you, Mr. Chairman and my distinguished colleagues, I am anxious to complete the task of eradicating from our laws and customs those gross vestiges of discrimination which have become so obvious to everyone in the last few years. I have no illusions about how difficult it will be to fashion legislation which will accomplish our purposes. It will not be easy to get a clear consensus on the finer points of constitutional law or the most effective legal machinery to carry out those purposes. That there is already a variety of approaches to every aspect of the proposed bill the Subcommittee is well aware. I will try to avoid further compounding of our difficulties by not urging different language here and there throughout the bill. I will confine my presentation to those parts of the Chairman's bill where I believe an amendment is critical.

At the outset, let me say that I support the Chairman's bill insofar as it goes. I believe it needs strengthening in several areas; equal employment guarantees, civil indemnification, and administrative machinery to enforce the Housing sec-

tion and a more adequate procedure to ensure compliance with the law in the selection for jury service in state courts.

Other witnesses have appeared and others will be appearing before you specifying the changes needed in the first three categories mentioned and I will not take the time of the committee to reiterate their arguments and documentation.

As in 1964 and 1965, I am in basic agreement with the views of the Leadership Conference on Civil Rights. It is quite clear that we would not have those great enactments which are now being implemented without the counsel and support that the membership organizations of the Leadership Conference afforded to the Congress and the Nation. I respectfully suggest that we again pay careful heed to the advice of the spokesman for those organizations in determining not only the scope but the specific procedures for implementation of the Civil Rights Act of 1966.

During the past year my office has carried on a lively correspondence with a group of senior law students at Yale University, who have devoted an incredible amount of time to civil rights legislation, not only this year, but also last year during our deliberation on the Voting Rights Act. They have prepared excellent draft bills particularly in the area of jury discrimination and civil rights crimes.

I have found both their research and their conclusions most helpful and I would like to take this opportunity to thank them and their professors for making their work available to me and to the other Members of Congress, some of whom have previously introduced so-called "Yale" bills. In large measure, the bill which I have recently introduced regarding state jury selection and which I shall argue for today is the product of Don B. Kates, Leonard Ross and Simon Lazarus of the Yale University law school.

I am convinced that the Administration proposal as contained in the Chairman's bill insofar as changing the discriminatory pattern of jury selection in some of our state and local courts, will amount to little more than a statement of policy. We have had experience with the ineffectiveness of the voting rights law of 1957, and we found it necessary to enact new legislation last year. We know that the individual lawsuit method was inadequate to assure Negroes the right to vote, and the individual lawsuit is going to be just as inadequate to assure them an equal right to jury service. There is overwhelming evidence that the law has been deliberately and consistently violated for decades in every county of the deep south and in many other counties as well. Negroes have been sent to the chain gang and the gallows by all white juries in court proceedings that were travesties. And with a predictable outcome that shocked the nation last year, all white juries have acquitted white men who killed and maimed and bombed and burned with a contempt for human life and decency that is revolting.

In my opinion the Administration bill holds out a promise that cannot be fulfilled for years. If we enact this section as it now stands we will need additional legislation in a very short time, just as we did with the voting rights law. I see no reason against and every reason for, drafting an effective procedure now. It is well to remember that the Supreme Court has repeatedly reaffirmed the doctrine that states may not exclude Negroes from their juries and the federal courts have overturned criminal convictions by the score where Negroes have been systematically excluded.

Nevertheless, jury exclusion continues on a tremendous scale—judicial vigilance against it in the last 90 years has accomplished virtually nothing in the hard core areas. Jury exclusion is more difficult to detect than voting discrimination since (a) records are much sketchier and less available; in most suits proof of exclusion is dependent on the testimony of the jury commissioner; (b) Negroes do not line up for jury service and so are not publicly rejected en masse; (c) the Negro community is so totally excluded from the state judicial system in the South that they can supply no real knowledge of the discriminatory practices. Indeed, jury exclusion appears to be more widespread than voting discrimination AND more stubborn. Jury discrimination is not only endemic in states like Louisiana, Mississippi, Alabama, Georgia, South Carolina. It appears also in areas where voter discrimination is more or less absent—in 1956 it was found in Kentucky, within the past five years Arkansas federal judges have thrown out convictions in three Arkansas counties, twice in one of them; the North Carolina Supreme Court reversed a conviction just last year in Mallory vs. State.

The Administration's judicially oriented method will prove no more capable of dealing with this situation than the 1957 Voting Rights provisions. In eight years litigation the Justice Department had managed to receive only 26 judg-

ments affecting 26 of the 201 counties of Mississippi, Alabama and Louisiana combined. And the latest Federal cases find the Department having to go back again and again to get further decrees in each of those counties. The history of desegregation litigation is distressingly similar. In the one year after the Administrative procedures, Title VI of the Civil Rights Act of 1964 was invoked, five times as much integration occurred as had occurred in ten years of litigation.

The administrative methods in my bill can be divided into two separate operative sections: Part II record-keeping; and Part III special jury commissioners. The record-keeping title differs from the Administration bill in that (1) my bill applies only to state courts with more than 10% Negro population, rather than to all state courts; (2) my bill allows the Attorney General to require selected state courts to, at federal expense, duplicate their records and send them to him rather than having to send a Federal officer to each court to get the records and then bring them back to Washington—permitting the Attorney General a broad general view of the situation; (3) instead of merely stating what generally should be in the state records and then leaving specifics to the states, my bill has the Administrative Office of the U.S. courts compose questionnaires which the state courts must answer.

Part III provides for a federal jury commissioner to be sent to counties whose courts have discriminated in jury selection. The Federal jury commissioner would get honestly composed lists of prospective jurors from the Administrative Office of the U.S. Courts and would apply state qualifications to them. However, State qualifications of literacy and superior intelligence would be held satisfied in areas coming under the Act by 6th grade education, and state property-holding, elector or taxpayer status or sex exclusions would not be operative. Thus, with the exception of the sex exclusion, every provision of Mississippi Annotated Code sec. 1762, a typical status defining the qualifications of grand and petit jurors would be applied by the federal jury commissioners.

The federal jury commissioner would come into counties:

(1) with more than 10% Negro population, if (2)(A) their records showed a discrepancy between Negro veniremen and Negro populace of one and one half; or

(B) if they had failed to keep records as required by the record-keeping requirements; or

(C) a federal or state court had within five years previous found that the county court or courts discriminate against Negro jurors

(D) if within five years the federal court under a voting suit had found discrimination and the county picked jurors from the voting rolls at that time.

Special jury commissioners would also test the veniremen for hardship and physical disability, dismissing those incapable or unable to serve. But, as the hardship excuse has been shown (e.g. the suits in Orleans Parish, Louisiana) to be among the most used to get rid of poor Negroes, while pressuring whites to sit, the special jury commissioner is authorized and directed to give federal jury compensation to jurors whom state hardship standards would otherwise excuse en masse.

My bill is of course closely modeled after the Voting Rights Act of 1965. As in that Act the Attorney General has a negative review of new state legislation in affected areas in order to assure that new legislation does not work to prevent Negroes from receiving equal jury rights. And the practices, procedures and provisions of my bill may be challenged in the District of Columbia by litigation against the United States.

Mr. Chairman, I strongly urge the Subcommittee to amend the Administration bill to provide a more adequate enforcement mechanism in the state jury selection section. If we do not do it now we will only put off the day of reckoning. Let us not hold out vain hopes for substantial change in the administration of justice by accepting unrealistic tools for the job.

Statement of Hon. Joseph G. Minish, U.S. Representative From the State of New Jersey

Mr. Chairman, members of the Subcommittee, I thank you for this opportunity to testify in behalf of H.R. 14765, the Civil Rights Act of 1966.

As the sponsor of H.R. 12845, the "Civil Rights Protection Act of 1966," I commend your esteemed Subcommittee for scheduling these hearings to consider the further steps required to complete the great task of assuring equal rights and justice to all our citizens. Your committee has played an outstand-

ing part in the historic legislation of recent years designed to eliminate the cruel inequities suffered by Negro citizens.

Recent federal civil rights legislation in counjunction with far reaching and long awaited U.S. Supreme Court decisions has accomplished much and alleviated much of the injustice which hard unreasoning prejudice has caused. Yet even with these advances, significant though they may be, much remains to be done.

It is contrary to the very idea of government that it should enact laws meant to protect rights but should fail to provide itself with sufficient force to put those laws into effect.

We expect in the United States that Federal law will take effect for the most part through the consent of the people, consent based either upon genuine recognition of the rights to be protected or, at least, upon respect for law as such.

But widespread recourse to violence, intimidation, and reprisal to deprive Negroes of Federal rights in some places in the South have made us realize that the Federal Government's means of enforcement are inadequate to vindicate its civil rights laws.

Let us take as an example the right not to be excluded from any public school, college, or university because of race or color. This right was defined in 1954 by the Supreme Court in *Brown* v. *Board of Education* on the basis of the Fourteenth Amendment. Congress has undertaken to give effect to this right by Title IV of the 1964 Civil Rights Act. Nevertheless, more than 125 incidents of violence occurred in the South between September, 1965, when schools opened, and February, 1966, according to a recent report by the Southern Regional Council and the American Jewish Committee. The report listed 10 murders, as well as cases of families evicted from farms and of parents ousted from jobs because of attempts to enroll Negro children in school with white children.[1]

There might be no need for additional Federal enforcement powers if all State and local officials were determined to protect the exercise of Federal rights. This is not the case. In its 1965 report on law enforcement in the South, the Civil Rights Commission reported that "In some instances, law enforcement officers have stood aside and permitted violence to be inflicted upon persons exercising rights guaranteed by Federal law." [2]

Civil suits by the Attorney General authorized by our civil rights laws are clearly inadequate to protect against violence. The Justice Department has presently to depend largely upon Sections 241 and 242 of Title 18 of the U.S. Code. But we need stronger criminal laws than these. If murder is committed to deny a Federal right, the United States ought to have authority to prosecute and seek punishment in Federal Court not merely for conspiracy but for murder to deny a Federal right. And Federal criminal law must protect civil rights workers and Negroes not only against violence in which "State action" is involved, but against violence, intimidation, and reprisal by private persons as well. Title V of the bill gives the United States authority which it needs to nullify violent resistance to the exercise of Federal rights.

Nor will violence to deprive persons of Federal rights be stopped as long as exclusion of Negroes from grand and petit juries lessens fear of criminal penalties. In his recent testimony before this Subcommittee, the Attorney General reported the Justice Department's finding of "a substantial disparity between the percentage of the adult Negro population and the percentage of Negroes on jury panels or jury lists" in Federal courts in six southern States.[3] Speaking of State juries, the Civil Rights Commission stated in its report that "In the few cases in which persons have been prosecuted for violence against Negroes, grand juries and petit juries—from which Negroes have been systematically excluded and which express deeply rooted community attitudes—have failed to indict or convict." [4] And the Attorney General pointed out that courts have recently found jury discrimination in the State courts of seven Southern States.

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[1] *Washington Star*, May 13, 1966, p. A–5.

[2] U.S. Commission on Civil Rights, *Law Enforcement; A Report on Equal Protection in the South*, (1965), p. 172.

[3] Attorney General Nicholas deB. Katzenbach, Statement before Subcommittee No. 5, House Judiciary Committee, in Support of the Proposed "Civil Rights Act of 1966", (H.R. 14765), May 4, 1966.

[4] U.S. Commission on Civil Rights, *op. cit.*

Titles I and II of this bill should give the United States sufficient authority to ensure selection of Federal and State juries so that men can no longer with impunity deprive others of Federal rights by means of violence.

In November, 1965, more than 11 years after the *Brown* decision, only 6.01 percent of Negro public school pupils in the 11 States of the South attended schools with white children.[5] This figure indicates both a failure to achieve equal protection of the law and the need for additional means to ensure equal opportunity in education.

Title III of the Civil Rights Act of 1966 gives authority to the Attorney General to bring civil actions to desegregate public facilities and public schools without having to depend upon written complaints from private persons and without having to take the time and trouble to determine whether such persons can themselves undertake litigation. And this increased authority will make it impossible for anyone to prevent the United States from acting by intimidating persons who would otherwise complain to the Attorney General.

Racial discrimination in housing causes incalculable evils in our country. Schools are based on neighborhoods, and Negro children by consequence are assigned to ghetto schools where conditions are such as to deny them educational opportunity equal to that given other children throughout our country. Disadvantaged schooling in turn means denial of equal economic opportunity.

On the other hand, discrimination in housing makes it nearly impossible for the Negro to better substantially the physical conditions of life for himself and his family by hard work and saving.

And discrimination in housing prevents all Americans from learning to live together in one community, and tends to keep us divided from each other by lack of understanding.

Title IV of this bill, which prohibits discrimination in the sale, rental, and financing of all living places, and which provides adequate means of enforcement through the courts, should greatly facilitate achievement of freedom, justice, and mutual respect.

Thank you, Mr. Chairman.

STATEMENT OF WALTER P. REUTHER, PRESIDENT, INDUSTRIAL UNION DEPARTMENT, AFL–CIO, TO SUBCOMMITTEE NO. 5 OF THE HOUSE JUDICIARY COMMITTEE, IN SUPPORT OF H.R. 14765, THE PROPOSED "CIVIL RIGHTS ACT OF 1966," JUNE 6, 1966

The Industrial Union Department, AFL–CIO, wishes to express its support of H.R. 14765, the proposed Civil Rights Act of 1966, and to suggest ways in which a good piece of legislation can be improved.

In spite of the impressive gains that have followed the enactment of the Civil Rights Act of 1964 and the Voting Rights Act of 1965, there are still grave deficiencies in the kind of citizenship we offer millions of Americans. The importance of H.R. 14765 lies in the prospect it offers of moving us closer to equality in at least two vital areas: the administration of justice and housing. It is difficult to say which is more important. The shortcomings of American justice, particularly as they are manifest in the tragic and farcical jury trials that acquit the probable killers of dedicated people in the civil rights movement, are more dramatic and more immediately alarming than the shortage of housing. But actually the choice is between two terrible evils. Depriving a man of a decent place to live may be every bit as devastating as depriving him of equal justice. In both instances you leave him nothing but despair and embitterment. Condemning millions of Negroes and other minorities to live in urban ghettos is many times a sentence every bit as inexorable and unjust as the verdicts handed down by racist juries.

It is not a matter of choosing between the two evils but rather seeing what must be done to eradicate both of them.

Accordingly, we support the major provisions of H.R. 14765:

1. Those that would make it possible to select federal and state juries free from discriminations based on race, color, religion, sex, national origin or economic status;

2. Those that prohibit discrimination because of race, color, religion or national origin in the sale or rental of all housing;

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[5] Southern Education Reporting Service, *Statistical Summary of School Segregation-Desegregation in the Southern and Border States*, 1965–66, p. 2.

3. Those that change existing criminal statutes to afford greater protection against assault and intimidation to Negroes and civil rights workers in the exercise of their constitutional rights, and to provide stiffer penalties for those who molest or attack them; and

4. Those that facilitate suits by the Attorney General aimed at desegregating public schools and other public facilities.

In addition, we believe the bill should be strengthened in at least four respects, as proposed by Chairman Roy Wilkins of the Leadership Conference on Civil Rights in his testimony on May 17.

1. We advocate a federal system of compensation to those injured in the course of working for racial justice or to their next of kin if they lose their lives. Admittedly, there is no fair recompense for permanent injury or murder where the victims are persons peacefully advocating their rights. At the same time there are numerous instances in which their families suffer. Jimmie Lee Jackson, who was killed by the police in Marion, Alabama, was the sole support of his mother. And Vernon Dahmer, a civil rights worker in Hattiesburg, Mississippi, was killed and his home and grocery store burned to the ground by nightriders, leaving his family with little economic support. An Indemnification Board would make it possible to compensate the families of such victims. If we can provide compensation for workmen injured in the course of engaging in their occupations and if we can compensate soldiers injured in battle or their families when they are slain, we should surely be able to work out a way of indemnifying those who are engaged in the front lines of the fight for freedom.

2. We believe the proposals for ending discrimination in housing will be much more effective if they are enforced by an administrative agency. Whatever experience we have had points to the difficulties of trying to end housing discrimination through individual suits brought by persons denied a place to live because of race or religion. In Washington, D.C., for example, Roland Barnes, the Negro principal of a suburban elementary school, has been fighting a court battle since 1962 in an attempt to buy a house near his place of work instead of having to commute 44 miles a day to and from the District. His case is illustrative of what would happen if enforcement of the housing prohibitions in the law had to depend on individual suits. What is needed is a government agency that can help men like Mr. Barnes fight to live where they want to, and can proceed against discrimination in broad segments of the housing industry instead of leaving it to individual citizens to establish, laboriously and expensively, little beachheads of open occupancy.

3. We believe the selection of juries should be made more automatic. Rather than requiring action by the U.S. Attorney General or by litigants or defendants to establish discrimination, justice would be better served if the procedures for nondiscriminatory trials could be instituted automatically wherever exclusion of Negroes and women could be established by some statistical standard. In effect, it would mean applying something like the automatic trigger of the Voting Rights Act of 1965 to the problem of juries that do not reflect the general racial and economic composition of the community in which a trial is to be held.

4. We propose that Section VII of the Civil Rights Act of 1964 be amended to cover employment by state and local governments. This strikes us as a necessary corollary of the provisions that would put an end to all-white juries. It would end the kind of justice, vividly described by the Southern attorney, Charles Morgan, Jr., in which a Negro defendant is arrested by a white policeman, brought to jail in a segregated patrol car, fingerprinted and photographed by a white clerk, indicted by a while grand jury, tried by a white judge, provided with a white defense attorney, convicted by a white trial jury and surrounded all his time in jail by white guards and prison officials.

Even as we make these suggestions, we realize how little time there is in which to carry them out. Only a few months of this session remain. But that is not the only deadline we face. Time gets shorter as the days get longer. School will soon be over and many dedicated young men and women will be leaving college and heading South to work in rural communities, helping people to vote, to read and write, to win their rights and move a little nearer to full equality. In recent years our summers have produced harrowing headlines. We must act quickly if we are to prevent the sort of incidents that prompt us to urge this Committee to enact laws that will protect these civil rights workers and the people they are trying to help.

This summer brings to a close a school term in which only the most minimal start has been made toward desegregating our public schools. Passage of H.R. 14765 before school starts again in September will enable the U.S. Attorney General to undertake the legal action necessary to help us build the kind of integrated school system that trains youngsters in the habits and attitudes of democracy.

Now is the time for us to remember Watts and Philadelphia and the ghetto riots that made last summer a nightmare. This bill, by declaring an end to housing discrimination to be a matter of national policy can help us put an end to ghettos and help create an open society.

The President has summoned us in his White House Conference of June 1 and 2 to consider what we must do "To Fulfill These Rights." This Committee and this Congress have it in their power to bring the nation closer to that fulfillment if they will act boldly and quickly.

I urge you to do so.

STATEMENT OF PHILIP M. KLUTZNICK, CHICAGO, ILL., IN SUPPORT OF TITLE IV OF THE CIVIL RIGHTS ACT OF 1966

The companies which I head as President or Managing Partner are engaged in town planning, development, utility operations, rental and sale housing, major shopping center operations, and in investment or management of such properties and programs. We operate primarily in the mid-west, but also in the mountain states, on the west coast, and in Florida. At times I have served in the Federal and State governments in various roles, among which were Commissioner of the Federal Public Housing Authority in the 1940s and Assistant Administrator in charge of War Housing in the National Housing Agency during part of World War II. I served for several years as Vice Chairman of the Illinois Housing Board. My experience in public housing and private development (including the presidency of the company that built the new town of Park Forest, Illinois) covers a span of 33 years.

Starting with the National Industrial Recovery Act of 1933 which provided limited sums for slum clearance, I have studied or participated actively in the development of legislation based on housing experience, both good and bad, which has progressively attempted to facilitate the realization of a good home in a decent neighborhood for every American family. This goal has been enunciated by the Congress and successive Administrations, so like "full employment" it is part and parcel of our national policy.

This is a difficult ambition to realize even for our nation whose wealth and earning capacity of its citizens is without equal. Congress has tackled barriers to this achievement from time to time. Progress has been made; but, for a large segment of our population this goal still seems remote, if not improbable, of attainment.

I favor Title IV because it is a logical, consistent, and inescapable addition to the tools that are essential to achieve our national objectives. It will not solve our housing problem, but it opens a door of opportunity that has been too long barred to a large segment of our people. We have tried by piece-meal measures to overcome the handicaps of discrimination. One must not underestimate some of these. The educational process has helped, and local ordinances and state laws have made some contributions where they were adopted and where they worked. The Executive Order opened a new possibility, but its limitations were self-defeating. If we mean to realize our goal of a "good house in a decent neighborhood" for every American family, the least that we can do is to eliminate discrimination against any family because of race, color, religion, or national origin. There are enough other handicaps to the accomplishment of our national commitment without perpetuating one that contradicts the very basis of the American dream. Assuring our people "equal opportunity in housing" is such an elementary and moral step that it is difficult to understand the opposition to this measure. In common with others, for many years I hoped that other means would resolve this matter. But they have not!

Developers and management firms who believe in the principles enunciated by Title IV have found themselves handicapped in competition with some who have tried to make a business asset out of discrimination in housing. Only under local favorable conditions and with great determination and resources

have notable successes in integration occurred. If we cannot make good and sanitary housing available to all of our people overnight, the least we can do is to eleminate discrimination against the opportunity to seek such housing for the reasons set forth in the bill. I favor Title IV because it is just, moral, and is in pursuit of the declaration of policy in housing which is already the law of the land.

We should realize that this Act, when a law, can only help but not solve the housing problem of a large part of our population. Title IV does not require a developer, landlord, or agent to sell or rent to a person whose income is too low to buy or rent a facility; it does not require acceptance of buyers or tenants whose families are too large for limited facilities or whose past behavior and present record denies that they will be reliable owners or responsible tenants. In short, Title IV does not substitute arbitrary standards for reasonable and acknowledged buyer or tenant selections criteria. All it does is to make it illegal not to apply such standards equally to white or Negro, Protestant, Catholic or Jew, persons of English, Polish or German extraction. This Title will not provide families with either the income, jobs, or training that will ultimately enable them to compete equally in the housing market, nor does it compel those who wish to live with others of their own race, creed or religion to integrate.

While Title IV will not solve the housing problem, neither will it create the dire consequences that some predict it will. Certainly there are places where people will be upset. Some drop-offs in construction and development may be charged to the enactment of Title IV. But this is par for the housing course and for all socially just legislation. This was predicted for H.O.L.C. when it saved the houses of millions of Americans; for F.H.A. when it revolutionized housing finance; for Social Security; for the Wagner Labor Relation Act; and almost every bit of forward-looking legislation. Change is difficult to accept. It understandably engenders fear of the unknown.

Probably everyone would have been more pleased if three decades of active Federal concern with the housing field had produced a condition which voluntarily or through state and local effort had eliminated discrimination as a factor in the housing market. The progress that has been made is limited to a few cosmopolitan areas and to token integration in some places. Faced with the moral dilemma, it seems inescapable that the decision must be to outlaw housing discrimination because of race, color, religion, or national origin. If one worries about the economic and social problems that such just and moral action will create, it might be well to consider the even greater economic and social ills that will flow from a continuation of the present unjust and unfair situation in so many places in our land.

Any change of this kind can create short-run problems, but in the long run we will have produced an atmosphere of equal opportunity which will alleviate social pressures and insure a healthier, more prosperous, and more stable housing industry.

PHILIP M. KLUTZNICK.

Dated May 23, 1966, at Chicago, Ill.

WASHINGTON, D.C., *May 16, 1966.*

HON. EMANUEL CELLER,
House Judiciary Committee,
House of Representatives, Washington, D.C.:

The 20 thousand members of Zeta Phi Beta Sorority heartily endorse Roy Wilkins proposal on the new civil rights legislation and all amendments being introduced by him.

MILDRED C. BOONE.
Grand Basileus.

DARBY, PA., *May 17, 1966.*

THE JUDICIARY COMMITTEE,
House of Representatives Office Building,
Washington, D.C.:

It is ironic that members of the Zeta Phi Beta Sorority in Penna should be working today as part of a brigade of workers to persuade reluctant voters to vote in the primary election while members of the chapters in the Southern part of our country are being harassed for demanding this same democratic right.

As no community State or nation is any greater than its planned efforts to understand and help liberate all peoples I urge the committee to consider and adopt the 1966 civil rights bill as proposed by President Johnson with the amendments suggested by the leadership conference. The viewpoint is being presented by Roy Wilkins today.

ALICE E. ROYE,
National Chairman of Human and Civil Rights of Zeta Phi Beta Sorority.

NEW YORK, N.Y., *May 22, 1966.*

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.:

As an individual I strongly support the general principles embodied in House bill H.R. 14765 concerning civil rights. I would hope that legislation incorporating these same principles could be effectively passed by Congress in the interest of justice and fair play in these highly important areas with which this bill deals. In my opinion these principles are in line with an expression concerning civil rights on record from our general convention which met in St. Louis. October, 1964.

JOHN E. JONES,
Presiding Bishop, Dom & Foreign Missionary Society of the Protestant Episcopal Church in the United States.

NEW YORK, N.Y., *May 23, 1966.*

Congressman EMANUEL CELLER,
House Judiciary Committee,
Washington, D.C.:

Congressman, this is to inform you that the Negro American Labor Council, the Brotherhood of Sleeping Car Porters and the A. Philip Randolph Institute back the testimony of Mr. Roy Wilkins before your committee on May 17.

A. PHILIP RANDOLPH.

HUNTER, ADAMS & MOYER,
San Francisco, Calif., May 17, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: Our law firm represents a number of major builders and developers in Northern California and we would like to go on record in favor of Title IV of the Civil Rights Act of 1966.

As you are aware, we have had fair housing legislation in one form or another in California since 1959. While such legislation has not completely solved the problem of discrimination in housing, it has been extremely helpful in this effort and has opened a good many doors which were previously closed. It has been particularly beneficial in assisting owners, builders and developers who wanted to follow a policy of non-discrimination but were previously unwilling to stand against the tide of public pressure. With fair housing laws to fall back on, builders are willing to take a public stand in favor of non-discrimination.

But the California fair housing laws do not go far enough. The present legislation applies only to multiple dwellings of four or more units and single dwellings with Federal assisted financing. Legislation is needed which would cover all dwelling units and property transactions. We are convinced that if Federal legislation were so enacted to fill this need, it would not in any way impose a burden on the housing industry. To the contrary, it would simply place all builders and property owners on an equal footing. For these reasons we strongly urge that you and your Committee give favorable consideration to the proposed Title IV of the Civil Rights Act of 1966.

Very truly yours,

HUNTER, ADAMS & MOYER,
By RICHARD M. ADAMS.

PITTSBURGH, PA., *May 30, 1966.*

Hon. EMANUEL CELLER,
House Office Building, Washington, D.C.

DEAR MR. CELLER: As the Chairman of the House Judiciary Committee, I urge you to do all that you can to support H.R. 14765, so that we can build greater safeguards against segregation.

Sincerely,

PETER AINSHE,
Chairman, Social Concerns Commission,
Penn West Conference United Church of Christ.

NEW YORK, N.Y., *May 24, 1966.*

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR SIR: We urge you to do whatever you can to bring the open housing section of the Administration's Civil Rights Bill to a vote in your Committee.

Today's N.Y. Times described the organized opposition of the National Association of Real Estate Boards to this section of the bill, and quoted Rep. Kastenmeier as saying that people in general had shown little interest in this year's Civil Rights bill.

We, a middle-class white family who have experienced 8 years of peaceful living in a racially integrated cooperative housing development, strongly favor the bill. We regard the desegregation of housing as the most important key to ending this country's racial inequities.

Respectfully,

PETER APTAKIN and JEAN APTAKIN.

SAN JOSE, CALIF., *May 26, 1966.*

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR SIR: As a branch manager of a well regarded, old line, mortgage banking firm representing several institutional investors in Northern California, I have an interest in the Civil Rights Act of 1966, particularly Title IV.

After reviewing the proposed anti-discriminatory housing legislation and considering its effect if it were to become law, I have to urge you to employ maximum effort to gain passage of the Bill.

In my opinion, discrimination, or any barrier to the sale of housing, is not only socially unjust to aggrieved purchasers, but financially detrimental to all people engaged in the business of building and selling houses. Speaking strictly from my own business, the more financially eligible borrowers, the better.

To maximize housing sales in this nation and thereby benefit the entire economy through the multiplier effect of spent dollars, I recommend you work diligently for passage of the Civil Rights Act of 1966.

Very truly yours,

R. L. ASH.

GERSON BAKAR & ASSOCIATIONS,
San Mateo, Calif., May 20, 1966.

Re Title IV, Civil Rights Act of 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: We are developers of multi-family housing in Northern California. Our activities the past few years have averaged approximately $7,000,000 a year in new construction. We have built over 2,500 rental units in the past ten years and are currently engaged in the development and construction of approximately 1,500 rental units.

The problem of discrimination in housing is one that deeply concerns us. Unfortunately, the "social conscience" of developers is not solving the problem.

Our policy has always been one of non-discrimination and we are proud to say we have never turned down a tenant because of race, creed, religion, or national origin.

We feel that the principal problems in America today with minority groups resolves itself to three categories: housing, education, and employment. I am no more for increased legislation than any other free enterpriser but if the aforementioned social conscience does not do the job, legislation must! The housing industry can and should do something in its field.

As concerns Sections 406 and 407, that part concerning enforcement of this title, it is our firm's policy to constantly review all tenant applications to assure ourselves that they will be qualified residents of our projects. Our qualifications relate to character and financial ability. Historically, we have had in almost every building every race represented but, needless to say, we have and will continue to reject *any* applicant because of the aforementioned reasons. In conclusion, we whole-heartedly support this Act to ensure the rights of the minorities with the reservation that the Landlord's rights are equally assured.

We are appreciative of this opportunity to state our views and hope many developers will be motivated to voice this opinion. I have written a similar letter to the Honorable James O. Eastland, United States Senate.

Very truly yours,

GERSON BAKER & ASSOCIATE:,
GERSON BAKAR.

JACK BASKIN, INC.,
Los Angeles, Calif., May 17, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR SIR: We are builders and developers of tracts and apartment house projects in California. In many of our projects we have availed ourselves of both V.A. and F.H.A. financing. We wish to go on record as completely endorsing the Civil Rights Act of 1966.

Very truly yours,

JACK BASKIN, INC.
JACK BASKIN.

BROWN & KAUFFMANN, INC.,
Palo Alto, Calif., May 27, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR SIR: Our firm is the largest builder of higher priced homes in Northern California. We have constantly advocated and praticed open occupancy in housing and have actively supported "fair housing" laws in the State of California.

We urge you to lend your support to the speedy passage of Title IV of the Civil Rights Act of 1966.

Sincerely,

WAYNE R. BROWN,
Chairman of the Board.

W. EVANS BUCHANAN, BUILDER,
Rockville, Md., May 20, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: I am writing in support of Title IV of the Civil Rights Act of 1966, the fair housing provisions.

It is needed by the real estate industry as a means of eliminating unsound competitive practices and protecting those who choose to do business on a non-

discriminatory basis. Participants in FHA and VA programs are now pledged to the policy and practice of nondiscrimination, under the provisions of Executive Order 11063.

The enactment of Title IV of the Civil Rights Act of 1966 will provide the uniform standards of conduct so greatly needed in today's real estate market. Many business firms and organizations would long since have discontinued practices of discrimination except for their fear of adverse economic consequences stemming from competitors who choose to capitalize on racial and religious prejudice. With a national law commanding the acceptance of all, the entire industry will sell or rent without discrimination and without fear of economic consequences.

Very truly yours,

W. EVANS BUCHANAN.

COLONIAL REALTY & INVESTMENT CO.,
San Francisco, Calif., May 24, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR SIR: I have carefully studied a copy of Title IV of the Civil Rights Act of 1966. It is my opinion that unless this type of legislation is passed discrimination in housing will certainly persist.

The enactment of fair housing legislation in California, later temporarily set aside by Proposition 14, seemed a constructive beginning to the end of discriminatory practices in selling and renting of real estate. I believe that only national legislation can really do the job. I urge the enactment of such legislation.

Sincerely,

CHARLES S. COHEN, *Realtor.*

CITIZENS FEDERAL SAVINGS & LOAN ASSOCIATION,
San Francisco, Calif., May 25, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

SIR: Our attention has been drawn to Title IV of the Civil Rights Act of 1966.

The affairs of this association have always been conducted within the spirit of the proposed legislation which would outlaw discrimination because of race, color, religion or national origin in the sale, rental or financing of residential property.

While we regret the need for such legislation, we recognize that its adoption would be another constructive step in the direction of guaranteed civil rights for all our citizens.

Therefore we urge enactment of Title IV of the Civil Rights Act of 1966 and pledge our support of its broad implications.

Sincerely,

F. MARION DONAHOE.

ADE REALTY, INC.,
Chicago, Ill., May 27, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: As a realtor with more than 25 years of experience in housing of minority groups, as well as others, I support the passage of Title IV of the Civil Rights Act of 1966. On the one hand, we have the very important right of each person to deal with his private property as he chooses, including the right to sell or not to sell to whomsoever he chooses. On the other hand, we have what should be the equally important right of each citizen to be able to house his family where he chooses and, which he can afford. Actually, there should be very little conflict between these two principles. However, too many people who advocate the former, have been using the principle primarily as an excuse to mask prejudices against minorities, rather than as an honest fight for principle.

The artificial restrictions resulting, against the laws of supply and demand that operate in other areas of the housing industry, first of all, have forced real estate agents to operate in an atmosphere of hypocrisy and double talk. Secondly, this artificial market has contributed greatly to the deterioration of many of our urban communities. Both of these are harmful to our business, from a dollars and cents point of view.

Since very little is being done on a voluntary basis to correct these evils, and the actions of the local communities and states are scattered, very slow and inconsistent, I am writing this letter urging the passage of Title IV of the Civil Rights Act.

Very truly yours,

EDWARD DURCHSLAG.

SAN FRANCISCO, CALIF., *May 11, 1966.*

Re civil rights bill, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: I am very much interested in the Fair Housing Section of the above captioned bill.

I am the founder and have been the President of Eichler Homes, Inc., a large California based home building company since its inception in 1947. During that period my firm has built in excess of 9,000 homes and has a policy of selling houses to any person who is financially qualified and whose references are sufficient for us to believe him to be a good neighbor. The color of a man's skin or his racial characteristics, his religious beliefs or his politics have never been standards by which we make this determination. We have not done this as a crusade nor have we ever advertised that we do not discriminate nor have we ever used a quota system.

The result has been that although we have built a large number of residential developments, some large and some small, in only on instance did we ever experience any difficulty because of our policy. This occurred about eight years ago and was resolved by my calling a meeting, and after a frank discussion harmony prevailed.

Members of all types of the so-called minority groups reside in nearly all of the many developments that we have built in the past seventeen years. I have often heard it stated that this causes both visual and financial deterioration. I have found the contrary to be the case. Almost every development that I have built has experienced substantial increase in resale value and in many cases these increases have been extraordinary and I have never seen any of the other dire predictions materialize that have been made regarding integrated communities.

At the outset I believed that handling this problem in this manner would prove to be successful provided I did my share of the job. This was to provide imaginative developments, well designed and well constructed housing at a fair price and at good financial terms. The point that I am trying to make here is that the overriding consideration is value and if the people who live in a development are reasonably intelligent and decent, the project will be successful. This has invariably proved to be the case.

I am enclosing herewith some data that perhaps will further describe our activities.

I strongly urge that the Fair Housing Section of this bill as proposed by the Administration be retained.

Sincerely yours,

JOSEPH L. EICHLER.

CARL M. FREEMAN ASSOCIATES/INC.,
Silver Spring, Md., May 23, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR CONGRESSMAN: I would like to take this opportunity to express my support for President Johnson's call for a fair housing law to ban racial and religious discrimination in the sale, rental, and financing of all housing.

Earlier this year, on March 16, I submitted a statement to the Judiciary Committee of the Maryland House of Delegates in favor of open occupancy legislation. In that statement I said we had reached the stage in our progress as a free society that required the elimination of housing discrimination. I added that there were many builders and realtors who, like myself, believe that the principle of open housing is a necessity in our society. Two week later I told the press: "I'm in favor of open occupancy. Period. I can't do it alone. If one owner opens up to Negroes and it goes all colored, this will intensify the fears of the other builders. The only way open occupancy will occur is on a broad base of participation by all builders and owners and managers. The only way to get that is with a law making it mandatory."

Both Attorney General Katzenbach and Secretary of Housing and Urban Development, Robert Weaver, have told this Committee that there are many builders who want to sell to all persons without regard to race or religion but are reluctant to do so out of a not unfounded fear that if they do, their projects, being the few open without regard to race, will ultimately become segregated as whites seek housing elsewhere. Enactment of the proposed law will place all builders under the same conditions and protect the builder who wants to do what is morally right. That is why as a builder who believes that racial and religious discrimination wherever it occurs is morally wrong, I unqualifiedly endorse the fair housing provisions of the new civil rights bill.

I am enclosing a copy of a Washington "Evening Star" editorial for Sunday, May 15, which voices its wholehearted endorsement for the proposed fair housing legislation. I am particularly pleased to note that the "Star's" findings are similar to mine—that there are many builders and developers who would welcome an anti-discrimination law and that enactment of such a law is essential if there is to be any significant change in present discriminatory housing practices and patterns.

I respectfully request that both my letter and the accompanying editorial be placed in the record of the Committee's hearings.

Sincerely,

CARL M. FREEMAN.

STATEMENT TO THE HOUSE OF REPRESENTATIVES, MARYLAND STATE DELEGATES, IN REFERENCE TO BILL 943

We have reached that stage in our progress as a free society that requires the elimination of passive discrimination in housing. As the elected officials of a citizenry that is both white and Negro, it is necessary to create a vehicle that will prevent all forms of passive housing discrimination in this state.

Speaking for myself, as well as many builders and realtors who have advised me of their support, we look to the delegates to pass this legislation so that the thrust and direction of this open housing principle operates from the broadest possible base.

We believe that the principle of open-housing is a necessity in our society. The history of the passage of the public accommodations law has proven that the law in itself is a potent educational factor. The bill before you will continue this educational process and, in many ways, work along parallel lines with existing and proposed Federal statutes to make open housing both a law and a way of life in our society.

In addition, it is both interesting and helpful to know that I have received a number of unsolicited telephone calls from realtors, builders and apartment house owners who have advised me that they are willing to both support the bill and this statement and if the committee so desires, I will be glad to forward the names of these gentlemen to you.

[From the Sunday Star, Washington, D.C., May 15, 1966]

EDITORIAL—HOUSING: THE NEXT CIVIL RIGHTS ADVANCE

It is time, said President Johnson on April 28, for Congress to ban racial discrimination in all aspects of private housing. And with that the '66 round in the civil rights battle began. It might turn out to be the bloodiest round of all.

Federal requirements for fair housing practices are by no means unique. By Executive Order, racial bias has been forbidden since 1962 in government-owned

housing and in new private apartments and houses financed under FHA and GI insurance. The categories were extended somewhat by the Civil Rights Act of 1964. In all, however, these actions cover a mere 3 percent of the nation's total housing supply. They barely scratch the surface.

The current bill, which is part of a larger civil rights proposal, covers all types of housing—old and new. It would outlaw, for the first time as a matter of federal law, discriminatory practices by builders, realtors, banks, homeowners or anyone else engaged in the sale, rental or financing of housing. It proposes, also for the first time, a legal remedy by which any individual discriminated against might seek redress in the federal or state courts. And it would authorize the Justice Department to initiate suits where it found prevailing "patterns" of discrimination.

It is too early in the game to discuss at length the specific provisions of this proposal. It is clear that a good many of them will not survive in precisely the form they were drafted.

Attorney General Katzenbach had barely begun his explanation of the bill to a House subcommittee the other day, for example, when he was asked if its provisions need extend all the way to the operator of a small boarding house—the symbolic "Mrs. Murphy" of the 1964 public accommodations law. The Attorney General conceded that such an exemption in the housing bill, as in the 1964 act, would not seriously impede its effectiveness. He was right, in our opinion, to say so.

Apart from details, however, the basic goals and motives of the administration bill are sound—and overdue.

Administration officials frequently repeat the remarks that housing "seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay." That statement is sufficiently accurate to make a crucial point. The point is that to deny anyone access to this "commodity" solely on the basis of race is, in this day and age, morally indefensible.

No law can solve, by itself, the problems of slums and poverty, or provide decent homes in decent neighborhoods for people who cannot afford them. The end of segregation would not dissipate the powerful force which the economics of the situation exert on housing patterns, especially in the suburbs. It would, however, give many Negroes a far greater opportunity than now exists to improve their conditions.

By now nearly everyone recognizes the need to revitalize our central cities, for the benefit of all parts of our growing urban regions. Yet, while new suburban growth is continuing at a rapid pace, larger and larger portions of our cities are turning into racially segregated slums. It is evident that this pattern must be broken if cities are to survive. One part of the answer is to accommodate some portion of the Negro populations in suburban areas. Another, equally important, is to attract increasing numbers of white families back to the city. Under present practices, however, both these trends are discouraged.

In their House testimony, both Mr. Katzenbach and Secretary Weaver argued at length that landlords and builders who resist integration frequently do so not out of personal bigotry, but out of fear that their investments will suffer if they become the first to break the pattern of discrimination. There is strong evidence to support these views.

In a recent survey of apartment living in Washington suburbs, where there is only token integration, The Star was told by several large developers that they would welcome an anti-discrimination law, and that very little is apt to change until one is secured.

These same pressures and fears stimulate panic selling on the part of individual homeowners when the first Negro families move into previously all-white neighborhoods. They encourage blockbusting tactics by unscrupulous realtors who too often are eager to play on the uncertainties of the situation. Perhaps Mr. Katzenbach goes too far in his conclusion that if all those in the housing industry "are bound by a universal law against discrimination, there will be no economic peril for any of them." But surely such a law, applied across the board, would ease the pressure of current fears.

In putting forward this legislation, the administration is relying for constitutional authority on the commerce clause or the Constitution and the "equal protection" clause of the 14th Amendment.

Senator Dirksen contends that the housing measure is "absolutely unconstitutional." He has offered, if he can be persuaded that interstate commerce is

involved in selling or renting a house "fixed to the soil," to "go out and eat the chimney."

This is a difference which, of course, can only be settled by the courts. The Supreme Court has demonstrated no hesitancy on previous occasions, however, to stretch both the commerce clause and the 14th to cover an increasing number of activities which were deemed to be in the public interest.

Senator Javits, meanwhile, is vigorously attacking the bill not on its merits, but on grounds that it is a tactical error. His motive is to avoid at this point the "divisive struggle" of congressional debate. He argues—and his view is shared by many civil rights leaders—that the administration could and should accomplish the same ends by expanding to extreme lengths the 1962 Executive Order which now bans bias only in new FHA and VA-insured housing projects.

It seems to us that the error, however, is on Senator Javits' side. The Executive Order approach would cover only a fraction of the houisng covered by the administration bill. It would rely largely on banks and other private lenders to police discriminatory practices, posing, as the Justice Department has pointed out, the most preplexing sort of practical problems. Even if the backdoor approach of the Executive Order were practical, however, it would be a mistake. You cannot solve the problems of racial discrimination in housing by refusing to debate them.

For the biggest problem of all, perhaps, is that the whole subject has been brushed under the rug for far too long.

DRAPER & KRAMER, INC.,
Chicago, Ill., May 25, 1966.

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

DEAR SIR: I am a mortgage banker who feels very strongly that Title IV of the new Civil Rights Act should be passed and made part of the law of the land of the United States.

This is the section of the act which makes it unlawful to discriminate in the sale, renting, and financing of housing because of race, color, religion, or natural origin.

For several years we have been operating under President Kennedy's 1962 Executive Order wherein it is unlawful to discriminate in housing built with FHA insured or VA guaranteed mortgages. We have found, however, that this Executive Order covers only a small part of the housing market; and it is also inequitable because it permits persons not using FHA or VA financing to discriminate, thereby allowing builders who might be building adjoining subdivisions to operate under different sets of rules.

In my opinion, Title IV would be an effective law under which the real estate, construction, and mortgage financing industries could operate very well.

Very truly yours,

HARRY N. GOTTLIEB.

BOSTON, MASS., *May 27, 1966.*

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR CONGRESSMAN CELLER: While there is no question that the supply of public and private housing has been markedly increased in recent years through the efforts of governmental and non-governmental agencies, there has been a great lag in providing equal access for minority groups to this housing.

The ghetto still exists, and there is every indication that it will continue to do so unless there is undertaken by the government a vigorous program to promote fair housing such as embodied in Title IV of the Civil Rights Act of 1966. Without such legislation the chronic problems of poor environment, inferior schools, substandard facilities will continue to cripple millions of American men and women in their efforts to realize their full potential as productive and creative individuals.

Therefore, I consider it a moral imperative to support Title IV of the Civil Rights Act of 1966. But, as a builder, I also consider it good business to do so, for the deprivations suffered by minority group members also exact a huge toll in their capacity as active customers in our economy.

At this time, many builders are fearful of adopting fair housing practices because they believe that eventually, whites will, through irrational fears refuse to accept Negroes as neighbors and relocate with the end result being a new ghetto—the very antithesis of the concept of open housing. But if all builders and real estate people find themselves operating under the same conditions, there is every likelihood that the goal of open and integrated housing may in fact be achieved.

I therefore support and prge as forcefully as I know how the swift enactment of the fair housing provisions of the Civil Rights Act of 1966.

Sincerely,

JOSEPH J. GOTTLIEB.

PALOMAR MORTGAGE CO.,
San Diego, Calif., May 23, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR SIR: We want to take this opportunity to impress upon you the importance of Congress acting favorably upon the Civil Rights Act of 1966.

Our company, which services for investors $400,000,000 of mortgage loans as well as having made a substantial capital investment directly relating to the real estate business, feels very strongly that this Civil Rights legislation should be given your utmost attention and, without any question, become law.

Sincerely,

E. T. GRAVETTE, Jr.
President.

COS COB, CONN., *May 25, 1966.*

DEAR MR. CELLER: I would like to express my support for the pending Civil Rights bill with special emphasis on the Fair Housing title. While Connecticut alread has similar laws in force, a federal and uniform statute would, first of all, help those people in states without such laws, and second would provide more pressure for the states to enforce their own laws if they have them.

To the "Realtor" lobby, one can only say that any industry that *requires* a condition of racial bias to avoid economic hardships is a sick industry and doubtless wilfully ignorant of the facts as exhibited in massive experience of interracial housing around the country. Freedom to make bigoted contracts in housing is *not* freedom.

Sincerely,

CHRISTOPHER HARRIS.

VAN SCHAACK & CO.,
Denver, Colo., June 1, 1966.

Hon. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: As former President of the Denver Board of Realtors, present Director of the Colorado Association of Real Estate Boards, and closely associated with the Realtors efforts to secure equality in housing opportunities for all people of Colorado, may I offer the following observations:

1. The Colorado Fair Housing law as amended April 8, 1965, has *definitely assisted* the public and real estate industry to bring about a healthy climate in human relations.

2. The law *has not* brought an increase in the number of "racial incidents"—in fact, it has worked just the opposite.

3. There *has not* been a decrease of property values due to any influx of minority people into an area, due to the law.

4. The law *has helped* to create an atmosphere in which responsible organizations dedicated to the cause of human liberties can work intelligently and effectively to create a more balanced society, economically as well as socially.

5. Similar legislation on a national level should warrant your serious consideration.

Very cordially yours,

JOHN I. HASSELBLAD,
Vice President.

HOLLIS CO.,
Omaha, Nebr., May 23, 1966.

Representative EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR MR. CELLER: For 11 years I have been actively engaged in the residential sales business. I am very interested in vitally concerned with the Fair Housing legislation you are advocating. It is my firm conviction that a fair housing law is mandatory if "open" housing is to become a reality in Omaha.

Despite efforts to convince sellers that they will actually benefit financially in our soft market if all willing and qualified buyers, regardless of color, creed, religion, are permitted to buy each house available, sellers continue to be fearful. Despite efforts to convince them that only panic selling creates surplus houses for sale on a street, (ergo falling prices) fear of public opinion and the unknown continue to plague most sellers. Fear of being the first to "break" a street and thereby becoming the recipient of acrimony and recriminations and worse, plague the salesmen. Fear of unfriendly neighbors and possible abuse prevents most minority buyers from inquiring about houses outside the ghetto. All of this creates an atmosphere of negativism for seller, buyer, and salesman alike.

It is my judgment that most real estate salesmen favor "open" housing if for no other reason than the desire to enlarge the field of prospects. However, until owners and salesmen are given the protection of the law, all involved find themselves fearful of repercussions and continue to be reluctant to sell the houses that are begging to be sold to the buyers who are begging to buy.

I shall be watching the progress of this much-needed legislation with eagerness and optimism.

Respectfully,

ROSE HOLLIS,
Owner-Manager.

UNITARIAN UNIVERSALIST ASSOCIATION,
OF CHURCHES AND FELLOWSHIPS IN NORTH AMERICA,
DEPARTMENT OF SOCIAL RESPONSIBILITY,
Boston, Mass., May 31, 1966.

Hon. EMANUEL CELLER,
Rayburn House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I am sending to you a copy of the Unitarian Universalist Special Report on the Reeb Murder Trial which I would like to request be added to the hearing record as a supporting document to the testimony of Dr. Duncan Howlett on the Civil Rights Act of 1966.

The Reverend Walter Royal Jones, Jr., chairman of our Commission on Religion and Race, and Attorney Daniel B. Bickford, special counsel to the Unitarian Universalist Association, were observers at the trial of the alleged assailants of the Reverend James Reeb. What they have to report is, I think, of special concern in consideration of those sections of the bill dealing with jury reform and the strengthening of our civil rights criminal statutes.

Sincerely,

ROBERT E. JONES,
Director, Washington Office.

I. JUSTICE IN AN ALIENATED COMMUNITY

(By Rev. Walter Royal Jones, Jr., Chairman, Unitarian Universalist Commission on Religion and Race Minister, Thomas Jefferson Memorial Unitarian Church, Charlottesville, Va.)

THE GENERAL SITUATION IN SELMA

Selma is getting ready for Christmas. The pervasive shabbiness of Broad Street is partly concealed, partly accented by the bright decorations which, especially at night, give an air of commercial gaiety. But Selma is still a town out of another generation. There are a few contemporary bank buildings and stores,

but by and large the architecture dates from the 19th century and earlier, more often decrepit than graceful. As one approaches the Edmund Pattus Bridge from Highway 80, one sees a billboard extending welcome from the Selma National Bank. Selma, it proclaims, is "the Town With 100% Human Interest."

In the surface, little tension is visible. Negroes can be seen patronizing Broad Street stores alongside whites, despite a partial boycott. Dolls for Negro girls grace the windows of the five-and-ten-cent store, alongside white dolls. There seems to be full freedom of movement for Negro shoppers.

Although it takes a while to penetrate, however, the tension is there. I was only one of many outsiders in Selma the week of the trial, of course. But my presence was noted. In the courtroom, where I sat beside Daniel Bickford, a Boston attorney also observing the trial for the Unitarian Universalist Association, I heard whispered speculation whether we were Department of Justice lawyers. In restaurants, the strange face was noted, with many a lengthy and inquiring glance. In the Negro section, on the other hand, quite to my surprise, there were some who allowed as having recognized me from March ninth. Whatever the case of memory, identification with the Unitarian Universalist Association was an instant open-sesame.

Monday evening, (December 6) I retraced the steps of the march to the bridge, having parked—quite by coincidence—directly in front of Walker's Cafe. The highway and streets bore nothing but traffic, this night. Traffic, and the ghosts of another day. It seemed a longer walk, than in the tension of that other afternoon, with the Sheriff's deputies lining the streets, taking photographs, and making cryptic radio reports from their patrol cars.

I stopped at the parsonage of the Brown Memorial Chapel, to inquire after Lonzey West, who might put me in touch with the Rev. Francis Walter, an Episcopal priest who is our interreligious "man in Selma." He is the new director of the Selma Inter-Religious Ministry. At West's home, and later in the Brown Chapel where Dr. Martin Luther King, Jr., once again spoke on Tuesday night, I learned about the SCLC boycott of downtown stores, and the projected march to protest segregated southern justice.

The trail to Francis Walter took me first Father MacNeice of St. Edmund's Mission, and thence to Rev. Everett Wenrick, an Episcopal theological student who, with his wife, has taken up residence in Selma to continue the witness of the martyred Jonathan Daniels. Wenrick is working on the Poverty Program, and has so far succeeded in maintaining tenuous contacts with both the Negro community and local Episcopal churches. The poverty project is a particularly sore point with the Negro leadership. There has been no breakthrough in employment in Selma, and a resolute refusal by the city to seek any of the Poverty Program funds. SCLC and SNCC workers tried long and unsuccessfully to engage the Mayor and the white estabilshment in joint sponsorship. At length, fearing Federal support might go to Negro leadership alone, by default, the Mayor submitted a plan of his own, which, behind a facade of elaborate committees and submittees, left final control of funds and program in his hands. It was rejected both by Selma Negroes and in Washington. Meetings continue, seeking a workable compromise, but thus far unavailing. Wenrick was stopped by police from distributing leaflets calling attention to a meeting of the Poverty Program Council. He expected that an appeal to Police Chief Wilson Baker would remove the interference. The boycott of stores by Negroes at Christmas is aimed both at frustration over failure to obtain employment and to launch the Poverty Program. Speakers at the Brown Memorial Chapel recounted how merchants had asked for a reprive from an earlier boycott, so that they could act "without being under pressure." The boycott had been lifted—and nothing happened. So it is being revived.

Tuesday, I succeeded in reaching Francis Walter, who is also working in Tuscaloosa, Selma, Camden, and Wilcox County. Walter confirmed the impressions I had gained from Wenrick and West about the Selma situation. He added that SCLC and SNCC are involved in a deep re-appraisal of tactics, tending to de-emphasize marches now, in favor or reorganization and cultivation of resources—economic and educational—in the Negro community itself. This is partly in response to the more sophisticated (and frustrating) attitude of the white Establishment, since March. Acts of violence against demonstrators are rare. The new tack is to give them police escort, receive them with a show of cordiality, send them off again, and do nothing!

There is little sign of re-appraisal in the white community. Segregationist literature crowds the newsstands. Radio programs originating in Selma's local

station, or linked with the hard right—like Carl MacIntyre's "20th Century Reformation Hour"—din the favorite fantasy into listenters' ears day and night. During the trial, the *Selma Times Journal* carried a page two photograph of the defendants jovially gathered with their attorney in the court library. But for the caption beneath, one would have taken it for a group of visiting delegates to a Junior Chamber of Commerce convention, just a few fine up-and-coming American young businessmen. Drinking fountains in the Court House are of the cup- and-faucet variety, the fountains having been plugged. Sheriff Clark still proudly displays his old NEVER button, even in court, as he stalks the corridors with that curiously menacting smile which is the special accomplishment of policemen and Senate Investigators. Doctors' offices downtown still announce Colored Waiting Rooms in the rear. It is alleged that there are five or six chapters of the John Birch Society in Selma. There are no Negro police officers. The hospitals are segregated. During the trial the defense attorney asked Dr. W. B. Dinkins, a Negro physician who first attended James Reeb, whether Good Samaritan Hospital (a Catholic mission hospital) was not in fact the best equipped in Salema. He could not answer, said Dinkins, because he had never been permitted inside the others.

Selma is a small town, even thought its internal subdivisions are sharp. Culturally ingrown, it lives in a world but little penetrated by the 20th century, and inclined to close ranks defensively against any incursion in depth. Efforts on the part of Negro and white civil rights leaders to build bridges with their Establishment counterparts have been rebuffed, so far. With white Selma, it is still a family affair, with the tangible virtues and appalling hazards of parochialism.

THE TRIAL

The trial began Tuesday morning (December 7) with Judge Moore's charge and questions to the 104 potential jurymen. News reports have it that 13 among these were Negro. Dan Bickford and I saw only four, and, in any case, none was selected. Several jurymen sought to disqualify themselves on ground of close relationship, fixed opinion, and opposition to capital punishment, and were excused. To the additional stipulation, suggested in absentia by Alabama Attorney-General Flowers, concerning bias against civil rights workers, two men rose and sought to be excused. It was an interesting look into the Southern conscience struggling with itself. I could not withhold respect from these men, wrestling with fairness, even though they were eventually not excused, having affirmed that if they were truly convinced by overwhelming evidence, they would have to find a verdict of "guilty" despite all. None of those who had sought disqualification were included in the final panel. But one juror proved to be, later, the brother of a key witness of the defense, whose testimony would have to be evaluated by the jury. Why either prosecutor or defense counsel allowed this, I find hard to understand.

The case was tried by Circuit Court Justice L. S. Moore, a paternal and seemingly conscientious figure. From what I saw, I was convinced he sought to conduct the trial with true impariality.

The prosecutor, Circuit Solicitor Blanchard McLeod, was a weak figure, perhaps attributable in part to his convalescence from a recent heart attack, but over and above that obviously reluctant in his role. Deputy District Attorney Virgis Ashworth carried the major burden of the prosecution. He was at his best in discrediting defense alibi witnesses, and in resisting Defense Attorney Pilcher's occasional efforts to make emotional hay with resentment against the civil rights movement as a whole. But he had little to work with. The prosecution's case was meagre. Only three out of six witnesses ever got to the stand at all. Strongest were Clark Olsen and Orloff Miller, whose positive identification of Elmer L. Cook as one of the assailants was never, to my mind, effectively refuted. The fourth witness was declared incompetent, after an inquiry that was itself fantastic, with the witness' medical history including very personal details being paraded before the court by a doctor presuming to offer a psychiatric analysis, although he was not a psychiatrist and had never examined the man in question. The fifth witness, R. B. Kelley, was dismissed since he intended to invoke the Fifth Amendment, being threatened with indictment in a Federal Court for a similar charge. The sixth was in Mississippi, and prudently elected not to come at all.

For a liberal, observing the Fifth Amendment episode was excruciating.

There was no doubt of the witness being in jeopardy, and thus entitled to its protection. At the same time it was the virtual death-blow to the prosecution's case to lose this witness, who may have testified earlier to a grand jury. Was such testimony available, if it occurred? Would it, too, be covered by the Fifth Amendment now? Thee are distressing, unanswered questions. The prosecution offered no visible objection to the judge's ruling, which was made with apparent reluctance.

As the state rested its case, two things only had been established: 1–Elmer C. Cook had been identified as one of the assailants, and 2–James Reeb had died as the result of the blow received, although his actual attacker was unknown. Judge Moore refused a defense motion, however, to dismiss charges against the Hoggle brothers, insisting that the jury should hear all the evidence.

If the prosecution's case was weak, the defense was ludicrous. It consisted of three points: 1–an alibi for the presence of O'Neal Hoggle at a nearby cafe at the time of the attack, 2–a string of witnesses to attest all three men were dressed in clothing different from that described by Olsen and Miller on that day, and 3–an effort to insinuate deliberate delay and perhaps additional injury to the wounded man, for the purpose of producing a martyr for the civil rights cause.

The first alibi seemed plausible enough, until it was disclosed that the witness 1–was a brother of one of the jurors, 2–was a business partner of Elmer Cook, and 3–that his testimony was being tied to the succession of witnesses on clothing. The longer this succession continued, the less convincing it became. I was more sure the Hoggle brothers were involved in the attack after the defense had concluded, than when it began. Of the third point, it need only be said that it was as cruel as it was fatuous. Only in Selma could it be taken seriously by a jury, if indeed it was.

I regret that I was unable to stay in Selma for the prosecution's and defense's summations and the judge's charge to the jury. Dan Bickford will fill in details on these. When I heard the radio account of the verdict, later on Friday, I was not surprised, although I had hoped for the possibility of a hung jury—at least that much a glimmer of conscience in Selma. But there was none. News reports told of applause and joyous greetings of the defendants. The family had come through; our boys were safe again.

Friday morning, before court opened, Solicitor McLeod saw some old friends sitting among the family of the Hoggle brothers. Wreathed in smiles he came over, and there was warm handshaking. Apparently no one doubted it would come out all right. They were not disappointed.

JUSTICE IN AN ALIENATED COMMUNITY

When a determined jury defied both magistrate and the law of the colonies to find John Peter Zenger not guilty of sedition, for his criticisms of the Governor of New York, a powerful blow was struck, not only for the freedom of the press, but the independence of juries. It was also a testament, handwriting on the wall, to the emergence of a new community, later to cut its ties with England altogether. We cite the incident with approval, for the new community is our own.

But Selma is also a severed community. Its cord, cut in the 1860's, has never wholly been repaired. This is ironic, for the same belligerent local pride that alienates it from the overall American community, is deemed to unite it in the more belicose aspects of super-patriotism. This affinity for the violent is mistaken for authentic unity and devotion to American ideals.

To a degree this is the plight of the total Deep South, for whom Americanism is a mixture of hard-core poltical conservatism, economic atomism, anti-Communism, fundamentalist religion, sex puritanism, and segregation. This is the official Dixie package; and deviation from any particular is viewed as an attack on the whole. In this complex the Negro is welcome only if he accepts "his place." But from Reconstruction days onward, his political ambitions have always been viewed as a menace, the rise of a rival and therefore hostile power center. It is one of the ironies of history that the Southern poor white, whose plight both politically and economically most closely parallels that of the Negro, has been effectively neutered as a force for change by exploitation of race tensions. One of these days he will wake up and discover he has been "had," victimized by his own propensities for hating the colored counterpart. But for the moment he still dwells in the reverie of identity with the white establishment, whose ladder of opportunity he may hope to climb, and to which he does indeed have a marginally better access than the Negro.

Withal its inner contradictions, however, the Southern community is a community, and tensely self-conscious. It has been long under attack by the culture of the 20th century, with its anti-parochialism in politics and world affairs, its religious pluralism, and the drives towards racial equality. The stance of the South is therefore defensive. It has admitted at a superficial and technological level the world of today; but it steadfastly resists the implications of that world for religion, morals, and society.

Our American system of law, more particularly our tradition of court action, cuts across such local differences: that is both its majesty and its peril. For the finely-made instrument, with its built-in protections for accused, is only partly responsive to its own precedents. It may function perfectly as an instrument; it cannot escape the influence of the community, working through the persons who set out the drama.

The trial in Selma may have had some defects, but by and large the effect of these defects on the outcome was miniscule compared to the forces with which the court could not possibly cope; which indeed it had to do its best to ignore, by the legal pretense of banishing them, through oaths, and proper instructions to the jury.

The jurors swore to come to an impartial judgment. But could they keep their oath? They could swear not to be swayed by the fact that James Reeb was in Selma as part of a civil rights protest; and the defense attorney could be prevented from ringing the changes on this theme. But could it be eliminated from their thinking? They could try not to recognize the three defendants as neighbors and friends, as members of "our side" in the siege, while the victim was the outsider and thus the enemy. But could this possibly be forgotten? The law prescribed the ultimate penalty for first degree murder. Most people consciously or unconsciously recognize capital punishment for what it is: not justice but retaliation. Could Selma's jurors by any stretch of imagination be seen calling for the act of vengence against their compatriots, however dismayed they might be at the consequences of a rash act?

Given the proper requirement that a verdict of guilty must be rendered only if there be not the slightest shadow of doubt, did anyone expect that doubt would be expellable? The climate also affected the prosecution, however valiantly it may have tried to be objective. To proceed with vigor would be to court the enmity of the entire community. It presented the evidence it could not help presenting; there is no sign of any effort "above and beyond the call of duty" to get more.

To say this is not to discredit the courts, but only to recognize the limits of judicial effectiveness. Murder is not murder except in the community that regards it so. And beyond that, murder is not a self-defining act. That would be true only in a universal community, which exists in principle, perhaps, and in legal theory, but not in social fact. Murder is defined by the margins of community consciousness: it depends less upon a man being killed than who he is. Our frustration with the recent civil rights cases comes out of our assumption that there is a single, organic American community, in which American citizens have been killed for working towards legitimate American aims. From this perspective, the slayings are murders. But that is not the perspective of Hayneville and Selma. From their view, conspiratorial and un-American outsiders have been killed by overzealous and perhaps unwise, but basically decent and patriotic defenders of the true way. The circle of community never included these who died. It is manslaughter—perhaps a sop to larger citizenship—but not murder, not in the sense that calls for outrage and revenge, for the "full measure of the law." In this the South is not structurally different from other self-conscious communities. We have no ground for self-righteousness; we are under the same judgment. It is only that for a moment we can see what is operating in our legal system, because in this instance the alienation and contradiction of community-consciousness is so obvious.

The answer to the dilemna is self-evident. Both the death of James Reeb and all his companions in the civil rights struggle, and the infuriating inability of the Southern courts to grapple with the issue, point to the same problem and the same solution. The insularity of the embattled community must be broken. The resources for a larger community must be uncovered and drawn out. It may be possible to accomplish some of this by further exercise of federal authority, extending protection to civil rights workers, for example, beyond the authority of state governments. But this is not the best answer, a measure

to be taken in desperation only. Nor will it directly meet the underlying problem, which is the alienated community.

The only answer is to bring the Selmas and Haynevilles into the American community at a far deeper level than they have yet been willing to come. And this will be accomplished, it seems to me, less by new legislation, than by the quiet but determined work of individuals and groups, to take advantage of the ground already gained, to undercut devisive anxieties, and prepare the way for the voluntary relinquishing of attitudes that are no longer useful nor attractive.

I say this, not to discourage work towards legislation that may yet be needed, nor demonstrations that may yet bear justified witness to wrongs suffered, but to encourage the constructive work at deeper levels without which further progress seems a vain hope. I look for a shift of emphasis, as a sign of American maturing, with the outcome of creating a genuine community in which the James Reebs will not be slain, and the courts will not have to try the slayers. This, I think, is what he would have worked for, too.

II. The Reeb Murder Trial

(By Daniel B. Bickford, Special Counsel, Unitarian Universalist Association, Partner, Ely, Bartlett, Brown & Proctor, Boston)

THE FIRST DAY

The courtroom was packed with witnesses, jurors, and spectators. There was no trouble gaining admittance to the Court. There were no police or deputies or court officers checking. I had to stand in the rear of the court, along with 50 to 75 others. The seating capacity of the room was in the neighborhood of 350, exclusive of the seating inside the bar enclosure. Inside the latter, there was ample seating capacity for all counsel, defendants, prosecutors, and others. (The Court is well laid out. The Judge sits where he can be seen and can command; the witnesses are close to the jury; the prosecutor sits directly in front of the witness, and the defendants in front of the Judge.)

The proceedings began with the Judge climbing the few steps to his seat and calling for order. (It took me some time to figure out who the Judge was, as he wore no robe and entered the room without introduction. He carried what appeared to be the docket books. No one stood when he entered the courtrom. There was no indication that he was other than a clerk.) The proceedings began about 9:15 a.m. on Tuesday, December 7, 1965.

The first order was the calling of the State's witnesses, followed by the calling of the defendants' witnesses. The Judge apparently was calling their names from a docket entry which he had in front of him. As the witnesses' names were called, they would step forward to the bar. The State had about 12 witnesses sworn, and the defense must have had about 75. The defense attorney indicated that most of the witnesses he had were character witnesses. The witnesses, with the exception of the character witnesses, were sequestered, that is, they were not allowed to attend the trial.

Next came the qualification of the jurors. This was a process whereby all the jurors stood, were sworn, and then were allowed to sit down while the Judge asked a number of statutory questions. These included: If anyone was under 21, he was to "inform the Court;" if anyone was not a resident of Dallas County for the last year, "he was to inform the Court;" if anyone had been indicated for a felony in the last year, "he was to inform the Court;" if anyone was convicted of a felony in the last six years, "he was to inform the Court;" if anyone was related to the defendants, "he was to inform the Court;" and if anyone knew he was mentally incompetent, "he was to inform the Court." (The Judge assumed by the silence of all jurors that the answers were negative.)

Questions as to capital punishment were asked; that is, whether or not there were any jurors who did not believe in capital punishment. There were four such jurors. Questions were asked with respect to belief in the use of circumstantial evidence, and one juror spoke up. On "voir dire" by defense counsel, the answer finally was that he could convict on circumstantial evidence.

Lastly, the solicitor was allowed to ask a question which he read after saying that the Alabama Attorney General, Mr. Flower, had asked that the question be asked. He read the question in a slow, almost inaudible tone. The question was lengthy and was, in substance, as follows:

"If the evidence was to show that the victim had dined with 'niggras' and had otherwise socialized with them, and if the evidence were to show that the victim felt that 'niggras" were equal to whites, and if the evidence were to show that the victim had come to Selma, Alabama, to assist the 'niggras' in establishing their equality, would that make the victim such a low person as to effect the juror in his consideration of the guilt of the defendants?"

Apparently because the question was read with such lack of enthusiasm and so inaudibly, the Judge asked if the question was in writing. On learning that the answer was in the affirmative, he asked for the question and read it painstakingly to the prospective jurors. (In my opinion, the question was made clear by the Judge, who read it slowly and paused after words to define them where necessary.)

Three jurors jumped to their feet and indicated that it would prejudice their deliberations. Roy D. Maples said, "I am leaning against a man who came down here from Boston when he should have been preaching up there." W. E. Dozier admitted his bias when he said, "I feel Reeb didn't belong down here." L. H. Smiterman said "I am sick of civil rights. I have a fixed opinion." Again, the defense took the prospective jurors on "voir dire," and two of the three agreed that it would not affect their decision if the evidence was such that the three defendants in fact committed the crime. The third prospective juror indicated that it would, and he was excused. (The other two were eventually excluded by a State's challenge.)

In my opinion it would have been far better to question each juror individually as to his beliefs on this subject. I am sure that experience must show that it is difficult for a individual to volunteer to give a "yes" answer in front of 350 other persons. However, the question was asked to the group, and each juror, by not volunteering, might feel obligated to the Court to exclude, consciously, any consideration connected with the identity of the victim. Would it have not been better to propound the question individually so that a prospective juror would not have to become a volunteer in exposing his prejudice? I would guess that the prosecution, by lengthy examination of each individual juror, would have been unable to qualify many of them, if the assumption is made that the inhabitants of Selma are hostile to the civil rights worker. As a matter of trial technique, the custom is to examine each juror individually if the attorney wants to eliminate certain people with a bias.

The next procedure was the "striking" of jurors. There were 67 jurors left after the above qualifying procedure. The State was allowed to challenge (eliminate) 13, the defense, 42. (The obvious implication of the procedure needs little comment.) The jurors who were selected, and their occupation, are as follows: Billy G. Boozer, mail carrier; William E. Barrett, insurance agent; Raymond V. Schiffer, auto sales manager; Willie C. Ellington, salesman; Milton L. Adams, officer, electric company; T. Maynard Busby, grocery manager; William W. Vaughan, own company; M. Woods Culpepper, logger; Cecil O. Campbell, truck driver; and J. Cooper DeRamus, Jr., cigar store employee.

It should be pointed out that there were four Negroes in the pool, but they were eliminated by the defense.

After the striking of the jurors, the prosecution made its opening statement to the jury. The statement was made by the Circuit Solicitor, Blanchard McLeod, and was very short. The Solicitor said that he would show that the three defendants "did the killing." He then went on to say that, because of a heart attack, his doctors had ordered that he not try a case until after the first of January, and that he was turning the prosecution of this case over to Mr. Virgis Ashworth. Mr. Ashworth is a former state representative; it is my understanding that this is the first case in which he has participated as a prosecutor.

The defense then made an opening statement which in substance outlined their defenses. The defense would be that the wounds that the Rev. Mr. Reeb received were not the wounds which caused his death, and that the wounds were "altered" from the time that he was in Selma to the time that he was seen in Birmingham. The second defense would be that the defendants were not in the area when Reeb was attacked. More specifically, O'Neal Hoggle was in a restaurant and Elmer A. Cook and Stanley Hoggle were at their places of business. There were three witnesses who would testify to these facts. The defense also pointed out that they would show that there were three or four other groups of persons in the area at the time of the assault, and that these groups could have and probably did cause the injuries.

The first witness was then called by the State. He was the Rev. Clark Olsen. Mr. Olsen identified himself as a clergyman from California. When asked who his attackers were, Mr. Olsen identified Cook from more than 300 people in the Courtroom, and the identification was made by standing and pointing to that specific defendant. With respect to the other attackers, he was only able to say that the two Hoggle brothers were similar in appearance, but he could not "positively" identify them, and that "they resembled to some degree the men I remember attacking me." He did ask the Judge if the other two defendants would stand, but the Judge said "no."

Mr. Olsen testified that he had had dinner at Walker's Cafe on Washington Street some time between 5:30 p.m. and 6:00 p.m., and that he remained in the Cafe from 1½ to 2 hours. He estimated that it was about 7:30 p.m. when he and the Rev. Orloff Miller and the Rev. James Reeb left the Cafe and turned right on Washington Street, and that it was a few moments later that they were attacked near the Silver Moon Cafe at the intersection of Washington Street and Selma Avenue. He testified that, as they neared the Silver Moon Cafe, "our attention was attracted by some men who started to come after us from across the street. They shouted at us and came in a threatening manner." He said that there were four or five men, and that the group continued walking for 12 or 15 feet. He testified that one of the attackers was carrying a stick or pipe, "an object of some length." Reeb was walking on the street side, slightly behind him, and Miller was in the middle, whereas he, Olsen, was on the building side. He stated that he saw one of the men swing the stick or club and hit Reeb on the side of the head. He saw Miller crouch down to avoid a blow, and he himself ran a few steps away from the attackers. One of the attackers, however, came at him. He testified that he was caught after running a few steps and was struck several times and lost his glasses. He testified, "I had an especially good view of the man attacking me. I turned to face him. I raised my arms to protect myself and saw him as he hit me." When the brief attack stopped, he stated that he looked back and saw one or two of the men (attackers) kicking Reeb and Miller. Olsen established the duration of the attack to be about 30 seconds.

After the men had withdrawn, and he did not know in which direction, he returned to the side of Miller and Reeb to see if he could aid them. He described Reeb as being badly hurt and unable to speak coherently immediately after the beating, his words babbling out.

He and Miller assisted Reeb to his feet, had him lean against the building, and when he was able to speak, and appeared to be conscious, they helped him to the Boynton Insurance Agency. As far as he was concerned, Olsen could only observe a small wound. Reeb, however, complained of a terrible headache.

In describing the man who attacked him, Olsen again said he had a "very good view of the man who attacked me."

Olsen stated in great detail the subsequent events at the Boynton Insurance Agency, where they finally got an ambulance and took Reeb to the Burwell Infirmary in Selma, where he was treated by Dr. Dinkins, a Negro physician. It was here that Reeb's condition worsened, and he lapsed into unconsciousness. Arrangements were made by Dr. Dinkins for Reeb to be moved to Birmingham for treatment by a neuro-surgeon. On leaving the Burwell Infirmary, for Birmingham, and about four or five miles out of town, the ambulance got a "flat rear tire," and they decided to return to Selma. On returning, they drove to a local radio station where they called for a second ambulance and made a telephone call for police protection. After placing Reeb in the second ambulance, they returned to the Boynton Insurance Agency to pick up a check for $150 which they had learned would be required to have Reeb admitted to the Birmingham Hospital. In the meantime, Dr. Dinkins was obtaining an automobile so that he could follow the ambulance.

Olsen went on to testify in some detail as to the events which took place at the Birmingham Hospital where he said they arrived at about 11:00 p.m. Reeb had still not regained consciousness.

With respect to the cross-examination of Clark Olsen, the defense attorney apparently had use of the FBI report. There was an attempt to show photographs to the witness, as well as earlier statements which had been made to investigators. Olsen testified in cross-examination that he had lost his glasses in the attack. On further cross-examination, the defense brought out that Olsen had arrived in Selma from California less than four hours before Reeb was

fatally beaten and that he had come to Selma to join in the demonstrations because he felt that he wanted to come as an individual to lend his assistance. He was asked questions as to whether or not he was a pacifist. He said he was not. He admitted that he had been driven from Montgomery to Selma in a car chauffeured by a Southern Christian Leadership Conference driver. Upon his arrival in Selma, he went to hear the Reverend Martin Luther King, Jr. After that meeting, and subsequent to the march, he went to Walker's Cafe. (Walker's Cafe is apparently a well-known Negro restaurant in Selma. Attempts were made to point out this fact by asking questions such as, "Who was in the Cafe?" etc.)

The trial recessed at 4:30 p.m., with Olsen still on the stand.

THE SECOND DAY

Olsen was on the stand at the beginning of the second day. Under cross-examination, he testified that, in his opinion, Cook was not the man who struck Reeb, but he was positive that Cook was the man who struck him.

The second witness called was the Rev. Orloff Miller, who identified himself as a Unitarian Universalist clergyman from Hingham, Massachusetts. Miller testified that he was able to identify Cook as the leader of the group which attacked Olsen, Reeb, and himself. He further testified that since the other men's lives were at stake, he could not be positive, but they definitely were men he had seen on that day.

Miller testified that he had been in Walker's Cafe, but had left about five minutes before the others to go outside for a cigar, and that the others, Reeb and Olsen, joined him outside and started to walk toward the intersection of Washington Street and Selma Avenue, where they planned to turn right and proceed to the Boynton Insurance Agency. As they were walking, four or five white men came from between parked cars, one shouting, "Hey, you niggers." They thereupon quickened their pace, the men approached from behind and to the left. Miller testified that "Jim was struck to the pavement. I heard the blow." He further testified that he immediately turned around, dropped to the pavement in a crouched position, as he had been taught to do, and was attacked or kicked on the forehead and on the arm. He described the attack as "an eternity, but was probably about 30 seconds." He testified that he saw the attackers and that he could identify them, whereupon he rose and identified Cook and stated that he was in the lead of the attackers that night. He went on to describe what subsequently happened after the attackers left, and the problems which they had in getting Reeb to Birmingham. Miller told about going to the Boynton Insurance Agency, getting an ambulance from the funeral home, going to Burwell Infirmary, proceeding out of town, proceeding to the radio station, getting a second ambulance, getting the money, and starting off the Birmingham with Dr. Dinkins following. In answer to a question by the prosecutor, Miller said that he had kept notes and stated that they arrived in Birmingham at about 11:00 p.m.

In cross-examination, Miller was asked to designate the position that he took during the attack, and he did this. He then agreed that he saw little after the attack began. He recalled that it was not dark, but that the street lights had come on while he was outside smoking his cigar. He did not see the instrument that hit Reeb, but he did reaffirm that he got a good look at the lead man.

Miller described in great detail the ambulance trip, and it was brought out that the injured man was not lying on his stomach, that there was no emergency equipment, such as oxygen tanks and respirators used to keep the circulatory passages open. Miller described Reeb as being unconscious, and in great pain. He further testified that he did nothing because he knew of nothing to do.

The prosecutor went into great pains to inquire of Miller whether or not the wound which Reeb suffered was a "compound, communated multiple skull fracture." There was no objection raised by the prosecution to these questions, but Miller said that he was not familiar with this terminology.

The prosecution did suggest that the defense describe such a wound, which the defense did, and that the skull "would be crushed like an egg shell with fragments of bone penetrating through the skin." With this description, Miller asked whether or not such a condition would go unnoticed immediately after an injury, but would develop as pressure increased from swelling.

Miller further testified that on the ambulance trip to the Birmingham Hospital, the stretcher did not fit the ambulance and had to be kept up against the side by him. He said that it had a tendency to roll.

A waitress, Ouida Larson, who worked at the Silver Moon Cafe, testified that she saw Cook and the two Hoggles together in the Cafe some time between 6:30 p.m. and 8:00 p.m. On cross-examination, she was unable to pinpoint the time, and she said that she heard nothing about the beating until the next day.

The remainder of the day was taken up with the qualifying of an "incompetent" witness, Edgar W. Stripling. The Public Safety Director of Selma, Wilson Baker, and Peter Lackeos, testified, as well as Dr. DeBardeleben.

Wilson Baker testified that he had noticed Stripling, who was a part-time employee at the Silver Moon Cafe, shadowboxing with parking meters, and, on occasion, talking with his coffee cup and saucer. Mr. Baker was put on by the defense with the intention of giving evidence to disqualify the State's proposed witness. Stripling had already been sworn and had answered questions with respect to his being able to tell the difference between truth and fantasy. He had then been excused so that the defense could put on some witnesses.

Following Wilson Baker to the stand, Peter Lackeos (who spoke with a foreign accent and was difficult to understand) identified himself as the owner of the Silver Moon Cafe, and as the employer and friend of Stripling for a great many years. He testified that Stripling had told him of fights which he claimed had taken place at the Cafe during his absence, and which he knew had not taken place.

Dr. DeBardeleben was called to the stand by the defense and testified that he specialized in internal medicine and that he was a general practitioner in Selma. He read extensively from Veterans' Administration records which indicated that Stripling had been in and out of Veterans' hospitals on a number of occasions. The last time was in 1959, and indicated that Stripling was a residual schizophrenic. The doctor said that certain types of this illness make it impossible for a patient to distinguish between fact and fantasy at times. He further testified that he did not know Stripling and had never examined him, and that the only information he had was obtained from the records of the Veterans' Administration.

At this time it should be noted that the State made no attempt medically to qualify this witness, nor did it object to the testimony of a general practitioner. On the other hand, however, when the doctor was testifying as to his qualifications, the State admitted that he was a qualified doctor. There is no indication on the record as to the qualifications of the defense's expert on mental illness. The evidence is quite strong to the contrary, in that the doctor is a general practitioner, had made no examination of the proposed witness, and was basing his so-called opinion testimony solely on the basis of records, the last entry in which was made six years prior to his testimony. At the most, he testified that it would be difficult for the proposed witness to determine the difference between truth and fantasy. Alabama has a statute which permits a Judge to disqualify a witness if the witness, at the time of his testimony, does not understand the oath which is being administered.[1] There certainly was no testimony that this witness did not understand the oath at the time it was being administered.

The Judge found that the witness was disqualified and stated: "I realize that it is a serious thing to determine whether a man is competent to testify. He might be able to tell the truth or he might not, I do not know. But I feel it would not be right to lay this witness before the jury in the face of his medical record and ask them to take credence in what he has to say."

THE THIRD DAY

The next witness to be called by the State was Mr. R. B. Kelley. (Kelley was arrested with the three defendants, but was never indicted.) The defense objected to Kelley's testifying, and represented to the Court that there were Federal conspiracy charges still being considered which would involve the same matters which this witness would be required to testify to and that the witness had availed himself of the Fifth Amendment privilege. The State argued that it should be allowed to ask Kelley questions and that, as to those questions which he felt would incriminate him, he could avail himself of the Fifth Amendment. The Judge would not allow this and stated in effect that he could

[1] The Statute reads: "Persons who have not the use of reason, as idiots, lunatics during lunacy, and children who do not understand the nature of an oath, are incompetent witnesses."

not imagine any question which would not also be involved in the conspiracy case and, therefore, he would not require the witness to testify. (The State made no effort to argue that the witness might well be granted immunity, if he was forced to testify, although this is a debatable point because immunity may not be effective to forestall a Federal Court proceeding.) What is not clear with respect to Kelley is whether he had ever given any statements before the Grand Jury or whether he had otherwise waived his privilege through prior testimony.

Dr. Dinkins was called by the prosecution and said that he examined Reeb around 8:30 p.m. at the Burwell Infirmary. His initial examination indicated that Reeb suffered a laceration and contusion of the left temple, and he ordered an X-ray taken, but it was not good enough to read. In the meantime, he reported that the condition of the injured man worsened and the symptoms showed that he had sustained an injury of a type that required additional study and treatment. Dr. Dinkins thereupon made arrangements for Reeb to enter University Hospital in Birmingham. He testified that there were no neuro-surgeons in Selma. On cross-examination, he testified that he was not able to determine whether Reeb had a skull fracture, and there was no indication on his first examination that there was pressure on the brain, but that within 10 minutes he did note pupillary reflexes which would indicate that pressure was being exerted on the brain.

He testified that, on the trip to Birmingham, the first ambulance threw a recap, and it became necessary to return to Selma and that they called for a second ambulance from a radio station. While that was coming, he said that he returned to pick up his own car.

He testified that Reeb received no treatment prior to his arrival in Birmingham, and that there were no respirators, tubes, or oxygen used to keep the air passages clear and that he gave no instructions to the ministers who rode with the victim. He further testified that, on the trip to Birmingham, there was a 10 to 15 minute delay while he got his car, and that the reason for his getting his automobile was that they were unable to get assistance from law enforcement officials. They left Selma for Birmingham at 9:30 p.m.

(I wonder why the prosecution called Dr. Dinkins, in that he really added nothing to the State's case. On the contrary, his testimony was not only embarrassing for him, but indicated that he was probably ill-equipped to handle this type of injury.)

Dr. Dinkins was asked, on cross-examination, why he did not take the patient to a Selma hospital, and pictures were introduced to show that the hospital in Selma was a rather modern facility. He stated that he had never been asked to step foot in the hospital.

Following Dr. Dinkins' testimony, the depositions of four Birmingham doctors were introduced by the State, although they had been taken by counsel for the defendants. The procedure which followed was for the defense counsel, Mr. Pilcher, to read the questions, and for one of his assistants, Mr. Radford, to read the answers.

Dr. Thomas H. Allen testified by way of deposition that he had administered to the patient by performing a tracheotomy and assisting in surgery to relieve the pressure on the brain. It was his opinion that Reeb died as a direct result of the head injuries.

Dr. James Argires, the neuro-surgeon at the University Hospital, outlined in detail the emergency operation performed. He testified that it was his opinion that Reeb died because of irreversible brain damage, and that the severe cranial head injury "would have led to death" in any patient.

Dr. Stanley Graham, another neuro-surgeon, testified that he had seen Reeb in the operating room and that it was his opinion that the fact that none of the usual procedures for dealing with vomiting were employed and the respiratory passages were not kept clear might have contributed to Reeb's death. This doctor also said the delay in getting Reeb to the hospital played a significant part and that, if Reeb had arrived one hour earlier, there would have been a greater chance of survival, and that the delay "seriously impaired" Reeb's chances for survival.

The final deposition was that of Dr. Ernest S. Tucker, a pathologist at the University Hospital, and it was through this deposition that 13 autopsy pictures were introduced. The autopsy disclosed that pneumonia contributed to some extent to the death of the patient, but that death came as a direct result of complications following one or more blows to the head.

The last witness to be called that day was Dr. Robert G. Johnson, a state toxicologist, who observed the autopsy. It was his opinion that Reeb died as a result of brain damage and pneumonia, both of which were direct and indirect results of the blow. He described the fracture resulting from the blow or blows as severe in the sense that it was severe compatible with life, but not severe to the extent of what one would expect to see if a person had been hit by a railroad train. He further testified that such an injury would result in almost certain death, if untreated. In cross-examination, he stated that, in his opinion, if competent continuing treatment had been given immediately, the survival rate would be something like one out of two or one out of three.

THE FOURTH DAY

At the opening of the session, the State said that it had one material witness which it was trying to convince to come to Selma from Mississippi, Billey Edwards, of Greenville, Mississippi. Mr. Ashworth stated that he had talked with Edwards on the telephone and that Edwards had indicated that he would come to Selma on the first available plane. The Court recessed for 45 minutes, and Ashworth made another call. He said that he called the man's employer, and that Edwards had gone to work and was making no effort to return to Selma. Ashworth also said that Edwards had been a resident of Selma on March ninth. (There is no indication that the prosecution had exhausted all efforts in trying to obtain the testimony of this witness, and there is a Federal fugitive statute which makes it a Federal offense for a material witness to flee from the jurisdiction of a state in order to avoid giving testimony. In any event, the subject of this testimony is not known.)

This ended the State's case. The defense moved for a directed verdict as to the Hoggle brothers, and the Judge denied this request.

The defense then made its opening statement, and indicated that it would show that the defendants were not present, that there were intervening events which caused Reeb's death, and that, in fact, the death was caused by a fourth person. The first witness called by the defense was Selma Public Safety Director, Wilson Baker.

Mr. Baker testified that there was a great deal of tension in Selma on the day of the fatal attack, but was prohibited from testifying by the Court as to what caused the tension. The questions indicated that the defense was trying to show that it was caused by the Reverend Martin Luther King, Jr., and the civil rights workers who were in town. The defense attorney, in a speech after the judge excluded the statements, charged that the civil rights workers needed a "martyr," and that these groups were willing to let him die. He said, "I propose to show (by the questions) that there was motivation on the part of other persons to injure Rev. Reeb or willfully permit him to die . . . There was motivation on the part of certain civil rights groups to have a martyr. . . ." Baker admitted that his department received the first call on the assault from a nurse at Burwell Infirmary, and placed the time around 7:50 p.m. He said that he sent patrol No. 22. He testified that he was unable to afford protection to all of the people in town on that day. Baker further testified he had been looking for Floyd Grooms since that day in connection with the attack.

Following Baker, F. J. Ellison, a Selma policeman who was in Car 22, the car sent to the Burwell Infirmary, said that he interviewed both Miller and Olsen at the infirmary with respect to being able to identify the individuals who attacked them. They said they were unable to identify the individuals. On cross-examination, it was learned, however, that what the policeman meant by identification was ability to swear out a warrant and identify the attackers by name.

Following Ellison's testimony, General MacArthur Brown testified that he was in the restaurant, but had not eaten there. He testified that it was approximately 7:00 p.m. when he followed three ministers out of the restaurant and followed them down Washington Street to Selma Avenue and saw nothing happen. He did say, however, that he saw Cook standing in the doorway of his store when he left. He placed the time around 7:00 p.m. He further testified, on cross-examination, that he was a friend of Cook and that he did not know whether or not the three men that he followed were the three men who were later attacked. He testified that there were other white men in the Cafe that night, and the three

could have been others. He denied that he had told the FBI agents that Stanley Hoggle stood and looked into the window of the Cafe while he was inside.

The next witness was Mr. George Hamm, a retired Baptist minister working as a janitor in a local factory. He appeared to be a rather reluctant witness. He testified that he had gone into the Silver Moon Cafe to try to make a telephone call between 7:00 p.m. and 7:30 p.m. When the phones were busy, he decided to telephone from outside, on Washington Street. He placed the time of his call at around 7:30 p.m. Hamm testified that he noticed an assault on the other side of Washington Street and it looked like somebody running together. He said that it wasn't light and it wasn't dark. After the assault, he went into the Coffee Pot Cafe where he saw Edgar B. Vardaman, who was standing at a counter. He was unable to identify any other individual in the Cafe. He was unable to identify the attackers, as they "just flushed out like birds." He did see an individual drop to his knees or all the way to the pavement.

The next witness to take the stand was Edgar B. Vardaman, who stated that he went into the Coffe Pot Cafe with O'Neal Hoggle, and that he (Hoggle) was making a telephone call when Hamm came into the Cafe and mentioned the incident. Vardaman, however, testified that he was sitting down when he spoke to Hamm.

Vardaman then identified three sets of clothing which he remembered were the exact clothes which the three defendants wore that day. One was a blue service station uniform, worn by O'Neal Hoggle, another was a suit worn by Cook, and the third was a sport jacket worn by Stanley Hoggle. Needless to say, on cross-examination, Vardaman admitted that he wasn't sure that they were the same clothes. He further testified that he was a business associate of O'Neal Hoggle. (This witness is the brother of one of the jurors, and it should be pointed out that the State should have known of the relationship prior to the time the jury was selected, because the defense had listed their prospective witnesses and had had them sequestered. Also, the witness himself probably should have known that he was to be called because the nature of his testimony was that of an alibi witness which means that he must have gone over it with the defense. In any event, it is apparent that the prosecution should have moved for a mistrial because of the relationship between the witness and the juror. It would be difficult for a juror to disbelieve his own brother's testimony.)

Following Vardaman to the stand, the manager of the Coffee Pot Cafe, Mrs. Frances Bowden, testified that O'Neal Hoggle was there about 7:30 p.m. She further testified that she left with Vardaman to go to supper at the Bamboo Club.

Following Mrs. Bowden's testimony, Paul Woodson, one of the owners of the Bamboo Club, testified that he saw all of the defendants at the Club between 8:00 p.m. and 9:00 p.m. on the night of March ninth.

On cross-examination, Woodson testified that he could not remember any other person at the Club that night, and he did not remember Mrs. Bowden and Mr. Varadaman. Following Woodson's testimony, the other owner of the Bamboo Club testified that he was at the bar and that the only person he recognized in the Club that night was Cook. He did not see the other defendants, nor could he remember the names of any other persons in the Club, even though he was familiar with both Vardaman and Mrs. Bowden.

The next witness to testify was J. South, a bread man, testifying that he was at Buchanan's Service Station with Charles Buchanan. He saw the ambulance go by, heading toward Birmingham, and decided to follow that ambulance, since it was going in the direction of his home. The ambulance turned around, and he followed it back to the radio station where it stopped. He said that it was traveling at a slow rate of speed on the way back. He examined the ambulance and found nothing wrong with it, but another ambulance came along with a faulty signal light which he fixed. He further testified that he left the radio station briefly to get Mr. Buchanan to have him call the police, as he felt that something funny was going on. South testified that it was some 30 to 50 minutes before the ambulance departed, and that no one was doing anything for the patient during that time. On cross-examination, South admitted that he was making it his business to find out what was going on. (The implication was that he was a trouble maker.)

Following South's testimony, Charles Buchanan, the owner of the service station, testified that he saw the ambulance go by his station as he was closing

up, and that he later had a chance to examine the ambulance at the radio station and found that there was nothing wrong with the tires.

The next witness to be called was Paul Bodiford, an auto repairman. He testified that he arrived at the Silver Moon Cafe at about 6:30 p.m., after observing the rally at Brown's Chapel and the march on Water Street. He said that he drank beer inside the Cafe for 30 or 40 minutes and then went outside, and that he saw nothing happen until he left at about 8:00 p.m. He testified that he was standing outside for most of the time between 7:00 p.m. and 8:00 p.m., except when he went to get a bottle of wine. He said that he was standing with Floyd Grooms, and that Grooms had been talking and was telling him about a fight with a group of civil rights workers and of Grooms' attempt to upset a station wagon. Bodiford said that he had not seen Grooms since. He said that another man, Winston Smith, was standing outside with him. With this testimony, the defense rested its case. The time was about 11:20 a.m.

Before lunch the prosecution made a brief argument. Mr. Ashworth told the jury that he expected that they would do their duty as jurors; that they would find a true verdict according to their consciences. He told the jury that he was not "sticking up" for the civil rights workers, but that the system of justice was on trial. He told them it was an important case and they must do their duty, "as he knew they would."

After the brief opening (about five minutes), the jury went to lunch. After lunch, the defense argued and reviewed the evidence. The defense rested heavily on the lack of identification implicating the two Hoggles. Very little was said about the defendant Cook, except that he did not deliver the blow. Argument was made concerning the injuries not being the same and that the treatment which Rev. Reeb received was "grossly negligent."

Following the defense's argument, the prosecution closed by pointing out that the Judge would charge that the defendant Cook need not be identified as being the person delivering the blow, as long as he was a member of a group, one of which did deliver the blow.

The Judge's charge to the jury was very good, in my opinion He charged with respect to each and every element of manslaughter in the first and second degree and murder in the first and second degree, and said that they could find each and every defendant guilty of any one of those offenses. He also charged that it was not necessary to identify the defendant who struck the blow; that it was only necessary to find one or all of the defendants were part of a group that contained an individual who struck the fatal blow. (The law of Alabama, much like that of the Federal Government, has abolished the distinction between accessories before and after the fact, as well as principles in the first and second degree.) The Judge continually used Cook as an example in the charge, but at all times, he made it clear that what he was saying applied to the Hoggle brothers, as well.

The jury returned a verdict of "not guilty" as to all defendants in 97 minutes after they began deliberations, a most unusual occurrence.

There was no real defense offered for the defendant Cook, except that during the day he was wearing a dark suit, as compared to what Mr. Miller and Mr. Olsen described as a light suit. The defense's own witnesses clearly put Elmer Cook at the scene, and the State's witnesses made him one of the attackers. The Judge charged that this would be enough to convict. The jury took only a limited hour and one-half to determine otherwise. In my opinion, the case involving Cook should have taken a great deal longer to consider. This belief is bolstered by the reported fact (although inadmissable as evidence) that Elmer Cook had been arrested 25 times and charged with assault and battery on 17 occasions.

BAYSIDE, N.Y., *June 8, 1966.*

Congressman EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I strongly urge you to recommend to your subcommittee prompt and favorable action on the Hart-Celler bill with the four amendments endorsed by the Leadership Conference on Civil Rights.

We must not allow this bill to be defeated or delayed.

Sincerely,

MRS. ROBERTA KAPLAN.

THE FIRST REALTY CO. OF BOSTON, INC.,
Boston, Mass., May 18, 1966.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN: Title IV of the Administration's Civil Rights Legislation S 3296 which will be before your Committee in the near future provides for preventatives to discrimination in the sale or rental of housing.

Here in Massachusetts we have had similar legislation for several years which is working quite well.

Our company is active in the construction and management of higher income FHA 220 developments and is now specializing in the below market interest rate FHA 221(d)3 housing program. We have a completely open occupancy policy with excellent results and I know of no incidents arising as a result either within or without any development.

Several articles are attached including one from this past Sunday's "Boston Globe" commenting on our latest 402 unit middle income complex in East Boston which indicates some of our activity and experience in the housing field.

As a past Director of the Massachusetts Association of Real Estate Boards and the Greater Boston Real Estate Board which favored similar state legislation, I know I speak for many realtors in the country in urging your Committee to favorably report Title IV.

Very truly yours,

MAX R. KARGMAN,
President.

[From the Boston (Mass.) Sunday Globe, May 15, 1966]

RENTALS WILL START AT $95—$5.6 MILLION HOUSING COMPLEX FOR E. BOSTON

(By Anthony J. Yudis)

To many people, East Boston is known only as the place one travels through to get to Logan International Airport.

For the past 25 years, there has been practically no major real estate construction in the area.

Its population has been declining steadily since World War II, and many of those who have left have done so to look for better housing.

Studies show that between 1950 and 1960, the number of new dwelling units built came to around 20 units. Between 1940 and 1949, there were 436 housing units built, but of this number 414 were public housing dwellings.

But recently a Boston development firm, after taking a hard look at the East Boston housing market, concluded that the area could absorb a generous amount of middle-income housing.

The result? Construction is already well underway on the biggest housing building program that East Boston has seen in years, and it's all being done without the benefit of any urban renewal program.

Without having to vacate a single family, the Boston-based First Realty Co. is putting up a total of 402 dwelling units, representing 12 times the number of private rental units built between 1949 and 1960. The investment totals about $5.6 million.

The scene of construction activity is a 20-acre site along Saratoga st., long a vacant eye-sore adjacent roughly to the Noyes Playground in the Orient Heights section. For years the vacant land has been zoned for industrial use. It was formerly owned by the old Port Development Co. headed by Bernard Goldfine. Nearby is the Columbus Nursing Home.

According to Walter K. Winchester of First Realty, the site is one of the few large-sized areas within minutes of downtown Boston, but for years there were no takers for it.

Winchester says the area's possibilities for new housing were first brought informally to his attention by Development Director Edward J. Logue.

"We took a long look at it, made some market studies and we felt—and the F.H.A. agreed—that this is a good site for middle-income families. We then bought the land from the trustees of the old Port company, and got the area rezoned to residential."

What has happened since is visible to neighbors across the street who own or occupy two and three decker homes. Concrete-capped piles cover the site like an army of sentinels. Soon the housing forms will be sprouting.

Winchester says the total neighborhood has been a prime consideration of the real estate developers.

"We're putting up only two story garden type apartments, not high rise here," said Winchester.

"And the area will be returning taxes to the city since we are doing this as a limited dividend corporation."

The housing program is being carried out under the F.H.A. 221d3 program which allows low-mortgage interest rates and lower rentals.

Of the 402 units, 140 will be one bedroom apartments, 146 will be two bedrooms, and 116 will have three bedrooms.

Winchester estimates rentals at roughly $95 for one bedroom; $115 for two bedrooms, and $130 for three bedrooms. Heat and hot water is included.

One hundred percent off-street parking will be available as will tot lots and some recreation space. The structures themselves are faced in brick (bottom half) and white aluminum clapboards. Slanted roofs are of asphalt shingles.

All units will have disposals and air-conditioning will be optional—at a $5 extra monthly charge, according to Winchester. Laundry facilities also will be available and all units will have refrigerators.

When completed the East Boston venture will be roughly part of some 1100 to 1500 units of 221d3 housing built by the First Realty Firm which is fast becoming the leader in New England in the construction of the middle-income housing.

A successful 500-unit project in West Roxbury called "High Point," a Fall River 120-unit program, a 320-unit development in Brockton, are among First Realty's housing construction accomplishments.

One reason has been because of differences between the firm headed by Max R. Kargman and Development Director Logue. One such conflict occurred over the firm's plan to construct 1200 units of rent-supplement aided housing on Boston Pier 2 waterfront—which Logue opposed.

Here, as in East Boston, is another long-abandoned and seemingly unwanted piece of land which First Realty is confident it can transform into something liveable and desirable.

In fact with its plans for Pier 2, with its recent housing program completions and with its massive 27-story "Tremont-on-the-Common" luxury apartment tower, First Realty becomes one of the major development and real estate firms in New England.

NATIONAL HOUSING CONFERENCE, INC.,
Washington, D.C., June 1, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR CHAIRMAN: On behalf of the Board of Directors of the National Housing Conference, I am writing to present our general support of Title IV of H.R. 14765, the proposed Civil Rights Act of 1966.

The National Housing Conference, as the principal national public interest organization in the field of housing and community development, has long supported the principle of equal opportunity for housing. Our organization is therefore fully in accord with the principles and objectives of Title IV of the pending Bill. However, in order to assure the achievement of these principles and objectives, we recommend to your Committee that administrative remedies be incorporated in Title IV rather than to rest the implementation of that Title largely on individual actions by persons discriminated against.

I am attaching a copy of the Resolution on Equal Opportunity in Housing adopted by the membership of the National Housing Conference at our Thirty-Fifth Annual Convention in Washington, D.C. on March 20, 1966 prior to the introduction of H.R. 14765.

I would greatly appreciate your inserting this communication in the record of your subcommittee hearings.

Sincerely yours,

NATHANIEL S. KEITH,
President.

Resolution on Equal Opportunity in Housing

(Adopted by the National Housing Conference at the 35th annual convention in Washington, D.C., March 20, 1966)

Throughout its entire life the National Housing Conference has been committed to equal opportunity for all American families to secure good housing in good neighborhoods. It again reaffirms this position. While recognizing the slow but significant progress that has been achieved in recent years, it deplores the fact that this opportunity is still denied to millions of American families throughout every section of the land because of their race, color, creed or national origin, or because of the myths which exist as to their desire, or ability to pay for and maintain good homes. To overcome this denial of opportunity and to dissipate these myths are great challenges facing the Nation.

The National Housing Conference has long supported the principle of a competitive housing market open to free bargaining by all American families without regard to racial or ethnic background. We therefore applaud action taken by the President and the Congress of the United States as steps in this direction, and support extension of the President's Executive Order on equal opportunity to lending institutions involved in financing housing. We commend also the increasing number of communities throughout the Nation that have affirmatively pursued equal opportunity in housing. Many localities have been limited in achieving this objective, however, because of the lack of adequate supplies of low and moderate-cost living accommodations and the congestion of many minority group families in limited sections of the community.

As a step in meeting this critically growing problem, the NHC approves and supports the President's Messages and bills on Demonstration Cities and Urban Development which recognize the necessity for a comprehensive attack upon slums through the concentrated and coordinated use of all available Federal aids and local private and governmental resources, including citywide aids and resources necessary to improve the general welfare of all the people living or working in the areas. We call upon the real estate and mortgage lending industries to provide their full support to, and cooperation with, local-federal collaboration for the peace, security and welfare of the Nation.

Further, NHC urges that all levels and agencies of government mobilize their resources and leadership to conduct a vigorous war against slums to make them neighborhoods which provide healthy, safe and socially-desirable places to live. Most of these areas are now concentrations of minority families. To fully implement the objectives of the Nation's stated goals, the substandard housing and environmental conditions which characterize the slums must be corrected.

Greenbelt, Md., *May 27, 1966.*

Mr. William R. Foley,
Chief Counsel, House Judiciary Committee,
Washington, D.C.

My Dear Sir: I would, on behalf of Prince Georges County Fair Housing, Inc. like to offer the following testimony and evidence in support of the "fair housing" section of H.R. #14765, the Civil Rights Act of 1966.

Prince Georges County Fair Housing has worked, since 1964, to end housing segregation in Prince George County, Maryland, one of the fastest growing counties in the nation. Our experiences in attempting to modify the racially segregated housing pattern in our county, which both the real estate industry and private prejudice has helped to create, leads us to believe that "fair housing" legislation is necessary. We would, therefore, like to go on record as strongly favoring the "fair housing" section of the proposed civil rights bill, acknowledging at the same time that legislation can not end the problem by itself, and private efforts to end segregated housing in our nation must be maintained and even increased after the bill becomes law.

At the same time, however, we would like to urge the Judiciary Committee to consider adding an "anti-blockbusting" clause to the proposed "fair housing" section of the Civil Rights Bill. We feel that inclusion of such a section is needed both to promote the objectives of the "fair housing" section and to insure that this section is not misused by a segment of the real estate industry.

It was a surprise to us to learn that, unlike the present "fair housing" law in the District of Columbia, and the "fair housing" laws recently proposed for

Maryland and our city of Rockville (see enclosed item #1), the proposed Federal legislation provides no curb to "blockbusting" tactics by the real estate industry. We feel very strongly that one of the motives segments of the real estate industry have for opposing "fair housing" laws is the huge profit they can make by creating a demand among our Negro citizens for "blockbusted" housing, by keeping them from access to the entire housing market. For this reason, we are convinced, the Maryland Association of Real Estate Boards and the Prince Georges County Board of Realtors openly opposed anti-blockbusting legislation at the last session of the Maryland General Assembly. (see enclosed item #2) Recently, Archbishop O'Boyle, of the Washington Archdiocese, released an official statement linking the problem of "blockbusting" to the problem of segregated housing patterns. (see enclosed item #3)

The most obvious reason for a Federal regulation to curb racist real estate operations and pressure tactics designed to turn integrated neighborhoods into all-Negro areas, for profit, would appear to be that only two states (Ohio and California) currently have anti-blockbusting protection, although the problem is nation-wide. Many state real estate commissions have some power to deal with certain "blockbusting" tactics, but as we have learned in Maryland, these state agencies seem often influenced by the wishes of the real estate industry (see enclosed item #4) and are unwilling to act against "blockbusting" by licensed operators.

Contrary to certain testimony offered your committee, we do not believe that segment of the real estate industry that deals with individual homes will cooperate and support the proposed "fair housing" section, if passed. Prince Georges Fair Housing believes, from the recent opposition of the Maryland Realtor Association to a state "fair housing" law on the grounds that it was a Communist plot (see enclosed item #5), and from reports of Realtor support of moves that overturned "fair housing" laws in California, Ohio, and Washington state, that many Boards of Realtors will continue to restrict Negro home buyers, and evade any Federal "fair housing" law. As Mr. Paul Rilling, recent Executive Director of the District of Columbia Council on Human Relations, stated at the last meeting of the Greenbelt, Maryland, Human Relations Committee, it is much harder to enforce a "fair housing" law on the individual housing market than on the apartment market. Most Negro buyers will, we therefore believe, continue to be directed into all-Negro or "blockbusted" areas as long as "blockbusting" is possible or at least fairly easy, and a Negro market for such overpriced housing can be created by resisting an open housing market for Negro buyers.

Since, in most urban areas, the real estate industry has better contacts with potential Negro home buyers than do "fair housing" and civil rights groups, it seems to us that so long as certain areas can be "busted," at less than market value by real estate operators, Negro buyers will be pushed into such areas, at inflated prices, and the intent of the "fair housing" legislation will be defeated as more all-Negro areas are created, while new all-white areas spring up outside of the present areas being "busted."

At the same time, a "fair housing" regulation without an effective anti-blockbusting section, could likely be utilized by the real estate industry in areas scheduled to be "busted," to make "blockbusting" easier for those firms that are engaging in this sort of fear selling. Already, as the circled item will show (see enclosed item #6), certain real estate agents are utilizing the concept of "fair housing" in a corrupt manner, to rationalize to the public their pressure tactics, designed to produce real estate sales through fear and panic. With a Federal law on the books, certain parts of their job would be even easier.

We feel, that if the high profits from "blockbusting" can be limited by making it risky for real estate firms to attempt to open up certain areas of housing through panic selling, one major motive for opposition to the "fair housing" section's intent will be removed from the real estate industry. At the same time, if "blockbusting" can be curbed for the first few years of the Federal law, we feel that the potential market for such housing will be taken away by an increasing amount of open market selling to Negro families, based on the provisions of the law. It would seem an anti-blockbusting clause could help do this.

Prince George's County Fair Housing would, then, like to enter into the record two possible wordings for an "anti-blockbusting" clause to the "fair housing" section of the Civil Rights Bill, which we feel deserve your careful consideration. The first, Maryland House Bill #481, has two main sections. The first

is taken from a six year old anti-blockbusting law on the books in Baltimore City, and is designed to prevent firms from taking an exclusive listing on a house, when a person has to sell for a normal reason, making no attempt to sell the house for four months (or whatever the term of the contract is), often telling the owner that because Negroes live in the neighborhood no buyers can be found, and as the owner becomes increasingly desperate, buying the house directly, much below the market value of the property. The second part is much like the recently passed Maryland anti-blockbusting law (which becomes effective June 1, 1966) and bars the use of racist representations to drive white residents out of integrated areas, or to keep white buyers from buying into such neighborhoods. A major difference between the bill that passed the recent session of the Maryland Legislature and H.B. #481 is that the law covers all persons who engage in the prohibited activities in order to pressure persons into selling, and thus covers paid "plants" sometimes utilized by real estate speculators and individual agitators. House of Deleagtes bill #481 would have only applied to licensed brokers, as do the Baltimore City anti-blockbusting regulations. H.B. #481 was passed by the Maryland House of Delegates, by the way, but did not have time to be considered by the Senate of Maryland. The second wording is the new Maryland anti-blockbusting law.

Let me conclude by saying that we feel that the proposed Federal "fair housing" legislation is a good beginning of Federal protection of the right of all Americans to buy housing that they desire and can afford. It should also be a help in breaking up the segregated housing patterns that the Federal Government at one time, and the real estate industry today, have built since World War Two. We do think that including an anti-blockbusting clause in this proposed legislation would make it more effective and hope you will give careful consideration to such an addition.

Yours truly,

NORMAN L. KILPATRICK,
Legislative Chairman, Prince George's County Fair Housing, Inc.

No. 481, HOUSE OF DELEGATES

(By Delegates Emanuel, Hart, Marshall, Dorman, McDonough, Conroy, and Meloy—Judiciary)

AN ACT To add new Sections 224 (o-1 and o-2) to Article 56 of the Annotated Code of Maryland (1964 Replacement Volume), title "Licenses," subtitle "Real Estate Brokers," to follow immediately after Section 224(o) thereof to prohibit real estate brokers from having an interest in the purchase of any residential real estate he or his organization has listed for sale, if purchase made during or within six months after the termination of such listing, with certain exceptions and to prohibit real estate brokers from engaging in the practice known as "block-busting"

SECTION 1. *Be it enacted by the General Assembly of Maryland,* That new Sections 224 (o-1 and o-2) be and they are hereby added to Article 56 of the Annotated Code of Maryland (1964 Replacement Volume), title "Licenses," subtitle "Real Estate Brokers," to follow immediately after Section 224(o), and to read as follows:

224.

Having any interest, directly or indirectly, in the purchase of any residential real estate which he or his organization has listed for sale, where such purchase is made during, or within six months after the termination of such listing.

Provided, however, that this paragraph shall not apply in cases in which a broker enters into a listing contract and a simultaneous "trade-in" agreement, whereby the broker, or any company, partnership or corporation in which the broker has any interest, either directly or indirectly, offers a guaranteed price for the listed property within a certain period in order for the seller to purchase another residence, either new or existing housing.

Engaging or participating in the practice commonly known as "blockbusting," described as inducing or attempting to induce the sale, purchase, lease, occupancy, use, assignment, transfer or other disposition of real property

(1) By representing that the racial, religious or ethnic composition of the block, neighborhood or area in which the property is located is changing, or will or may change;

(2) By representing that the presence or prospective presence of any particular race, religion or national origin will or may lower property values in the area or cause an increase in crime or antisocial behavior, or result in a decline in the quality of the schools serving the area;

(3) By representing to any prospective buyer or seller of real property for the purpose of discouraging the purchase, rental, occupancy or other use of real property in a particular area that the block, neighborhood or area in which the property is located has, will or might undergo a change with respect to religion, racial or national composition;

(4) By referring to race, religion, color, creed or national origin in any advertisement offering real property for sale or rent;

(5) By engaging in any act other than the acts described herein for the purpose or with the intent to incite fear of racial, religious or ethnic change in or among owners, occupants, buyers or sellers of real property; or

(6) By procuring or attempting to procure another, or counseling, aiding or abetting another to perform any act prohibited by this subsection for the purpose or with the intent to incite fear of racial religious or ethnic change in or among owners, occupants, buyers or sellers of real property.

SEC. 2. *And be it further enacted,* That this Act shall take effect June 1, 1966.

A BILL ENACTED BY THE LEGISLATURE OF THE STATE OF MARYLAND, MARCH 26, 1966

(Sponsored in the Senate by Senator Clark of Howard County, and Sponsored in the House by Meyer Emanual of the Prince Georges County Delegation.)

[Stricken matter in black brackets]

AN ACT To add new Section 230A to Article 56 of the Annotated Code of Maryland (1964 Replacement Volume), title "Licenses", subtitle "Real Estate Brokers", to follow immediately after Section 230 thereof, to prohibit the practice of inducing the transfer of real property or discouraging the purchase of real property by knowingly representing the existing or potential proximity of property owned or occupied by persons of any particular race, color, religion or national origin or that this proximity of persons will result in certain happenings affecting the use or enjoyment of the property, this practice being generally known as "blockbusting", [to prohibit the purchase of property by real estate agents or brokers or their employees who have offered such property for sale, and providing penalties for violations]

Whereas, the practice know as "blockbusting" is disruptive to the peace, tranquility and general good order of the State of Maryland, and is usually engaged in by firms or individuals interested in reaping excessive financial profits from such activity. This practice cheats homeowners, increases inter-group tensions, promotes neighborhood instability, and creates ghettos which do harm to the citizens of Maryland; and

Whereas, it is essential to the peace and welfare of the community that public as well as private efforts be made to stamp out this unscrupulous practice, which utilizes and promotes panic, fear, and hate, usually for purposes of financial profit; and

Whereas, it is hereby declared to be the policy of the State of Maryland, in the exercise of its police power for the protection of public safety, general welfare, for the maintenance of business and good government, and for the promotion of the State's trade, commerce and manufactures to protect all its citizens and property owners from the efforts of "blockbusters"; now therefore

SECTION 1. Be in enacted by the General Assembly of Maryland, That new Section 230A be and it is hereby added to Article 56 of the Annotated Code of Maryand (1964 Replacement Volume) title "Licenses", subtitle "Real Estate Brokers", to follow immediately after Section 230 thereof, and to read as follows:

"230A. (a) It is unlawful for any person, firm, corporation or association, whether or not acting for monetary gain, knowingly to induce or attempt to induce another person to transfer an interest in real property, or to discourage another person from purchasing real property, by representations regarding the existing or potential proximity of real property owned, used, or occupied by persons of any particular race, color, religion, or national origin, or to represent that such existing or potential proximity will or may result in: 1. The lowering of property values; 2. A change in the racial, religious, or ethnic character of the block, neighborhood, or area in which the property is located; 3. An increase in

criminal or antisocial behavior in the area; or 4. A decline in quality of the schools serving the area.

"(b) A violation of this section is a misdemeanor, punishable upon conviction by a fine of not more than five hundred dollars ($500) or imprisonment for one year, or both; and a conviction of any real estate broker or real estate salesman for a violation of this section [shall be considered as constituting his or her unworthiness to continue to act as such in the State of Maryland. Such a conviction] shall be referred to the Maryland Real Estate Commission for action."

SEC. 2. And be it furthere enacted, That this Act shall take effect June 1, 1966.

NOTE.—This act was passed by the General Assembly of the State of Maryland. To be come law, it must be signed by the Governor before April 30, 1966. If you are in agreement with this law, you might well consider writing to the Governor expressing your feelings and asking him to sign the bill into law.

Signed into law by Governor J. Millard Tawes on April 29, 1966.

THE KNUTSON COS., INC.,
Minneapolis, Minn., May 11, 1966.

Hon. EMANUEL CELLER.
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR SIR: Our Company is a Mortgage Banker and we have processed in the last ten years approximately $100,000,000 in Government guaranteed loans, plus many million dollars more of conventional loans.

Our Company is also engaged in General Construction, and we are the largest general contractor in Minnesota. We just finished the construction of an $11,000,000—220 housing project of some 500 units which we have integrated with absolutely no problems.

It is the policy of our Company, and I think it should be the policy of the Federal Government to create an opportunity for all Americans to be equal. If everybody were given the right to be equal, the adjustment would be very short in coming about to assure a better America for all.

We believe in this—we practice this, and we preach this.

Sincerely,

DONALD T. KNUTSON, *President.*

DRAPER & KRAMER, INC.,
Chicago, Ill., May 5, 1966.

EMANUEL CELLER,
Member of Congress,
House Office Building,
Washington. D.C.

DEAR MR. CELLER: I am a realtor and mortgage banker and have been with the the firm which I now head for 43 years. I have just read title IV of the new civil rights bill, the purpose of which is to eliminate discrimination in residential housing on account of race, color, religion, or national orgin.

The executive order issued by President Kennedy prohibiting discrimination in housing on property financed by FHA issued and Veteran's Administration guaranteed mortgages probably affects less than 20% of the new housing that is being built. It is, therefore, unfair and ineffective because it covers such a small proportion of the housing in the United States.

The proposed legislation, in my opinion, would be both equitable and effective and healthy for the real estate and construction industry. It is most difficult for any industry to operate where the rules are not the same for everyone.

For example, we have a ordinance in the City of Chicago which applies only to real estate agents and brokers. Under this law an owner can discriminate by firing his agent and handling the property himself. Therefore, even though there has been some slight progress under this ordinance, it has been much less effective than it might have been.

I hope very much that you will do what you can to get this bill on the floor of the House with a "Do Pass" label.

Sincerely yours,

FERD KRAMER, *President.*

LEVITT & SONS, INC.,
Lake Success, N.Y., May 20, 1966.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: I am enclosing an article which appeared in the Trenton Times last November. I think you will find it interesting and it certainly should be part of a current civil rights record of the hearings.

Sincerely,

WILLIAM J. LEVITT, *President.*

THROUGH CAREFUL PLANNING, INTEGRATION HAS WORKED IN THIS PLANNED COMMUNITY. SO WELL IN FACT THAT ONE REALTOR CAN SAY: "WILLINGBORO WILL NEVER HAVE A NEGRO PROBLEM"

(By Dana Stevenson)

(Five years ago the first Negro family moved in. In the ensuing years there has been no burning of crosses, no rioting, no broken windows, no scrawled insults. Negroes hold important positions in the community. Mixed social, gatherings are not uncommon.)

WILLINGBORO.—Five years ago a sales executive and his wife, a school teacher, moved into a new home here with their two sons.

They were the first Negroes in town.

Today there are more than 200 Negro families in this planned community—and their presence has caused little stir.

There has been no burning of crosses. No rioting. No broken windows. No scrawled insults.

"Willingboro is 15 years ahead of the rest of the country when it comes to race relations," according to a local real estate broker.

"This is a wonderful place to live, and we want to keep it that way," declares an official of the Burlington County Human Relations Council.

INTEGRATION WORKS HERE

"Integration works in this town because everyone is 'new' here," believes the police chief, explaining that there are no "old established families" in the seven-year-old development.

All three statements ring true when it is realized that—

There is a Negro on the school board.

The school psychologist for the Willingboro public school system is a Negro woman. There are a number of Negro teachers, including a very popular and highly respected mathematics "helping teacher."

A Negro attorney was high on the list of candidates last Spring for an unexpired term on township council. His failure to gain appointment is said to have been due to political pressure for a party favorite, rather than racial bias.

There is a civic group calling itself "The Kinsmen," devoted to recognition of the Negro's cultural heritage and placing emphasis on the welfare of the entire community rather than on civil rights marches.

All this in a community of 26,000 in which Negroes account for less than five percent of the population.

Integration in Willingboro began during the summer of 1960, following the failure of the U.S. Supreme Court to review a ruling by the New Jersey Supreme Court which upheld the state's open housing law.

The suit against Levitt and Sons had originated with Willie R. James and Franklin D. Todd of Burlington. The Levitt firm challenged the constitutionality of the law as written, but not the question of racial integration. William Levitt was also said to feel that his company, because of its size, was being singled out to test the law. He advocated that an open housing policy be adopted by the entire home-building industry.

When it became apparent that the case would not reach the highest court in the land, Levitt employed a human relations team, Dr. Harold A. Lett and his wife, both Negroes, to aid in preparing the community for integration.

WORKED BEHIND SCENES

The Letts, with a white consultant on education and human relations, NAACP leaders and representatives of the American Friends Service Committee, worked for five months behind the scenes, until after the first Negro families had moved into their homes.

Conferences were held with clergymen, educators, public officials and the police chief. A Human Relations Council was formed. The official announcement of the new policy was announced from the pulpits of township churches on March 27. This was followed by a series of evening programs featuring human relations authorities as lecturers, panelists and discussion leaders.

Mr. and Mrs. Charles Williams were the first Negro couple in Willingboro, but the exact date of their moving and their address were not made public. Other families followed, in the next few weeks but no announcement was made. Most of the men were professional employes of RCA or Campbell Soup Company. Willie R. James, now president of the Burlington County Chapter of the NAACP and a staff member at the youth training program at Camp Kilmer, moved in shortly afterwards. Todd's plans had changed and he decided not to buy in Willingboro.

This was the beginning of integration, and thanks to careful planning, it was a far cry from the violence and terror which followed the appearance of Negro family in Levittown, Pa., in 1958, only two years before. Levitt had maintained an all-white policy in Pennsylvania because the commonwealth had nothing on its lawbooks concerning open housing at that time. The color line was breached through a resale to a Negro family. Levitt explains his position as "We obey the law where there is a law, and where there is no law we follow local customs."

Yet there were some repercussions.

At the time there were 2,500 homes in Willingboro, which had originally been planned for 16,000. In a report written by Dr. Lett for the federal Housing and Home Finance Agency, William Levitt is quoted as saying:

"We had no violence or picketing, but our sales ground to a halt and remained that way for nearly 18 months." Other factors contributing to the slowdown in sales, according to Lett, included zooming property taxes in the new development, an economic slump in the greater Philadelphia area and the sudden availability of on-base housing at nearby McGuire Air Force Base.

With the passing of time, property taxes have, as expected, continued to climb. Negroes have continued to move in quietly—and Levitt sales are 73 percent ahead of last year. The volume of re-sales is brisk, too.

"Where can they go?" asks real estate broker Edward Casel when mention is made of high taxes.

The Willingboro home market is having its "strongest year to date," he declares. Many homes are listed for less than a week before they are sold. As for integration, Casel believes "Willingboro will never have a Negro problem." The attitude of white people in the northeast has advanced greatly during the past five years, he says.

NOT NECESSARILY WHITE

"They seem to feel that they want neighbors who are decent people, not necessarily white people."

Municipal officials agree.

Police Chief S. Marshall Roser, who worked in the early days towards insuring a peaceful welcome for Negroes, feels it has been "a minute problem."

"You're going to have some difficulty with integrating any ethnic or religious group because some people are a little bigoted. We've had a couple of minor incidents, but these were mostly personality conflicts, I think. But person for person, we have less trouble with the Negro residents than we do with whites."

Mrs. Joyce Morgan, municipal welfare director, reports that there are no Negro families receiving aid.

A survey of several dozen Negro Willingboro families indicates that on the average, they have higher incomes and better educations, than the white residents. They are solid citizens.

As Mrs. Charles Williams explains:

"Remember, this is the nicest home we've ever had, and we don't intend to lose it. It's always easier for a white person to buy a house."

FACTS AND FIGURES

It is estimated that one-half of Willingboro's Negro families have bought their homes from the builder, the remainder through real estate brokers or directly from original owners.

No one knows, the exact figure, because state law forbids any mention of race in sales contracts or mortgage papers.

A spokesman for Levitt and Sons said the firm's "best estimate is that Negroes have comprised two to three percent of the buyers during the past five years."

This would mean 75 to 115 Negro families have purchased through Levitt, since the New Jersey Supreme Court upheld the state's open housing law. Their homes are in the Millbrook, Hawthorne, Garfield Park sections and Windsor Park sections.

Edward Casel, whose real estate agency manages properties foreclosed by the FHA, believes there are 800 "used" homes sold each year. Of these, one out of four is sold without the services of a real estate broker and usually involves assumption of the existing mortgage by the buyer. He declined to speculate on how many buyers of "used" homes are Negroes.

In 1963, three years after integration began, there were 35 to 40 Negro families in Willingboro. A survey made last year by the Burlington County Human Relations Council showed there were approximately 100 families.

Another study is now underway, but the results are not yet known. Most observers, including white and Negroes, agree there is now a minimum of 200 families.

LEWIS HOMES, INC.,
Claremont, Calif., May 16, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I respectfully urge that you vote for passage of the new Civil Rights Bill, and particularly with respect to Title IV, the provision prohibiting discrimination in housing.

I have been a tract developer in California and Nevada for over 10 years, served as State President of the Building Contractors Association of California, Inc. in 1963, and am presently serving on the California Commission of Housing and Community Development. Based on this experience, it is my firm opinion that the housing industry would operate much better with a fair housing law than without. At present, builders who follow our national policy against discrimination, either because they are so required under FHA and VA regulations or because they believe this is the right way under our American system, can suffer financial detriment if other builders in the same locality do discriminate.

We know of instances where builders who do discriminate warn buyers away from tracts that do not discriminate. This is an unfair and unwholesome kind of competition which can be prevented only if all builders, real estate brokers, apartment owners, and lenders operate under the same uniform national policy, which would be the case if Title IV is enacted into law.

Passage of Title IV would also have the highly desirable effect of preventing passage in many states of laws like California's Proposition 14, recently invalidated by the state Supreme Court. I think that without question Proposition 14 was a factor contributing to the Watts riots, and we must do our utmost to prevent further harmful state legislation of this sort.

Sincerely yours,

RALPH M. LEWIS.

PITTSBURGH AREA RELIGION AND RACE COUNCIL,
Pittsburgh, Pa., May 31, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I support the civil rights bill recently introduced in both the Senate and House by the administration. I support all sections of this bill. Especially I support the section which would outlaw discrimination

in the area of private housing. I believe this protects the rights of every citizen. In the pursuit of happiness, he has a right to seek a home without discrimintion on the basis of religion or race or national origin.

Sincerely,

Rev. DONALD W. MCILVANE,
Convenor.

YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF THE U.S.A.,
New York, N.Y., May 31, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives,
U.S. Congress,
Washington, D.C.

DEAR MR. CELLER: The National Board of the Young Women's Christian Association of the U.S.A. would like to register its support of the proposed civil rights legislation incorporated in H.R. 14765, and request that this fact be noted in the record of the Judiciary Committee hearings on this bill.

We are glad to associate ourselves with the testimony already presented by Mr. Roy Wilkins of the Leadership Conference on Civil Rights in behalf of the cooperating organizations who have worked together to support the civil rights legislation which your committee has developed.

We would also hope that the proposals which the Leadership Conference has made to strengthen H.R. 14765 might be given due consideration.

As the enclosed copy of our letter to Attorney General Katzenbach indicates, the National Board of the YWCA has already indicated its concern for the strengthening of the civil rights laws enacted in 1964 and 1965. We are particularly glad to note in the new proposals measures to assure that all qualified persons should have the opportunity to serve on juries. We would particularly urge that all discrimination on the basis of sex, as well as race be eliminated in jury service.

The YWCA has been working continuously since 1908 when the first Negro joined the professional staff of the national Association to include people of all races in its membership and to work for an integrated society in which "barriers of race, nationality, education, and social status are broken down in the pursuit of the common objective of a better life for all." These words adopted at our 1936 Convention are echoed in the more recent statement adopted in 1964 when we pledged ourselves in addition to a more conscious and deliberate effort to achieve integration within our own fellowship to work as well for reconciliation and full integration immediately in all areas of the community's life including education, employment, housing, public facilities, and religious and social institutions.

One of the most important features of the new legislation, we believe is that calling for the elimination of discrimination in housing (Title IV). The YWCA believes that to work for freedom of choice in housing is an integral part of our efforts to work for an end to discrimination. We are concerned about open housing not only because we wish to see that the rights guaranteed to all citizens are in fact being implemented, but also because as women we recognize that if we are to live as good neighbors and to rear children of good will we must have the freedom to live freely in a multi-racial society. The artificial discrimination based on race has little validity in the kind of world we wish to provide for our children.

It is our hope that your Committee will be able to assure the inclusion of this important facet of the Civil Rights Act of 1966.

Sincerely yours,

Mrs. LLOYD J. MARTI, *President.*

NOVEMBER 3, 1965.

Hon. NICHOLAS DEB. KATZENBACH,
Attorney General,
Department of Justice,
Washington, D.C.

DEAR MR. KATZENBACH: As you are aware, the National Board of the YWCA has given its full support to the new federal civil rights laws enacted in 1964 and 1965 and to the efforts of the Federal Government to give strong imple-

mentation to these laws. Because we are concerned that there be no relaxation in the firm pursuit of justice for all citizens, the National Board of the YWCA at its meeting on Thursday, October 28th has directed me to write you this letter.

We have been greatly disturbed by the continuing examples of miscarriage of justice, the most flagrant of which occurred in the recent trials in Lowndes County, Alabama, of Collie LeRoy Wilkins, accused murderer of the civil rights worker, Mrs. Viola Liuzzo and of Thomas Coleman, accused murderer of the theological student, Jonathan Daniels. We recognize that where an atmosphere of racial tension and overt bias predominate a fair trial is in jeopardy, and that the continuing segregated character of the state and federal courts in the South, including judges, lawyers and all levels of appointed and employed personnel, as well as the exclusion of Negroes and women from juries also militate against fair and impartial justice. We are also concerned that there is continuing intimidation and harassement of civil rights workers and the discouragement by overt or covert means of those who would register to vote in certain states and counties in the South.

We urge therefore that the Justice Department under your leadership make full use of all measures within our framework of constitutional law to safeguard the civil rights and personal safety of those seeking to implement federal civil rights laws.

We also urge you to make fuller use of all the federal provisions for assisting with voter registration. We further urge you to seek more vigorously the enforcement of existing laws, and where necessary, the enactment of new legislation to insure that such flagrant violations of legal justice as occurred in Lowndes County will not be repeated.

We trust you will use whatever powers you have to bring about needed changes in the present all-white character of the Southern Courts and that you also will use the authority vested in the Department of Justice for assuring that Negroes will no be excluded from jury duty. The burden of securing justice cannot be left to those who are already the victims of continued injustice. We must use all the means at our disposal to support them, and thus help implement the commitments made by President Johnson in his magnificent speech at Howard University last spring.

While we are greatly encouraged by the progress that has been made in voter registration and in securing compliance with other civil rights legislation, we know how difficult it is to overcome the stubborn and burdensome injustices to which all of us as Americans have contributed in some form or another. We would like to offer you our support and encouragement in your heavy responsibilities and in turn to ask you to take every initiative that is open to you, and to suggest how citizens may aid you.

Sincerely yours,

Mrs. Ambrose L. Cram, Jr., *Vice President.*

Alfred H. Mayer Co.,
Florissant, Mo., May 23, 1966.

Mr. Emanuel Celler,
Chairman of House Judiciary Committee,
Washington, D.C.

Dear Sir: As one of the largest homebuilders in the St. Louis area, I feel that it is imperative to pass legislation that would guarantee open occupancy to everyone.

Any assistance that you could give us in this matter would be appreciated.

Sincerely,

Alfred H. Mayer, *President.*

Coordinating Committee on Moral and Civil Rights,
Indianapolis, Ind., May 27, 1966.

Hon. Emanuel Celler,
House of Representatives,
Washington, D.C.

Dear Congressman Celler: We want to express our support for the President's Civil Rights Act of 1966. Further, we join those who are seeking to strengthen these measures: specifically we support amendments offered by the Leadership Conference on Civil Rights.

As you know those proposed changes in the President's bill consist of the following four parts:

1. That there be established a new agency, the Indemnification Board, that will award damages to victims of Civil Rights violence, or in the event of death, to their families.
2. That the Fair Housing Law be enforced by an administrative agency in order to take from the aggrieved person responsibility for undertaking necessary court action to gain his rights to the home of his choice.
3. That there be provided a more automatic way of instituting procedures for ending jury discrimination. An analogy given here is the automatic trigger of the Voting Rights Act which authorized use of its system of federal registrars.
4. That Title VII of the Civil Rights Act of 1964 be extended to include state and local government employees.

We respectfully urge that the House Judiciary Committee act with dispatch in recommending this legislation together with these strengthening amendments. We hereby declare our commitment to the passage of these much needed laws and will do what we can to build support among the churches.

Sincerely yours,

HERALD B. MONROE, *Chairman.*

MARVIN B. MYERS.
Chicago, Ill., May 17, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR SIR: I would like to respectfully express my opinion in favor of the Housing Section, Title IV, of the Civil Rights Bill of 1966, for the following reasons:

The Executive Order re non-discrimination in government insured housing fails to cover our residential market place, since our local real estate industry has historically utilized conventional financing for over 85% of its activity. In those outlying areas of our greatest population growth, and where most of our job opportunities are being created, there is almost a complete avoidance of government insured housing, because it is still legal to prudently avoid the supposed financial risks of integration.

Those of us, within the real estate industry, who are aware of both the moral and economic limitations of discrimination, find definite need for legislative approval of non-discrimination for the entire residential market place. Without this legislative approval we are not strong enough to withstand the pressures of fear and prejudice. With the force of legislative approval much can be accomplished, as has been evidenced by the record of FHA financing, in this area, since the Executive Order.

I am a member of the National Association of Real Estate Boards, and the National Association of Home Builders. Over the years I have served in many posts in these organizations. Most important were President of the Home Builders Association of Illinois, Chairman of the National Labor Committee, and President of the Home Builders Association of Rockford, Illinois.

Respectfully yours,

MARVIN B. MYERS.

AMERICAN HOUSING GUILD.
Burlingame, Calif., May 17, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

GENTLEMEN: We urge you to include Title IV in the Civil Rights Act of 1966, and to pass same.

The people of the United States, should at this time, stand up and make a moral commitment that no person be prevented from buying the home of his choice because of race, creed or color.

As a builder of over 500 homes in the San Francisco Bay Area, we feel the inclusion of Title IV will help the industry, not hurt it.

If passed, the Bill will insure that all homebuilders will sell to minorities and that all homebuyers will buy in non-segregated neighborhoods. The misconcep-

tion and unwarranted fears of economic and social distress that a small group of people still have will vanish with the experience of living under a strong Civil Rights Bill.

Very truly yours,

MICHAEL H. PODELL.

COLUMBIA SAVINGS & LOAN ASSOCIATION,
Denver, Colo., May 20, 1966.

Hon. EMANUEL CELLER,
Member of the House of Representatives,
Washington, D.C.

DEAR MR. CELLER: American industry in cooperation with American government has in the past two decades made unprecedented contributions to the amount of housing available to families throughout the nation. The millions of homes and apartments that have been constructed have done much to improve the quality of life for great numbers of our citizens.

But at the same time the nation has failed its racial minorities by denying them equal access to that housing. Racial ghettos are still the rule in our large cities. Minority group families able to improve themselves still encounter resistance in their attempts to move to better neighborhoods. The result is that the poor environment, inferior schools, substandard public facilities and prejudice produced by segregated housing continue to rob millions of men and women of their full potential as productive and creative individuals. And those conditions continue to rob the nation of the full contribution to its wellbeing that such men and women could otherwise make.

I, therefore, support Title IV of the Civil Rights Act of 1966 because it is right. But there is another compelling reason for its passage. A national fair housing law is not only right, but it is good business. All of the deprivations suffered by our minority groups have reduced their capability of making an economic contribution to our country. Because of residential segregation our minority groups are not active customers for good new houses and new apartment units. This, in turn, restricts the amount of business activity in these fields.

Builders and real estate agents are fearful of selling or leasing property to members of these minority groups because white customers might, through their irrational fears, refuse to accept them as neighbors and go instead to competitors who maintain segregation. Or if the builders or agents sell or rent to these minority group members, others follow and the neighborhood or building soon becomes a segregated one, thereby defeating the very purpose of open housing.

Were there a national law commanding the acceptance of all, builders and agents could sell or rent to all without fear of loss of white business and without the danger of creating new ghettos.

There is no question, then, that enactment of this legislation would create increased demand for all types of housing, with increased business for all elements of the real estate business and related industries. Fair housing, therefore, is as sound as it is right.

We believe that a national effort is necessary to rid the housing market of the barriers that result from discrimination by reason of race, color, religion or national origin. We believe that Congress should provide the tools for that effort. We therefore join with the President in urging the swift enactment of the fair housing provisions of the Civil Rights Act of 1966.

Sincerely,

DANIEL L. RITCHIE, *President.*

NEIGHBORS, INC.,
Washington, D.C., May 20, 1966.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: Neighbors, Inc., a citizens' organization devoted to maintaining a stable integrated community for the 40,000 residents of North Central Washington, D.C., supports the principle behind Title IV of the Civil Rights Act of 1966 and urges its adoption. Residential segregation, which adversely effects the lives of so many of the people of this country, can no longer be deemed to be a purely local problem. Rather, it must be dealt with, as has

voting, employment, education and access to public facilities, on a nationwide level.

In the eight years of its existence, Neighbors, Inc. has demonstrated to all who have been watching, that people of different races can live harmoniously in the same neighborhood. We have established, too, that real estate values in integrated areas do not suffer in relation to those prevailing in all white communities. For so long as public agencies continue to concern themselves with maintaining the quality of local facilities in these areas, white families in significantly large numbers will continue to purchase homes in integrated neighborhoods and contribute, with their Negro neighbors, to the maintenance of community stability and integration. In short, our experiences destroy the foundations upon which rest the arguments of those who say "It just cannot work."

We also suggest that Title IV be amended to vest the enforcement in an administrative agency of the government, rather than place the burden upon the individuals by carrying out their own suits.

Respectfully yours,

CHARLES M. RODGERS, *President.*

YONKERS, N.Y., *May 25, 1966.*

Congressman EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: I understand that you are holding hearings concerning the proposed civil rights legislation proposed by the President dealing with a new Federal Fair Housing Law.

It has been my privilege to work with the Yonkers Fair Housing Committee for about three years and I have come to the realization how urgently this legislation is required. As you know, New York State has, what appears to be quite an adequate Anti-Discrimination Law covering housing and yet the practice of discrimination is quite rampant and most difficult to eliminate. This is surely an indication of how much more difficult the situation must be in other States which have no such legislation.

I know that you will be receiving many letters urging that the property laws which are very important to many people are being violated by such proposed legislation. However, it appears to me that human beings must come before property in a country that is dedicated to the rights of the individual. The kind of humiliation and rejection that is suffered by minority group persons seeking housing is positively shameful and extremely harmful to a human being's self-esteem.

I believe that segregated housing patterns, which can only be changed by strongly enforced laws, are harmful to all our communities and everyone who lives in them. Irrational fears and prejudice are perpetuated while in an integrated community people get to know and understand one another and it does not take long for people to find out that we have similar needs and abilities. An integrated community will lead to a richer life for all of our children and ourselves and would automatically solve many of the problems that now bedevil us in schools and employment situations.

Until it becomes illegal for any minority group to be relegated to ghettos by the majority our country will be falling far short of its goal of being a true democracy with liberty and justice for all.

I hope sincerely that your Committee will report favorably on the proposed legislation.

Sincerely yours,

ILSE H. SAKHEIM.
GEORGE A SAKHEIM.

SAXE REALTY CO., INC.,
May 17, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR SIR: Those of us who are in the real estate business are vitally concerned with all aspects of the housing field, and my reason for writing to you at this time is to express my concern not only as a Realtor, but as a citizen in a metropolitan city which, like others, is faced with many problems which would be affected by Title IV of the Civil Rights Act.

As you well know, California is in the position of extreme confusion over the relative status of the Rumford Act, the Unruh Act, and the State Supreme Court ruling on Proposition 14. This situation can be repeated in every state.

Neither buyers nor sellers, nor builders nor developers, can effectively serve the citizenry unless we are able to do so under a Federal law by which all can conduct themselves with the greatest amount of fairness in housing to the greatest number.

For these reasons, I urge your support for the fair housing provision, Title IV, of the new civil rights bill.

Very truly yours,

MARIAN SAXE, *President.*

ANTI-DEFAMATION LEAGUE OF B'NAI B'RITH,
New York, N.Y., May 24, 1966.

HON. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: The Anti-Defamation League of B'nai B'rith wishes to take this opportunity to express its support for and to urge early passage by Congress of H.R. 14765, the Civil Rights Act of 1966.

The Anti-Defamation League is the educational arm of B'nai B'rith which was founded in 1843 and is America's oldest and largest Jewish service organization. It seeks to develop good will and understanding among Americans of the various religious, ethnic, and racial groups. Its program is rooted in the religious teachings of Judaism: man is a creature of God and all men are equal before Him; the dignity of the individual is God-given and must not be violated—teachings which are shared by all the great religions in America and which undergird the constitutional guarantees of freedom and equality.

It is not our purpose in this brief statement to go into any detailed analysis of the bill. President Johnson in his message to the Congress eloquently underlined the critical need for the legislation. Attorney General Katzenbach in his testimony has already provided you with a lucid and closely reasoned title by title explanation of the bill's provisions.

We have previously joined with the more than seventy religious, civic, labor, and educational organizations in the Leadership Conference on Civil Rights who have endorsed the statement submitted to your Committee by Roy Wilkins, the Conference Chairman, supporting the bill with the reasonable changes suggested there in order to make a good bill an even better one. It is only because we want to emphasize the urgent need for Congress to act this session and to act decisively and comprehensively to attack "the discrimination that still affects our land" that we are submitting this supplemental statement.

Immediately after the President sent his message to the Congress when asked to comment by the USIA we then stated that passage of the legislation would end a system of justice which the President stated last November has tipped "the scales one way for whites and another for Negroes." We added that the bill would also enable Americans of all colors to exercise their constitutional rights free from fear, intimidation, and violence. It would speed up the process of public school desegregation and it would establish a national policy against racial and religious discrimination in housing just as the Congress has already done with respect to employment and public accommodations.

By enacting this legislation Congress can once again demonstrate its continuing commitment to civil rights and help the nation take another step forward in fulfilling the American ideal of equality and justice for all.

We do, however, have one comment not included in the Leadership Conference statement. Title I of the bill requires a prospective federal juror to fill out a questionnaire stating, among other things, his religion. We appreciate that the purpose of this inquiry is to facilitate securing the necessary proof that discrimination is being practiced. But in our view a serious constitutional question affecting religious freedom is raised by any governmental inquiry into the religious beliefs of any individual. This provision, laudable as its objective may be, may open the door to infringements of the privacy which is an essential aspect of religious freedom. Furthermore, there is no indication of any pattern of religious discrimination in the jury selection process, as there is in the case of race. Hence on balance we recommend that this provision should be stricken

We cannot conclude this statement without taking the occasion to commend the Committee and particularly its distinguished Chairman and ranking minority member for the leading roles they have played in the dramatic civil rights gains made in the last decade.

We respectfully request that this statement be included in the printed record of the hearings.

Very sincerely yours,

DORE SCHARY, *National Chairman.*

PHILADELPHIA BUILDERS EASTWICK CORP.,
Philadelphia, Pa., May 11, 1966.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: I am writing to you in support of the President's Civil Right's Act of 1966, and specifically that title of the Act that deals with discrimination in housing.

It is most important that everyone have free and open access to housing accommodations, and the opportunity for the exercise of his choice.

May I respectfully urge your favorable consideration in this regard, and your support of this Act, which further strengthens our Country's aims and goals.

Sincerely yours,

JOSEPH A. SINGER, *President.*

REPUBLIC REALTY MORTGAGE CORP.,
Chicago, Ill., May 27, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

DEAR CONGRESSMAN: I am writing to express my support for Title IV of the Civil Rights Act of 1966.

As a mortgage lender, I am frequently faced with situations where sound mortgage investments are not consummated with reliable mortgage lenders because of the minority group status of a purchaser. While I do not believe that mortgage investors generally harbor basic prejudices, they are reluctant to commit funds to these types of investments because of their limited exposure to the minority group lending. It seems to me the resultant lack of adequate mortgage credit at competitive rates is in large measure responsible for the decay of many of our central city neighborhoods. This process is too expensive for home owners, real estate investors, small businessmen and mortgage lenders. Title IV would provide a common standard for all mortgage lenders which would help to correct this situation.

I believe the Civil Rights Act of 1966 (Title IV) will go a long way to lessening racial tension by making all housing available to all members of our society. In our democracy, we cannot tolerate less than this.

Sincerely,

DAVID E. STAHL,
Executive Vice President.

THE UNIVERSITY OF CHICAGO,
DEPARTMENT OF PHILOSOPHY,
Chicago, Ill., May 24, 1966.

Representative EMANUEL CELLER,
House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CELLER: Today I read that many people—perhaps mostly realtors—have objected to the proposed housing antibias law your committee is now considering. Their arguments are as simple as they are reprehensible: Property rights before civil or human rights! I hope and trust that, as in the past, you will not put up with such disgusting and immoral self-seeking. I have long

admired your stands—and I see no reason to believe that I will not be able to do so in this case, too.

Yours,

MICHAEL STOCKER.

P.S.—With some temerity—if you think that philosophers, especially those concerned with ethical and social problems could be of use (or interest) to you, please do not hesitate to get in touch with me, or my colleagues through me.

BRENTWOOD MORTGAGE CORP.,
Beverly Hills, Calif., May 19, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR SIR: As president of a mortgage banking company and as head of a homebuilding organization which constructs in excess of 1,000 homes per year, I am in favor of the Civil Rights Bill of 1966, and urge you to do everything possible to have it favorably reported out of Committee and enacted into law.

The enactment of this Bill will remove the inequities now existing between FHA and VA financed housing (with respect to which Executive Orders forbid discrimination) and conventionally financed housing. It will establish a uniform national policy which will be beneficial to the homebuilding industry and to mortgage lenders. I believe they would both welcome and support such a law.

Aside from economic considerations, the Bill should be passed in the interest of social justice.

Respectfully,

LAWRENCE WEINBERG, *President.*

DISCRIMINATION IN THE SELECTION OF WOMEN ON FEDERAL AND STATE JURIES

(Mrs. Dwyer (at the request of Mr. Don H. Clausen) was granted permission to extend her remarks at this point in the Record and to include extraneous matter.)

Mrs. DWYER. Mr. Speaker, in his state of the Union message to the Congress earlier this year, the President proposed "legislation to establish unavoidable requirements for nondiscriminatory jury selection in Federal and State courts—and to give the Attorney General the power necessary to enforce those requirements."

I, for one, Mr. Speaker, wholeheartedly support this objective. The recent history of civil rights legislation and its implementation in areas of racial discrimination should convince us that justice in the courts can be a very uncertain thing when juries are selected on the basis of racial discrimination. Justice must be blind to color.

But justice, too, must be blind to all other irrevalent factors. Discrimination of any kind in the selection of a jury undermines the very foundation of democracy in the administration of justice, whether such discrimination is based on race, religion, economic class, political affiliations, or sex.

Unfortunately, Mr. Speaker, in only 21 of the 50 States are jury selection laws applied equally to men and women. And despite the mandate of the Civil Rights Act of 1957, which made women eligible to serve on all Federal juries, many Federal district courts have failed to give full effect to this purpose.

This situation has been a matter of deep concern to many of us here including several of our colleagues among the women Members of the House and Senate. We believe that this Nation has for too long tolerated the wholly arbitrary discrimination against women's participation in the jury system. We believe it is essential to have Federal legislation which will truly establish "unavoidable requirements for nondiscriminatory jury selection" for all State and Federal courts. We believe such legislation is fully authorized under section 5 of the 14th amendment to the U.S. Constitution. And we hope the President will propose and Congress will enact jury selection legislation which will prohibit discrimination against women.

To give expression to these views, Mr. Speaker, I am pleased to announce that I have been joined by seven of our distinguished colleagues—representing both Houses of Congress and both political parties—in requesting the President and the Attorney General to include in the jury selection proposals now under study

in the administration specific provisions which will preclude discrimination based on sex.

These distinguished colleagues are: the senior Senator from Maine, Mrs. Smith, the junior Senator from Oregon, Mrs. Neuberger, the gentlewoman from Ohio, Mrs. Bolton, the gentlewoman from Washington, Mrs. May, the gentlewoman from Washington, Mrs. Hansen, the gentlewoman from Illinois, Mrs. Reid, and the gentlewoman from Hawaii, Mrs. Mink.

For the information of the House, Mr. Speaker, I include as a part of my remarks the texts of our letters to the President and the Attorney General and the text of a memorandum on the status of the problem which was prepared at my request by Mr. Phineas Indritz, counsel to the Committee on Government Operations.

The documents follow:

"CONGRESS OF THE UNITED STATES,
"HOUSE OF REPRESENTATIVES.
"*Washington, D.C.*

"THE PRESIDENT,
"*The White House,*
"*Washington, D.C.*

"DEAR MR. PRESIDENT: In your state of the Union message of January 12, 1966, you advised the Congress and the Nation that you will 'propose legislation to establish unavoidable requirements for nondiscriminatory jury selection in Federal and State courts.'

"Discrimination in the selection of a jury undermines the very foundation of democracy in the administration of justice, whether such discrimination is based on race, economic class, political affiliation, or sex.

"We, as Members of Congress, believe that this Nation has for too long tolerated the wholly arbitrary discrimination against women's participation in the jury system.

"Although women are now eligible to serve on all Federal juries by virtue of the Civil Rights Act of 1957, the procedures still being used in many of the Federal district courts have failed to give full effect to the statutory purpose.

"The situation is much worse in State courts. Only 21 States apply the law equally to men and women. The others contain varying degrees of discrimination which effectively discourage or totally exclude women from serving on both grand and petit juries.

"We were heartened by the recent decision of a three-judge Federal District court (*White* v. *Cook*, opinion of Feb. 7, 1966), declaring that Alabama's law excluding women from serving on juries is unconstitutional. But that decision does not necessarily apply to all the varying provisions of the many other State laws which discriminate against women's participation on juries. We believe it is essential to have Federal legislation which will 'establish unavoidable requirements for nondiscriminatory jury selection' for all State and Federal juries, and that such legislation is fully authorized under section 5 of the 14th amendment.

"We therefore urge that when you present the administration's bill on nondiscriminatory jury selection, it will preclude, in both State and Federal courts, any discrimination in jury service on the basis of sex, as well as other irrelevant factors such as race, color, political or religious affiliation, or economic or social status. Such legislation will be in accord with the principles embodied in the Equal Pay Act of 1963 and title VII of the Civil Rights Act of 1964 guaranteeing equal treatment for women in employment. They deserve equal treatment in the exercise of their civic responsibilities with respect to the selection of jurors for the administration of justice in civil and criminal controversies.

"Respectfully yours,

"_____ _____."

"CONGRESS OF THE UNITED STATES,
"HOUSE OF REPRESENTATIVES,
"*Washington, D.C.*

"Hon. NICHOLAS DEB. KATZENBACH,
"*Attorney General,*
"*Washington, D.C.*

"DEAR MR. ATTORNEY GENERAL: We, as Members of Congress, believe that the legislation which the President promised to present to Congress 'to establish unavoidable requirements for nondiscriminatory jury selection in Federal and

State courts' should include provisions dealing with discrimination based on sex, as well as other irrelevant factors such as race, color, political or religious affliation, or economic or social status.

"We believe there is no rational or legal justification for the continued toleration of discrimination against women in jury participation anywhere in our country.

"Enclosed is a copy of the joint letter we have sent to the President expressing these views.

"We hope, and respectfully urge, that the bill which your Department is preparing to submit to the President for his presentation to Congress will include provisions to prohibit and eliminate discrimination based on sex in the selection of juries in both Federal and State courts.

"Sincerely yours,

"_____ _____."

"FEBRUARY 14, 1966.

"To: Hon. FLORENCE P. DWYER,

"From: Phineas Indritz, Counsel, House Committee on Government Operations.

"Subject: Discrimination againt women in selecting jurors in Federal and State courts.

"Pursuant to your request, I have prepared the following brief summary of the present status of discrimination against women in jury service in Federal and State courts.

"I. JURORS IN FEDERAL COURTS

"By virtue of the Civil Rights Act of 1957 (28 U.S.C. 1861), women are now eligible to serve on all Federal juries. State eligibility rules are no longer controlling for either grand or petit jurors in Federal courts. The validity of this statute was upheld in *United States* v. *Wilson*, 158 F. Supp. 442 (D.C., Ala., 1958), aff'd. 255 F. 2d. 686, cert. den., 358 U.S. 865. Compare *Ballard* v. *United States*, 329 U.S. 187 (1946).

"However, the Committee on Civil and Political Rights of the President's Commission on the Status of Women reported, in October 1963, that the new statutory eligibility of women has not been given full effect in many of the Federal district courts. The report stated that the percentages of women serving on juries were very low, and that the jury-listing procedures are not calculated to secure their full participation on the district court juries. The Committee therefore recommended enactment of legislation to expressly prohibit discriminatory exclusion of women from Federal juries and to help achieve equal jury service through the improvement of jury listing and panel selection procedures.

"The Committee specifically endorsed section 1864(b), paragraph 2, of H.R. 3284, 88th Congress, which provided: 'The procedures employed by the jury commission in selecting the names of qualified persons to be placed in the jury box shall not systematically or deliberately exclude any group from the jury panel on account of race, sex, political or religious affiliation, or economic or social status' (report, pp. 11–12).

"The Committee also recommended that the Judicial Conference and other Federal agencies should give attention to practices concerning listing and calling of women jurors, and should press for equal jury service.

"On February 10, 1966, Senator Douglas, on behalf of himself and 19 other Senators of both political parties, introduced S. 2923 entitled 'The Civil Rights Protection Act of 1966 (Congressional Record daily issue pp. 2856–2863). Sections 101–104 of the Douglas-Case-Hart-Javits, etc., bill contains provisions designed to secure, in the selection of Federal court jurors, 'a representative cross-section of the population of the judicial district without exclusion on the basis of race, color, sex, political or religious affiliation, or economic or social status.'

"II. JURORS IN STATE COURTS

"A. Three States specifically permit only males to serve on juries. These are: Alabama, Mississippi, and South Carolina.

"B. Twenty-six States and the District of Columbia provide different treatment for men and women with respect to jury service, as follows:

"1. Three States permit women to serve on juries only if they first register with the clerk of the court.

"These are: Florida (in addition, Florida specifically provides that a jury in a condemnation case shall be composed only of men), Louisiana, New Hampshire.

"2. Sixteen jurisdictions permit women to claim exemption from jury service solely because they are women. These are: Alaska, Arkansas, District of Columbia, Georgia, Kansas, Maryland (Maryland jury law varies from county to county—of the 23 counties, 4 permit women to claim exemption on the basis of sex alone, and 19 counties apply the law equally to men and women), Minnesota, Missouri, Nevada, New York, North Dakota, Rhode Island, Tennessee, Virginia, Washington, Wisconsin.

"3. Eight States specifically exempt women (but not men) on the basis of their responsibilities in connection with child care or other family matters. These are: Connecticut, Massachusetts, Nebraska, North Carolina, Oklahoma, Texas, Utah, Wyoming.

"4. Two states include women on the jury only when courthouse facilities permit. They are: Rhode Island, Nebraska.

"5. Two States specifically provide that women are not required to serve in trials involving certain crimes. These are: Massachusetts, Nebraska.

"(C) Twenty-one States apply the law equally to men and women. These are: Arizona, California, Colorado, Delaware, Hawaii, Idaho, Illinois, Indiana, Iowa, Kentucky, Maine, Michigan, Montana, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, South Dakota, Vermont, West Virginia.

"The 1963 report of the Committee on Civil and Political Rights of the President's Commission on the Status of Women stated (pp. 12–14):

" 'The Committee believes there is urgent need for State legislative reform with respect to jury service eligibility, exemption, and excuse in order to achieve equal jury service in the States. The removal of sex distinctions in State laws respecting jury service would not mean that women having the care of small children would be forced out of the home; it would mean only that eligibility for an exemption and excuse from jury service would be the same for either sex.'

"The Douglas-Case-Hart-Javits, etc., bill (S. 2923) contains provisions (sec. 105–112) to prohibit jury discrimination in State courts but only with respect to discrimination based on 'race or color,' not with discriminatioin based on sex. This bill, I understand, was prepared by the Leadership Conference on Civil Rights which announced that the principles of the bill are supported by the following organizations participating in the Leadership Conference (Congressional Record, pp. 2857–2858, daily issue of Feb. 10, 1966): American Civil Liberties Union, American Jewish Committee, American Jewish Congress, American Veterans Committee, Americans for Democratic Action, Anti-Defamation League of B'nai B'rith, Congress of Racial Equality, Episcopal Society for Cultural and Racial Unity, National Association for the Advancement of Colored People, National Council of Catholic Women, National Urban League, Protestant Episcopal Church Division of Christian Citizenship, Southern Christian Leadership Conference, Union of American Hebrew Congregations, Unitarian Universalist Fellowship for Social Justice, United Automobile Workers of America, United Steelworkers of America, Women's International League for Peace and Freedom.

"The effect of discrimination against women in jury selection is dramatically illustrated by the situation of Lowndes County, Ala., where State court juries recently acquitted the slayers of Mrs. Viola Liuzzo and Jonathan Daniels, both white civil rights workers. The population of Lowndes County, aged 21 to 64 years, inclusive, is as follows:

		"Percent
Men:		
White	738	13.2
Negro	1,798	32.1
Subtotal	2,536	
Women:		
White	789	14.1
Negro	2,278	40.6
Subtotal	3,067	
Total	5,603	100.0

"Thus, of 5,603 persons in that age group, 4,865 (86.8 percent) are excluded from jury service, and only 738 white males in that age group are available for jury service.

"In view of this situation, a number of persons—including Negroes, white women and others—filed suit in August 1965 in the U.S. District Court for the Middle District of Alabama, Northern Division (*White, et al.* v. *Crook, et al.*, civil action 2263–N) against various Alabama officials responsible for jury selection in Lowndes County. The U.S. Department of Justice intervened in support of the plaintiffs. On February 7, 1966, the court ruled that Alabama's law excluding women from jury service is unconstitutional on the ground that it violates the equal protection clause of the 14th amendment.

"This decision does not necessarily settle the issue. There will probably be further litigation, both in Alabama and in other States, for at least two reasons.

"First, there have been past decisions by the Supreme Court and by State courts which have either ruled, or assumed, that it is constitutionally permissible for a State to provide different treatment for women and for men (including the total exclusion of women) in relation to jury service: *Hoy* v. *Florida*, 368 U.S. 57, 60 (1961); *Strauder* v. *West Virginia*, 100 U.S. 303, 310 (1880); *Fay* v. *New York*, 332 U.S. 261, 289–290 (1947); *State* v. *Emery*, 224 N. Car. 581, 31 S.E. 2d. 858, 157 A.L.R. 441, annotation at 461 (1944); *Bailey* v. *State*, 214 Ark. 472, 217 S.W. 2d. 424, 9 A.L.R. 2d. 643 (1949); *Black* v. *State*, 215 Ark. 697, 222 S.W. 2d. 816 (1949); *Commonwealth* v. *Welosky*, 276 Mass. 398, 177 N.E. 656 (1931); *cert. den.* 284 U.S. 684 (1932); compare *Ballard* v. *United States*, 329 U.S. 187 (1946).

"Second, the district court decision in *White* v. *Crook* relates only to Alabama law. In view of the variety of the State laws relating to jury service by women, it is probable that extensive litigation will be required before women are treated equally with men in connection with jury service in all States.

"Accordingly, the judicial case-by-case method will take a long time to end discrimination against women in the selection of State court jurors. The question therefore occurs: Why was the Douglas-Case-Hart-Javits, etc., bill (S. 2923) drafted to end sex dicrimination in selecting Federal court jurors, but not in selecting State court jurors? The answer probably is that since the bill was drafted before issuance of the opinion in *White* v. *Crook* (which was announced on February 7, 1966), those who drafted the bill may have doubted whether, in view of the above cited decisions, Congress could constitutionally legislate on the subject of sex discrimination in the selection of State court jurors.

"I think Congress has such authority. The equal protection clause of the 14th amendment is not restricted solely to the protection of Negroes. It prohibits any State from making a distinction between classes of persons unless the classification is based upon a reasonable and rational ground which bears a just and proper relation to the attempted classification and is not a mere arbitrary selection. *Gulf, Colorado & S. F. Ry.* v. *Ellis*, 165 U.S. 150, 165 (1896); *Herandez* v. *Texas*, 347 U.S. 475, 478 (1954)

"Insofar as its rationality with respect to jury service is concerned, there is no difference between a legal distinction predicated solely on race (which the courts have uniformly held is unconstitutional) and one resting solely on the basis of sex. In neither case does the distinction bear a reasonable relationship to either civic responsibility, the quality of juror selection, or the proper functioning of the jury system.

"Hence, women have a constitutional right, under the equal protection clause of the 14th amendment, to be free from State-imposed discrimination based solely on their sex, in the selection of those who serve on either grand or petit juries. This is the rule adopted by the district court in *White* v. *Crook*. Section 5 of the 14th amendment authorizes the Congress "to enforce, by appropriate legislation," the guarantees of the equal protection clause, and thus to enact legislation prescribing methods and procedures to eliminate discrimination in State court juries on the basis of sex.

"In *Ballard* v. *United States*, 329 U.S. 187 (1946), the Supreme Court ruled that a criminal conviction in a Federal court case where women had been purposely excluded from the jury, violated the Federal statute regarding the qualification of jurors. Justice Douglas, speaking for four Justices, expressed the following views which are equally pertinent to the constitutional issue stated above:

" 'The American tradition of trial by jury, considered in connection with either criminal or civil proceedings, necessarily contemplates an impartial jury drawn

from a cross-section of the community * * *. This does not mean, of course, that every jury must contain representatives of all the economic, social, religious, racial, political, and geographic groups of the community; frequently such complete representation would be impossible. But it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Jury competence is an individual rather than a group or class matter. That fact lies at the very heart of the jury system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury.

" 'We conclude that the purposeful and systematic exclusion of women from the panel in this case was a departure from the scheme of jury selection which Congress adopted.

" 'It is said, however, that an all male panel drawn from the various groups within a community will be as truly representative as if women were included. The thought is that the factors which tend to influence the action of women are the same as those which influence the action of men—personality, background, economic status—and not sex. Yet it is not enough to say that women when sitting as jurors neither act nor tend to act as a class.

" 'Men likewise do not act as a class. But, if the shoe were on the other foot, who would claim that a jury was truly representative of the community if all men were intentionally and systematically excluded from the panel? The truth is that the two sexes are not fungible; a community made up exclusively of one is different from a community composed of both; the subtle interplay of influence one on the other is among the imponderables. To insulate the courtroom from either may not in a given case make an iota of difference. Yet a flavor, a distinct quality is lost if either sex is excluded. The exclusion of one may indeed make the jury less representative of the community than would be true if an economic or racial group were excluded. (329 U.S. at 192–194.)

" '[The] exclusion of women from jury panels may at times be highly prejudicial to the defendants. But reversible error does not depend on a showing of prejudice in an individual case. The evil lies in the admitted exclusion of an eligible class or group in the community in disregard of the prescribed standards of jury selection. The systematic and intentional exclusion of women, like the exclusion of a racial group, *Smith* v. *Texas*, 311 U.S. 128, or an economic or social class, *Thiel* v. *Southern Pacific Co.*, *supra*, deprives the jury system of the broad base it was designed by Congress to have in our democratic society. It is a departure from the statutory scheme. * * * Such action is operative to destroy the basic democracy and classlessness of jury personnel.' (329 U.S. at p. 195.)

"PHINEAS INDRITZ."

AUGUSTA, GA., *May 12, 1966.*

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.:

We urge that your committee report the civil rights bill, H.R. 14765, without title IV.

THE AUGUSTA REAL ESTATE BOARD, INC.

SLIDELL, LA., *May 21, 1966.*

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.:

Our board strongly urges you to vote against the proposed Federal forced housing law (H.R. 14765) because if adopted it would destroy the American tradition of freedom of contract—the right of individuals to choose.

Respectfully,

ST. TAMMANY BOARD OF REALTORS,
Mrs. GUS BALDWIN, Jr.,
President.

LAFAYETTE, LA., *May 16, 1966.*

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.:

Our board strongly urges you to vote against the proposed Federal forced housing law (H.R. 14765) because if adopted it would destroy the American tration of freedom of contract—the right of individuals to choose.

Respectfully,

LAFAYETTE, LA., *May 16, 1966.*
MARY ALICE R. BRIGNAC, *President.*

SAN PEDRO, CALIF., *May 23, 1966.*

EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.:

Please exert every effort to defeat the administration proposal bill H.R. 14765 title IV Civil Rights Act of 1966 that would strip from home and property owners their traditional right to choose to whom they may sell or rent.

TONY CALIFANO.
President, San Pedro Board of Realtors.

COLUMBUS, GA., *May 27, 1966.*

Representative EMANUEL CELLER,
House Office Building,
Washington, D.C.:

Re H.R. 14765, S. 3296, we urgently request you use all effort and influence at your command to have title 4 eliminated from the above bills.

Respectfully,

COLUMBUS REAL ESTATE BOARD, INC.,
PATSY G. COOPER, *President.*

LAREDO, TEX., *May 19, 1966.*

HON. ELIGIO DE LA GARZA.
House of Representatives,
Washington, D.C.:

The Laredo Board of Realtors, in the interest of all property owners are in unanimous opposition to title four of the Civil Rights Act of 1966 referred to as H.R. 14765. We urge you to use all your influence with members of the House subcommittee now considering this legislation to stop all action on this bill immediately.

E. J. DRYDEN,
President.
JOHN A. SNYDER,
Secretary.

ANCHORAGE, ALASKA, *May 28, 1966.*

CHAIRMAN OF THE HOUSE JUDICIARY COMMITTEE,
House Office Building,
Washington, D.C.:

Members of Alaska State Association of Realtors strongly encourage the rejection of title IV of H.R. 14765 and Senate bill 3296. Depriving a property owner of his rights of choice is removing one of the basic freedoms given in our National Constitution. We urge you and Congress to uphold the American way of freedom of choice.

W. RALPH FOSTER.
President, Alaska Association of Realtors.

ROME, GA., *May 12, 1966.*

Congressman EMANUEL CELLER,
Chairman of the House Judiciary Committee,
Washington, D.C.:

Strongly urge you report the Civil Rights Act bill H.R. 14765 (without) title IV.

W. P. HOPKINS,
President, Rome Real Estate Board.

TUCSON, ARIZ.

Hon. EMANUEL CELLER,
House Office Building, Washington, D.C. :

The right of self-government by free elections, of trial by jury and of freedom to contract for ones own property all are basic to the principals upon which our country was founded. Legislation which would deprive our citizens of these rights, under the guise of civil rights, is un-American and constitutes legal discrimination of the highest order, an end to the evil to discrimination in housing is now in sight by means of education, persuasion, and example. Any attempt to achieve this by force of law can only destroy all of the good work thus far accomplished. In every instance where State legislation comparable to that of the pending bill was submitted to a referendum of the people, it has been rejected by overwhelming majorities. Voluntary efforts are achieving the effort. Tucson, Ariz., is proof of the success of this voluntary effort.

While the objective of open occupancy is praiseworthy, this proposed means of accomplishing it is 100 percent wrong, since true and lasting acceptance of neighbors by neighbors can be accomplished only by understanding and education fostered voluntarily by churches, schools, and all men of good will it cannot be achieved by the Federal Government with its vast power wiping out the freedom of choice and contract for all citizens under the guise of providing a new right for minority groups.

We therefore strongly urge that you use your best efforts to retain the basic freedoms of our people by causing the defeat of title IV of H.R. 14765.

This request respectfully submitted by the 515 members of the Multiple Listing Service of Tucson.

RAYMOND S. LUETY, *President.*

CLEARWATER, FLA., *May 13, 1966.*

EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.:

Your continued opposition to the enactment of H.R. 14765 is earnestly solicited. The bill tramples on the basic and fundamental rights of Americans to dispose of private property to the person of their choice and introduces an element of compulsion in the dealings of a property owner with the person who seeks to buy or rent his property. These things are not in the public interest.

CLEARWATER-LARGO BOARD OF REALTORS,
A. RAY MCKAY, *President.*

LANDER, WYO., *June 2, 1966.*

Representative EMANUEL CELLER,
Washington, D.C.:

After careful consideration of the merits of H.R. 14765, the Fremont County Board of Realtors expectes your negative vote on this flagrant infringement of every homeowner's rights as provided by the Constitution of the United States.

K. L. MARTINSEN, *Secretary.*

MARTINSVILLE, VA., *May 24, 1966.*

Representative EMANUEL CELLER,
House Office Building, Washington, D.C.:

We strongly urge you to vote against House bill H.R. 14765. We are opposed to racial, religious or ethnic discrimination. We insist the element of compul-

sion, of legal coercion, between a property owner and a person with whom he does business, is not in the public interest.

MARTINSVILLE-HENRY COUNTY BOARD OF REALTORS.

ALBANY, GA., *May 24, 1966.*

Congressman EMANUEL CELLER,
Washington, D.C.:

The Albany, Ga., Board of Realtors request that the House Judiciary Committee report the 1966 Federal Civil Rights Act without title IV.

J. LAMAR RESESE, Jr.,
Resident Albany Board of Realtors.

ST. AUGUSTINE, FLA., *May 19, 1966.*

HOUSE JUDICIARY COMMITTEE,
House of Representatives,
Washington, D.C.:

We urge your opposition to H.R. 14765 and all other such forced housing legislation that might be introduced.

ST. AUGUSTINE-ST. JOHNS COUNTY
BOARD OF REALTORS.

RIVER GROVE, ILL., *May 23, 1966.*

Congressman EMANUEL CELLER,
House Office Building,
Washington, D.C.:

As Chairman of the legislative committee for the Leyden Board of Realtors we wish to go on record as being opposed to bill H.R. 14765; we also feel this is the opinion of the majority of the one hundred thousand people from Leyden Township.

FRANK STEIN.
Leyden Board of Realtors.

CITIZENS LEGISLATIVE ACTION COMMITTEE,
Berwyn, Ill., May 19, 1966.

Hon. Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building
Washington, D.C.

DEAR CONGRESSMAN: The Citizens Legislative Action Committee of Illinois does hereby wish to notify you that we are against H.R. 14765 (Federal "Forced Housing" Law), especially Part IV of the suggested legislation, which tramples on the rights of the owner of private property, and makes it unlawful for a property owner to refuse to sell, rent, or lease said property to someone not of his own choice.

A bill such as H.R. 14765 is, in our judgment, unfair, unconstitutional, and would subject the citizens and private property owners to the loss of his basic inherent rights through the exercise of a Police System similar to those being exercised in Communistic Governments that take personal privileges and rights away from individual citizens.

This Federal "Forced Housing" Law purports to grant rights, and privileges to one group by destroying the constitutional rights and privileges of others by force of law.

We humbly ask that you kindly protect the rights of citizens and property owners in this Great Country of ours by protecting and safe-guarding our constitutional rights and freedoms in the defeat of this proposed legislation. We respectfully thank you.

Sincerely,

OMAR CALZARETTA,
Chairman Citizens Legislative Action Committee.

BUILDING OWNERS AND MANAGERS OF ATLANTA, INC.,
Atlanta, Ga., May 31, 1966.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR SIR: The Building Owners and Managers Association of Atlanta, Georgia, with a membership which includes the major owners of commercial real estate located in Atlanta, hereby oppose any favorable consideration by your Committee and the passage of H.R. 14765.

Our objection is not only to Sec. 403 of this proposed legislation which would preempt certain long-established rights incident to the business of selling, renting and leasing residential property, but also the impropriety of the definition of "dwelling" in Sec. 402 to include vacant land and, by virtue of such definition, the resultant absolute restriction imposed by the later prohibitions of this Act on the alienation of property, the right to which has been fundamental to the legal as well as the economic basis of this democracy since its inception.

Sincerely yours,

C. HOWARD CANDLER, III, *President.*

CALIFORNIA PROPERTY OWNERS AND TENANTS COMMITTEE,
Los Angeles, Calif., May 20, 1966.

To the Members of the U.S. Congress:

As you contemplate the issues involved in the President's proposed measure dealing with alleged discrimination in the sale or rental of housing, may we call your attention to some very interesting aspects when the people of California expressed their feelings in repealing very similar housing legislation during the general election in November 1964.

Californians voted overwhelming opposition to such legislation by a vote of 4,526,460 to 2,395,747. This is the first state in the Union, and probably the only one thus far, wherein the people have had an opportunity to vote in a statewide election upon the important matter. Californians thereby voted to retain their freedom to sell, rent or lease their property to persons of their own choosing.

Those opposed to repeal took the matter to the Courts on a Constitutional question. The California Supreme Court, by a split decision, overruled the expressed wishes of 4,526,460 voters. A petition for a rehearing will be filed.

The vote in favor of the repealer, Proposition 14, was a non-partisan vote that crossed party lines. Note that the total "Yes" vote for repeal, 4,526,460, exceeded the total vote received by President Johnson in California which was 4,171,877. The total Democratic registration was 4,737,886. The Republican registration was 3,181,272.

We are confident that the vast majority of the voters in the other states in the Union would vote on this issue about the same way as did the California voters. Like us, they will be watching with great interest what the Congress does with this type of legislation.

Respectfully,

FRANK P. DOHERTY, *Chairman.*

MULTIPLE LISTING REAL ESTATE BOARD OF YAKIMA,
Yakima, Wash., May 25, 1966.

Hon. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House of Representatives, Washington, D.C.

DEAR MR. CELLER: The following resolution was passed at the May 18th membership meeting of this Board.

"*Resolved*—the Multiple Listing Real Estate Board of Yakima, Inc., representing 137 brokers and salesmen, goes on record as opposing the Civil Rights Legislation known as H.R. 14765 and S. 3296, on the grounds that this measure violates the constitutional rights of *all* citizens by trampling on the long established rights of private ownership including the right to dispose of private property to the person of the owner's choice. It is our belief that passage of this far reaching measure would eventually destroy the freedom of all Americans and ultimately injure rather than improve the cause of better race relations.

We should not destroy the foundations of freedom under the guise of correcting a social evil."

We trust you will ponder the implications of this measure and see fit to modify the legislation on this matter.

Yours very truly,

ELRY GRANSTRAND, *President.*

FEDERATION OF CITIZENS ASSOCIATIONS
OF THE DISTRICT OF COLUMBIA.
May 24, 1966.

JUDICIARY COMMITTEE,
U.S. House of Representatives,
Washington, D.C.

GENTLEMEN: Enclosed is a copy of a resolution approved at the May 12 meeting of this Federation, representing about 20,000 residents of the District of Columbia.

At the meeting, one of our past presidents, an attorney of international repute, spoke at length on provisions of pending legislation and his conviction that they are unconstitutional—that property owners have the right to dispose of their property as they see fit so long as it is to be used for lawful purposes. Other attorneys who are delegates are in full agreement with this position.

Very sincerely yours,

JOHN R. IMMER, *President.*

RESOLUTION ON FEDERAL CONTROL OF SALE OR RENTAL OF PRIVATE HOUSING

Whereas, a new Civil Rights bill has been proposed by the Administration and introduced in the Congress as S. 3296, and

Whereas, this bill contains provisions for the control by the Federal Government of the sale of private housing in the name of anti-discrimination, and

Whereas, the right of the individual citizen to own his own home and to dispose of it as he sees fit is one of the fundamental rights of our democracy and the proposed legislation would seriously impair this right, now, therefore,

Be it resolved by the Federation of Citizens Associations of the District of Columbia in regular meeting on May 12, 1966, that it opposes that part of the proposed civil rights legislation S. 3296 which would force an individual home owner to sell or rent his property against his desires, and

Further, that it calls on the Congress to reject this legislation, and

Further, that copies of this Resolution be sent to the President, Chief Justice Warren of the U.S. Supreme Court, the Attorney General, the leaders of the Senate and the House, the chairman of the committees involved, and the D.C. Commissioners.

Approved by the Federation May 12, 1966.

GEORGE W. BRADY,
Chairman, City Planning and Zoning Committee.
MRS. EDWARD B. MORRIS,
Secretary.

HOME BUILDERS ASSOCIATION OF GREATER SALT LAKE.
Salt Lake City, Utah, May 27, 1966.

Hon. EMANUEL CELLER,
Chairman of House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR MR. CELLER: We are deeply concerned with the so-called "Civil Rights Act of 1966" and the various sections under Title IV.

Instead of promoting Civil Rights this is trampling on rights; the rights of all property owners and the right of freedom to contract, etc.

The issue is not open occupancy or equal opportunity of housing for all people; the issue is whether Government should be permitted to compel a property owner to enter into a sale, or to rent a room in his home to a person not of his choice.

This Association is strongly opposed to H.R. 14765 and urges you to make every possible effort to assure its rejection.

Sincerely yours,

A. C. KING,
Executive Officer.

Subject: Proposed "fair" or "open" housing legislation.

1. This Ohio Citizen, a real property owner, requests your consideration of the following testimony (and supporting data) in opposition to the subject legislation now under consideration by our City, State, or Federal Legislators. These data, although referring specifically to an example in the State of Ohio, is pertinent to a broad application as our Federal Congress has previously made many land grants and /or/ treaties stipulating citizen's right to the complete ownership of real property.

2. In the first place, a warranty deed title to real property is valid by authority of the original land grant authorized by the Congress of the United States.

3. An appreciable large percentage of real property owners in Dayton, Ohio, hold their Warranty Deeds by assignment through one—Jonathan Dayton—, the latter having acquired his title and authority by land grant directly from the United States Congress in A.D. 1800. (See attached copy and photograph)"—to have and to hold the described tract of land—and to his heirs and assigns forever—" describes the intent of Congress. With no other qualifications or stipulations, the Dayton City Commission (or other inferior political subdivision), or the electorate by referendum, are without jurisdiction to encroach upon this act of Congress. Specific attention is invited to the word 'forever' in the above quotation.

4. Using the term "fair" or "open" housing in proposed legislation is a trick misnomenclature of English that does not, in actuality, promote the high and noble purpose its name seems to imply. This proposed legislation has been intentionally mislabled to hide its true identity and purpose and, therefore, borders on fraud. In full truth, the actual purpose of the subject legislation is to single out all real estate owners for the sole purpose of discriminating against them by trespassing on their civil right to completely own real property through process of contract. This is not a "exercise of regulatory powers", but would actually deprive the fundamental right of full 'ownership' per se. The state of 'ownership' includes the right of 'disposition'; if the right of 'disposition' is denied then one does not 'own', he has only enjoyed 'squatters rights', a land title system long antiquated. This would, in this event, effectively 'nationalize' the right to own real property.

5. The very simple, but important, fact in that no law exists in the State of Ohio which denies the equal opportunity to acquire, rent, or lease real property by anyone. The real full truth is that our present statutes governing contract in the acquisition of real property makes no mention of race, creed, or color, therefore these statutes are equally applicable to every citizen. It follows, that any attempt to legislate so called "fair" or "open" housing would promote discriminatory privileges for ethnic groups of citizens at the expense and detriment of real property owners, and would often violate Congressional Land Grant provisions as well as pre-convict citizen-home-owners, en masse, by denying them their individual civil rights of due process in a court of competent jurisdiction.

6. Attempts to justify enactment of "fair" or "open" housing laws under the Federal Civil Rights Act of 1964 would be stating that this Act contains provisions abrogating the right to acquire, rent, or lease real property by contract. The truth of the matter is that the 1964 Civil Rights Act is conspicuously silent on any reference to the right of contract or its relation to housing (real property).

7. Attempts to justify any "fair" or "open" housing laws because of moral reasons would be to attempt legislation in the field of religion, as the basic tenents of 'Morality' are taken from religious laws.

8. This citizen would view with great alarm any overt act indicating an organized conspiracy to abrogate his Constitutional rights to the full ownership of his home. The contract through which his home was acquired did not require any self-appointed agent of the Deity, any 'Civil Rights Organization', any City Commission, or a vote of any municipality as a prequisite to a good title transfer, or in payment of the valuable consideration. The above address is your correspondents home, and he expects all Legislators and Courts to sustain his full ownership of it to the same extent as when the conditions of its acquisition were accepted.

Very truly,

FORREST O. MILLER,
Ohio Citizen-Real-Property Owner.

JOHN ADAMS, PRESIDENT OF THE UNITED STATES OF AMERICA

To all to whom these presents shall come, Greeting:

Know ye, That in pursuance of the act of Congress passed on the first day of June 1796, entitled "an act" regulating the grants of Land appropriated for Military Services, and for the society of the United Brethren for "propagating the Gospel among the Heathen," and of the several acts supplementary thereto passed on the second day of March 1799, and on the eleventh day of February and the first of March 1800, there is granted unto—Jonathan Dayton—a certain tract of land estimated to contain four thousand acres being the second Quarter of the fifth Township in the fifteenth Range of the Tract appropriated for satisfying Warrants for Military services; surveyed and located in pursuance of the acts above recited: To have and to hold the said described tract of land, with the appurtenances thereof unto the said Jonathan Dayton, and to his heirs and assigns forever, subject to the conditions, restrictions and provisions contained in the said recited acts.

In witness whereof, the said John Adams, President of the United States of America, hath caused the seal of the said United States to be hereunto affixed, and signed the same with his hand, at the City of Philadelphia the Twentieth day of March in the year of our Lord 1800; and of the Independence of the United States of America the twenty fourth.

By the President:

[SEAL OF THE UNITED STATES OF AMERICA ATTACHED] JOHN ADAMS.

TIMOTHY PICKERING,
Secretary of State.

STATE OF OHIO)
County of Montgomery) *ss:*

Personally appeared before me: Mr. Forrest O. Miller, Mrs. Florence Apple, and Miss Margaret Ward, first being sworn according to law, says: "That they did jointly visit the Library of the Dayton Art Institute at aproximately 8:15 P.M. E.S.T. on 12 April 1966; and that they did witness and carefully inspect the land grant transcribed above; and that they are satisfied that this document is the original and authentic instrument; and that Mr. Forrest O. Miller, having seen this document some twenty years previously, recognizes it as the one and same document; and that the transcription appearing above is complete, true and accurate of the best of their individual and collective knowledge and belief."

The three affidavit's further sayeth not.

FORREST O. MILLER,
4830 Mays Ave., Dayton, Ohio.
FLORENCE APPLE,
3525 W. Hillcrest Ave., Dayton, Ohio.
MARGARET WARD,
1615 Wayne Ave., Dayton, Ohio.

Subscribed and sworn to before me this 30th day of April A.D. 1966.

[SEAL] LOUISE DAILEY.
Notary Public in and for Montgomery County, Ohio.

My Commission expires Sept. 3, 1967.

GARDENDALE CHAMBER OF COMMERCE, INC.,
Gardendale, Ala., May 20, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
Washington, D.C.

HONORABLE CELLER: You may be sure that we are unequivocally opposed to House Bill "H.R. 14765". We are certain you feel the same way. However, we want to lend our encouragement to your efforts and urge that you do everything within your power to defeat this bill.

"Property Rights" are so closely aligned to "Human Rights" that they are inseparable. We can't afford to lose the rights embodied in "Property Rights".

Very sincerely,

J. I. PESNELL, *President.*

MAY 23, 1966.

THE JUDICIARY COMMITTEE,
House of Representatives,
Washington, D.C.

GENTLEMEN: In accordance with your suggestion in answer to my letter asking for the privilege of appearing before the Committee in opposition to the Johnson current so-called Civil Rights Bill on behalf of the Maryland Petition Committee and myself, I am submitting our statement for the Record.

My name is Geo. Washington Williams, attorney, 231 St. Paul Place, Baltimore 2, Maryland, and I am authorized to speak for said Committee on any subject within the scope of its work, and the instance one definitely is, as is well known.

First, as this and much of the legislation in this field is predicated upon the 14th Amendment, we say it is our belief that the said Amendment is not legitimately a part of the Constitution, as we believe it was never constitutionally proposed by the House, as we understand that the membership was 184, and only 120 voted to approve, which, as you know, is not two-third of 184.

Now, since this was an Act of your House, we challenge your right to act with the 14th Amendment as your basic authority, and we also call your attention to the 9th and 10th Amendments, if that is true. If our information is correct, where do you get authority to act on such matters?

Secondly, now, even if the 14th Amendment were a legal document, you still have no right to act on Housing, as any such action must come from the States, even if they have the right to so act, which we do not admit.

Thirdly, the Committee is, and I am, also against all the other raids on the States, therein contained—and also, because the Federal Government has no *legal right* to go into the motive of States when acting within the range of their regular jurisdiction, as held by the Civil War-time case, *McCardle*, and it has been so expressed by later Supreme Court decisions. We here and now emphasize our objection on this ground, too.

Fourthly, while here, we also wish to say that we believe that, in view of *Section 5*, the 14th Amendment is not *self-executing*, which has been expressed on the floor of the House by the present Mayor of New York City, and without dissent then made, or at any other time that I have seen, and I get the Record regularly.

Fifthly, we are not overlooking the action of the Senate and the absence of delegations from the Southern States, whose votes were received in connection with the preceding, the 13th Amendment. The same applies to the House, and is now emphasized here.

Sixthly, also New Jersey and Ohio reversed their approving vote, but the reversal was ignored, as Seward's Report to the Congress shows.

The attached paper "To The Citizens of the United States" is intended to be a part of my remarks to your Committee.

It is understood that this will be inserted in the printed Record, the same as if orally given, but the absence of such right, I might say, is regretted.

Respectfully submitted,

GEO. WASHINGTON WILLIAMS.

GEO. WASHINGTON WILLIAMS, ATTORNEY AT LAW,
Baltimore, Md.

Re: Jefferson, Lincoln & Prof. Nevins on Integration & Effects

To the Citizens of the United States, Greetings:

The 17th of May will mark the Seventh Year since the so-called Segregation Decision by the Supreme Court, and one of the Press Associations says that "Segregationists" labeled that day 'Black Monday'. Others call it the 'Second Emancipation', and thus this integration movement is associated with Lincoln, and implies that Lincoln would be for this integration program, which I dispute. The Emancipation proclamation itself was not *general*, but covered only the *actual war area*, a war measure only.

Lincoln worked on three hypotheses, namely: (1) in Holy Writ it is said that a House Divided against itself cannot stand, and (2) he said that the country could not exist half slave and half free, that it would have to be all one or the other, and (3) he was, himself, working on the last item when he was in the White House, *namely, that the country could not live in peace half Black and half White*, and therefore, he was hoping to arrange for either a *repatriation* or a *colonization* in Central or the edge of South America. As to the third item, see the *Diary of Gideon Welles*, Secretary of the Navy, Vol. I, page 150, et seq:

Summer *1862*, I quote a couple of items therefrom to support my statement:

(1) "The President was earnest in the matter of wishing to send the negroes out of the country." Defense of Race and hatred are not synonymous. Speech, Congress, December 1, 1862, re colonization.

(2) "Thought it essential to provide asylum for a race which we emancipated but which could never be recognized or admitted to be our equals."

(3) Attorney General Bates "desired that *deportation*, by force if necessary, should go with emancipation." p. 158.

The Great Emancipator had previously made the following declarations: At Ottawa, Illinois, in the Douglas-Lincoln Debates, on August 21, *1858* "I have no *purpose* to *introduce political and social equality* between the white and the black races. There is a physical difference between the two, which, in my judgment, will probably forever forbid their living together upon the footing of perfect equality."

When a Delegation of Negro Preachers, *et al*, called upon him on August 14, *1862*, he, interalia, stated that: "You and we are different races. We have between us a broader difference than exists between almost any other two races. Whether it is right or wrong, I need not discuss: but this physical difference is a great disadvantage to us both, I think. Your race suffers very greatly, many of them, by living among us, while ours suffers from your presence. In a word, we suffer on each side. If this is admitted, it affords a reason, at least, *why we should be separated.*"

At Springfield, on December 12, 1857, he said that "*A separation of the races* is the only perfect prevention of amalgamation, but as an immediate separation is impossible, *then the next best thing to keep them apart where they are not already together.*"

Re the Supreme Court, the Dred Scott (negro) case and Lincoln's caustic comment: "The Dred Scott decision is erroneous * * * The Court that made it has often overruled its own decisions, *and we shall do what we can to have it overrule this*" June 22, 1857. "All I am doing is to *refuse to obey it as a political rule.* It is the first of its kind. It is an astonisher in legal history * * *. It is based upon falsehood in the main as to facts. Allegations as to facts * * * are not facts at all in many instances." July 10, 1858. My intention is "not to overthrow the Court, *but is to overthrow the men who perverted the Court*". Sept. 14, 1859. Compare the Segregation cases, 347 U.S.

Prof. Allan Nevins, Professor of American History at Columbia University and author, tells us in the U.S. News and World Rep., Nov. 14, 1958, page 72, that amalgamation will be the result, as things are now going: "*As a historian*, I do not for a moment believe that, in our mighty American river of many nationalities, *two currents can flow side by side down the centuries without ultimately becoming one*" and he says that "any *sociologist* could *cite a dozen reasons* why it is *inevitable*" and that he "could *cite a dozen analogies* from history to prove that such a process is *inexorable, irresistible.*"

Thomas Jefferson says, "Nothing is more certainly written in the book of fate than that these people are to be free, nor is it less certain that these two races, equally free, cannot live under the same government." (Jefferson, a Biography.) Letter to Holmes, April 22, 1820 says he hopes "a general *emancipation and expatriation* could be effected, and gradually with due sacrifice, I think it might be done." *What is the answer to all this?*

Many quotations sustaining the above expressions could be supplied, and I do not like to see Lincoln and Jefferson misunderstood and libeled as they have been down through the years, (and are now at least inferentially libeled) and such people become *Judas Goats by associating them with the current integration movement.* If I am an *evil person* I am in *good company.*

Yours sincerely,

GEO. WASHINGTON WILLIAMS.

To: Congress of the United States of America.
From: Maryland Petition Committee, Inc., P.O. Box 1631, Annapolis, Md.
Date: April 21, 1966.
Subject: Research material regarding civil rights.

THE SWITCH FROM COMPARATIVE TRANQUILITY TO TURMOIL AND RIOTS AND WHY?

It is important for every American who wishes to contribute to a solution of the race problem in our country to recognize certain truths—truths that can be backed by facts, not theories or ideals unrelated to scientific realities. One of the

most important sets of truths that all men in a position to formulate policies of government should understand and study, is genetics. Dr. Eldon Gardner's *Principles of Genetics*, is a good presentation to start with (John Wiley and Sons, Inc., 1960). The importance of genetics toward resolving the race problem now afflicting society with riots and violence is clearly shown in the following paragraph from page 2, quoted with permission:

"Furthermore, individuals do not react in exactly the same way to propositions or environmental situations. The fundamental differences among people are real and inescapable. Biologically speaking all men are not free and equal as stated in the Declaration of Independence, there exists many biological differences. The social ills with which society is plagued might be overcome in large measure by recognition and understanding of these individual differences and concepts of liberty and freedom would take on added significance."

The next thing to look at is the crime picture. Mr. Henry Savage, Jr., in his book *Seeds of Time*, states on page 299:

"The whole problem is complicated by being made to appear more simple than it actually is when New Yorkers, for example, are not informed that from their negro fourteen per cent in 1957 came over half of all the city's criminals when Chicagoans are not made aware of the fact that more than half of the arrests in their city for homicide, rape, and robbery were from their fifteen per cent negro population; and when the people of San Francisco are not made aware that more than half of their robberies were committed by negroes although they represented but seven percent of the city's population. Perhaps if non-Southerners were given such facts they would realize that the process of integration where negro ratios are far greater is not so simple as they are prone to believe, and a more patient and understanding attitude toward the South which is fully aware of such facts, might result." (Permission to quote given.)

Now, many intellectually honest negroes recognize these facts, although they are reluctant to talk about them, their honesty prevents them from shifting the blame on to others for what they know to be their own shortcomings. The honest, intelligent, well adjusted negro definitely feels that the negro must accept his own responsibility in this matter. However, there are many vested interests in both the white and black races, who write and declare a lot of absurdities, and these people care only about the dramatic effect which their statements are designed to excite. Many of them wish to blame the injustices of the white man for the negroes failure to gain accessibility to full qualification for complete citizenship. However, there are many fine members of the Afro-American race—such as a well-known lawyer, a judge, and a psychologist—who place a great responsibility on their own people. They also criticze the programs of welfare, etc., for the great breakdown of the thrift, integrity, and moral independence of many members of their negro race.

Now, let us face some startling facts. The welfare bill for the United States has climbed to something over 5.5 billion dollars yearly, and every three years there is added to the cost, about another billion dollars. Yet these programs have failed to produce the desired results—a healthy society. In fact, for the years 1958-1964, our serious crimes increased six times as fast as our population. An even more alarming fact is that the juvenile population crime rate is increasing fifteen times as fast as the youth population.

The Surgeon General of the United States Public Health Service, Dr. Luther Terry, recently published some terrifying statistics. He stated that 1,500 youngsters acquire veneral disease in the United States each day. This means more than a half million new cases a year. This is a very disturbing truth when one considers the vast stretch of resultant perils from such pollution of body and behavior. An additional truth is that antibiotic treatment to fight the disease in this category has not turned out to be as entirely adequate as is commonly supposed.

A former Surgeon General of the United States Public Health Service stated that negroes have nine times as much syphilis as do whites. A great confusion has been created by equating favorably the culture of the mass of the United States negroes to the culture of the minority. However it is extremely important that one face this problem realistically.

You must face your personal limitations, so must everyone. This is one of the basic rules of mental hygiene. People who promote dreams which have no bases for realization, create frustration and hate, this causes people to strike out at anything and everything. Bureaucratic government cannot provide

everything for the people, including brains. It is a great mistake to take the constitutional right of one group of people away from them and give an unconstitutional right to another group, who in the majority are separated from each other by many fundamental differences. Many people may refuse to face these facts, nevertheless, the scientific facts as noted by Dr. Elden Gardener cannot be disputed.

When one has, in himself, the qualifications for progress, he is able to lift himself up by his own bootstraps. However, all the help in the world will go down the drain if one does not have either the will or the gray matter, which includes judgment and foresight, to accomplish ones wishes.

Booker T. Washington, who was born a slave, and yet attained fame and respect, stated to his race:

"Put down your buckets and prove yourselves before you ask for anything more."

You cannot create character in people by simply trying to give them sustenance, nor strengthen their mental muscles by excusing them and justifying their civil disobedience. Though negroes constitute only slightly more than 10% of the population in the United States, they are reported to receive 20% of the welfare funds. This amounts to $2.00 spent per negro in comparison to 90 cents per white person in the population.

In Baltimore about four years ago, when the negro population was not as high as it is today (1965), 80% of the people on welfare were negroes and 90% receiving medical relief were negroes. Today the city jail houses inmates 85% of whom are negroes and 65% of these are repeaters.

It would be good for the thinking person to stop and take a look at the glaring omission from so many commentaries on "Civil Rights" of a basic and substantial part of the real issue. How many times does anyone hear or read of civil responsibilities?

The pseudo-experts have produced a sorry mess of the domestic tranquility of this country. The alluring schemes of passionate reform were yielded to before the long-range advancements for which our standards impel us had time to evolve. This has led negroes to expect what they are unable to obtain in mass at present, and which many, may never be able to accomplish by and of themselves.

But, no matter what their goals may be, certainly their reaction to the laws passed for their benefit has only proven that they are unable to assume basic civic responsibility. The terrible Harlem, Rochester, and other riots of last year plus the outrageous riots in Los Angeles and the lesser one in Chicago now, in 1965, can only prove that the method of appeasement is not producing the desired results.

How can anyone excuse the havoc created in Los Angeles, where 37 were killed, 800 injured, over 3,000 arrested, and 46 square miles were considered dangerous areas? Damage by fire was estimated at $175,000,000 while looting accounted for untold millions more—such a senseless loss of life and property. It was reported also that it cost about $200,000 a day to maintain order in this distracted city at the height of trouble. One might ask "Why?" Since our government has seen fit to make it so easy for the criminal, one can hardly expect anything else but anarchy in the country.

This is what the "Great Society" has supplied—the fertilization and cultivation by mouthings of injustice—and the crop produced could be nothing other than violence and destruction in our cities.

Proverbs 14:34 states: "Righteousness exalteth a nation; but sin is a reproach to any people."

One should not forget that the only laws given by God Himself and written by His finger on tablets of stone were the "Ten Commandments". The Fifth one states:

"Honour thy father and thy mother that thy days maybe long upon the land which the Lord thy God giveth thee."—given by God, not by coercion of government.

The Tenth Commandment states:

"Thou shalt not covet thy neighbor's house, thou shalt not covet thy neighbor's wife, nor his man servant, nor his maid servant, nor his ox, nor his ass, nor *anything* that is thy neighbors."

Laws are not good laws which are in opposition to the laws of God. However, many ministers being only fallible men have not always, either adhered to the Bible, or have they been able to understand its meaning.

James Madison wrote in 1785:

"Because experience witnesseth that ecclesiastical establishments, instead of maintaining the purity and efficacy of religion, have had a contrary operation. During almost fifteen centuries, has the legal establishment of Christianity been on trial. What have been its fruits? More or less in all places, pride and indolence in the clergy; ignorance and servility in the laity; in both, superstition, bigotry, and persecution. Enquire of the teachers of Christianity for ages in which it appeared in its greatest lustre; those of every sect, point to the ages prior to its incorporation with civil policy."

Now, of recent years the relationship between the leaders of the National Council of Churches and the present administration must be very close according to the president of the N.C.C. for in an interview with "Capital Times" a reporter of Madison, Wisconsin, reported that he said:

"The churches are more involved in changing both religious and political policies than any other group in the country."

Besides this he is quoted as saying:

"The passing of civil rights legislation has been affected more largely by the religious institutions of this country than any other factor."

However, there is a grave question as to whether any of the members of the member churches of the National Council of Churches have ever been polled on the issues which they sponsor. For example at a hearing of the special subcommittee on labor of the House Committee on Education and Labor, it is reported that Congressman Robert Griffin asked, "Has the National Council of Churches ever polled the members of the member churches of the National Council of Churches on this issue?"

The reply was, "No." wo don't proceed in that way * * *" Mr. Griffin then declared, * * * "I am a member of a church that is affiliated with the National Council of Churches and I want to say on the record that I bitterly resent the fact that the National Council of Churches is involving itself in an issue such as this."

In the final enumeration of facts the following quotation is from *The Dan Smoot Report*, Box 9538, Dallas, Texas, 75214, Title "The Fruits of Liberalism":

"It is a fact—astonishing and grim, but a fact—that the growth in the U.S. crime rates has followed the growth of the socialistic welfare state. From 1933 to 1963, population in the United States increased 50%; crime rates increased 1231% government spending (approximately one half of which is for welfare) increased 1215%. (22, 23)

"Figures give the lie to the liberal contention that poverty and unemployment are basic causes of crime. In 1933, at the bottom of the great depression when more than 12 million adults were said to be unemployed, reported arrests for crime in the United States totaled 320,162. In 1963, when the nation was enjoying full employment, riding the crest of affluence, reported arrests totaled 4,259, 463. (22) In 1933, government spending (federal, state, and local) totaled about $12.8 billion, in 1963, $168.4 billion. (23)

"Bad conditions do not create bad people. Bad people create bad conditions. When decent, productive people are forced to support and coddle criminals and other dregs and drones of society, chaos, degradation, and ruin are inevitable.

"The longer we wait to abandon collectivism and return to individualism—to dismantle socialistic welfare—statism and re-establish constitutional government—the harder our task will be. If we do not act quickly, we will soon reach the point of no return to freedom and decency in an organized society. The criminals and the drones feed and flourish on the bounty which productive citizens are forced to provide. When tax consumers so overwhelmingly outnumber tax producers that they control all elections and politicians, it will be too late to save our civilization." (Permission to quote given under conditions.)

Do you want crime and violence in our country in the wholesale manner of today? If not, let your vote count on every bill, also let your vote count in every election from now on, and give us laws, and elect men who will give us justice but no more appeasement.

(22) Compiled from "Uniform Crime Reports"—Federal Bureau of Investigation.

(23) Historical Statistics of the United States,—Bureau of the Census,—Facts and Figures on Government Finance.

[Reprinted from the Baltimore Evening Sun, May 4, 1966]

CIVIL RIGHTS CAUSE LOSES A FRIEND

SIRS: I am opposed to any further extension of civil rights to Negro citizens, no matter that they may be entitled to them.

I would strongly hope that this sentiment comes as a shock to the Negro community, and particularly to my many Negro friends of years' standing, for my credentials over the years as a civil rights advocate are unassailable.

I was a member of the N.A.A.C.P. in 1945, when few white persons would stand up and be counted on the subject of civil rights, while at the same period I was both anti-Communist enough to be called a red-baiter by some friends, and anti-McCarthy enough later, when he came along, to have been the author of a practical joke denouncing him upon the occasion of the unveiling of a monument in his honor in Baltimore city at the height of his popularity. I am a long-time member of the A.C.L.U. Legal Panel, and have been a member of the Legal Assistance Committee of the N.A.A.C.P. I live in a three-quarter Negro block, next to a Negro slum, and happily send my children to a 50–50 integrated elementary school, which happens to be the best in town; I have run for public office on a slate headed by our present Negro State Senator, Verda Welcome, and I was invested with important responsibility in the campaign of Henry Parks. I have, as a lawyer, represented civil rights demonstrators in the Courts, and I have most recently raised the question, with apparent immediate success which should culminate in a rapid correction, of the long-standing evil in Baltimore city of petit jury panels inherently discriminatory against Negroes.

But the Watts riots disgusted me, and sickened me as a human being. The inhumanity of undiscriminating maiming and killing by Negroes of human beings who had performed no specific wrong against any Negro, but who were attacked, and butchered, like slaughterhouse pigs, only because they were random members of a hated group, was barbarism at its worst. The full bloody enormity of the Watts occurrence is beyond exaggeration.

I cannot accept then, as a human being, the manner in which Negro leaders have drawn the Watts carnage to their bosoms; and have declared it to be, not their shame, but their glory. So be it. I have heard Germans boast of Dachau, also.

But I wish such persons to know that they will not, until killing has been forsworn as a political weapon, have my sympathy or my support, or my good will.

I will not be moved by the threat of harm to myself my loved ones and my possessions, to yield up anything to those who threaten me—no matter whatever whether or not I am entitled to hold back that which I will not yield. To yield to threats of horror is both, immoral and dangerous.

I would believe that tears and remorse would be the fitting reaction of Negro leadership to the terror and death consciously perpetrated by colored persons in the course of despoliation of Watts. I will not accept the inhuman savagery, the simple affront to human dignity, the unholy evil of having rioting and harm brandished at me, or at anyone, as an alternative to giving way.

I for one will not give way. I have seen the social and political condition of the Negro advance, during the later years of my adulthood, more by far than they advanced in all of the previous years since the Civil War.

I have worked for it, I have wanted this, and as a human being I would want it to continue.

But gentlemen of the Negro community, by expressing pride, complacency, or satisfaction in the Watts riots, you have lost me.

LEONARD J. KERPELMAN.

Baltimore.

(Distributed by Maryland Petition Committee Inc., Box 1631, Annapolis, Md.)

TAXPAYERS INTEREST LEAGUE,
POST OFFICE BOX 3575,
Baltimore, Md., May 4, 1966.

To the Honorable The Congress of the United States of America:

We of the Taxpayers' Interest League, Incorporated, respectfully urge that you will cast a negative vote *against* the following bills and any of a similar nature:

The Urban Development Act,
The Demonstration Cities Act, and
A National Forced Housing Act of any type.

Enclosed is a letter giving our reasons for opposing the provisions in these bills which would lead to the forced integration of neighborhoods. Please read them carefully.

In addition, we oppose these bills because of the higher taxes their passage would make necessary. We believe that it is vital to the economic health of the United States, and consequently to its freedom, to stop the run-away spending on non-essentials.

Finally, we oppose these bills because they increase the control of the federal government. We need to halt the increasing socialization of the U.S.

Please work for the development of cities and suburbs by private enterprise *only*, with the federal government functioning efficiently in the spheres assigned to it by our Constitution, interpreted as in the original.

We thank you for considering our views and would appreciate your comments.

Very sincerely yours,

(Miss) MAUD-ELLEN ZIMMERMAN,
Chairman of the Legislative Committee.

BALTIMORE, MD., *April 14, 1966.*

To the Honorable The Congress of the United States of America:

We of the Taxpayers' Interest League, Incorporated, are opposed to forced housing legislation in any guise. We urgently and respectfully request your opposition to any bill proposed for so-called "fair" housing or "open" occupancy. We consider any type of forced housing legislation an abridgement of the rights of *all* citizens, those who own property and those who do not.

We oppose forced housing legislation because it abridges the basic freedom of the property owner to control his property. The right of the owner to decide to whom he will rent, lease or sell his property is as fundamental to Americans as is the right to life, liberty and the pursuit of happiness. A man acquires property in exchange for his time and effort; his time and his effort are his very life! The exclusive right of the property owner to possess, enjoy and dispose of any property—whether it be a horse or a house—is a basic and fundamental concept upon which Americans have built their lives; it is, indeed, the basis upon which our free enterprise system is built.

Further, we oppose forced housing legislation because it restricts the right of the individual to determine his choice of associates. This point is borne out by the following quotations from the 1959 report of the United States Civil Rights Commission:

"* * * the need is not for a pattern of integrated housing. It is for equal opportunity to secure decent housing * * *" and

"* * * There may be many Americans who prefer to live in neighborhoods with people of their own race, color, religion, or national origin. The right of voluntary association is also important. * * *"

These two fundamental rights—the control of one's property and the choice of one's associates—we believe are guaranteed by the Constitution of the United States. It is good to know that many of the legal profession agree with this interpretation. We refer you to a volume edited by Dr. Alfred Avins, a constitutional lawyer, titled *Open Occupancy vs. Forced Housing Under the Fourteenth Amendment.* This is "A Symposium on Anti-Discrimination Legislation, Freedom of Choice, and Property Rights in Housing". It summarizes many cases histories, psychological and sociological studies, real estate people's reports of experience, et cetera, giving excellent documentation and very cogent direct quotations, including on pages 41 and 42 the ones cited above from the Civil Rights Commission report. Trial has shown forced housing laws ineffectual and detrimental.

Some who oppose us use ridicule, claiming that the reasons we state are a screen to mask bigotry and prejudice. Such is not the case. We desire to preserve liberty for *all* citizens.

Forced housing laws would be most difficult if not impossible to enforce with any degree of justice. There are people of his own race an individual citizen would want to turn down in the renting or selling of his property. In selling, it would be because he would be considering his former neighbors in the community. In renting, he may be considering the care he would want his property

to receive. If the person he turned down happened to be of a race, religion, or ethnic group different from himself and that person registered a complaint, the homeowner would have difficulty proving the validity of his reasons.

In Baltimore City, bills for forced housing have been defeated for three consecutive years. For the past four years, such bills have been introduced in the Maryland General Assembly, but they have failed to become law. The voting of the members of the Baltimore City Council and of the State Legislature reflects the true feeling of the majority of their constituents on this issue.

We are confident that a national law of any type restricting the freedom of action of those concerned with the sale and rental of residential real property—whether owners, agents, or lenders of money—would be odious to the citizens of free America. Please advise us whether we can count on a negative vote from you in respect to any such legislation. Thank you.

Very sincerely yours,

Miss MAUD-ELLEN ZIMMERMAN,
Chairman of the Legislative Committee, Taxpayers' Interest League, Inc.

Taxpayers' Interest League, Inc., is dedicated to—
Honesty and efficiency in government,
Excellence in education,
Sincerity in politics,
Effectiveness in law enforcement, and
Fairness in taxation.

ANNAPOLIS, MD., *April 14, 1966.*

To the Congress of the United States of America:

You will find attached to this introductory statement a copy of a speech which I made in the name of the Maryland Petition Committee, Inc., to the Judiciary Committee of the House of Delegates of the Maryland General Assembly on March 16, 1966. Since it has many ideas in it which apply equally to President Johnson's plan to force integrated housing, I am submitting it to you for thoughful and prayerful consideration.

It is my firm and unalterable conviction, which is also shared by members of the group that I represent, that the free choice of a person's home and associates is and shall remain an individual's sacred right. Certainly our wonderful Constitution also substantiates this fact.

Therefore, we appeal to you to study carefully and pray over your decision, which we trust will be in accordance with the Constitution and with the laws of the Ruler of the Universe.

Respectfully,

A. STEI FOX,
Unpaid Lobbyist, Maryland Petition Committee, Inc.

Members of the General Assembly of the State of Maryland:

Only one of the many possible arguments will be developed on these two pages to support passage of the proposed amendment to the Constitution of the State of Maryland which would guarantee to owners of real estate their right to choose tenants and purchasers.

My concern is with the First Amendment to the Constitution of the United States: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; * * *" While many prominent religious leaders have stated their desire to require integration of housing by law, they should not be allowed to force this upon dissenting members of their own congregations nor upon members of religious bodies who believe integration and amalgamation of the races to be contrary to the teachings of the *Bible.*

Before listing some of the *Bible* quotations, I will quote points relevant to the present situation from the successful argument given by James Madison in 1785 protesting a bill which was being proposed in the Virginia General Assembly. This document is one of several which paved the way for the Bill of Rights of the federal Constitution. I quote from *Memorial and Remonstrance Against Religious Assessments* (*Writings of James Madison*, Hunt Edition, Vol. II, pp. 183–191):

"* * * We remonstrate against the said Bill,

"1. Because we hold it for a fundamental and undeniable truth, 'that Religion or the duty which we owe to our Creator and the Manner of discharging it, can be directed only by reason and conviction, not by force or violence.' The Religion then of every man must be left to the conviction and conscience of every man; and it is the right of every man to exercise it as these may dictate. This right is in its nature an unalienable right * * *.

"3. Because, it is proper to take alarm at the first experiment on our liberties. We hold this prudent jealousy to be the first duty of citizens, and one of (the) noblest characteristics of the late Revolution. The freemen of America did not wait till usurped power had strengthened itself by exercise, and entangled the question in precedents. They saw all the consequences in the principle, and they avoided the consequences by denying the principle. We revere this lesson too much, soon to forget it * * *.

"8. * * * What influence in fact have *ecclesiastical establishments* had on Civil Society? In some instances they have been seen to erect a spiritual tyranny on the ruins of Civil authority; in many instances they have been seen upholding the thrones of political tyranny; *in no instance have they been seen the guardians of the liberties of the people.* Rulers who wished to subvert the public liberty, may have found an established clergy convenient auxiliaries. *A just government*, instituted to secure & perpetuate it, *needs them not.* Such a government will be best supported by *protecting every citizen in the enjoyment of his Religion with the same equal hand which protects his person and his property;* by neither invading the equal rights of any Sect, nor suffering any Sect to invade those of another * * *. (Emphasis added.)

"9. * * * Instead of holding forth an asylum to the persecuted, it is itself a signal of persecution. It degrades from the equal rank of Citizens all those whose opinions in Religion do not bend to those of the Legislative authority. Distant as it may be, in its present form, from the Inquisition it differs from it only in degree. The one is the first step, the other the last in the career of intolerance. * * *"

Jefferson wrote in the Bill for Establishing Religious Freedom (1779, introduced: 1786, enacted—found in XII *Hening Statutes of Virginia* 84–86, 1823):

"I. Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hypocrisy and meanness, and are a departure from the plan of the Holy author of our religion, who being Lord both of body and mind, yet chose not to propagate it by coercions on either, as was in his Almighty power to do: that the impious presumption of legislators and rulers, civil as well as ecclesiastical, who being themselves but fallible and uninspired men, have assumed dominion over the faith of others, setting up their own opinions and modes of thinking as the only true and infallible, and as such endeavouring to impose them on others, hath established and maintained false religions over the greatest part of the world * * *."

Although preachers of the social gospel favor forcing integration by law, where were their principles hidden for the past hundred years? Their new dogma does not square with the clear pronouncements in the *Bible*.

The sanctity of an individual's right to property appears in the Ten Commandments, which were the only laws given by God Himself:

V. "Honor thy father and thy mother that thy days may be long upon the land which the Lord thy God giveth thee." (*Exodus* 20:12) Given by God, not by coercion of government.

X. "Thou shalt not covet thy neighbor's house * * * nor any thing that is thy neighbor's." (*Exodus* 20:17)

Acts 17:26 is very clear in the separation of the races:

"And hath made of one blood all nations of men for to dwell on all the face of the earth, and hath determined the times before appointed and the bounds of their habitation."

The distorted use of moral and religious principles to promote integration by force of law is the greatest hoax of the present time. Man's philosophizing cannot produce laws equal in quality to God's laws. Let us remember Christ's parable, recorded in *St. Matthew* 20:15, in which Jesus had the householder ask:

"Is it not lawful for me to do what I will with mine own?"

Very sincerely yours,

A. STELFOX,
Baltimore, Md., February 10, 1966.

In conclusion I will make one more statement from Genesis 13:8–9 "And Abraham said unto Lot, Let there be no strife, I pray thee, between me and thee, and between my herdmen and thy herdmen—

"Is not the whole land before thee? Separate thyself, I pray thee from me; if thou wilt take the left hand, then I will go to the right: or if thou depart to the right hand, then I will go to the left."

Paul states that these small details in the lives of former people in the Bible are "for our learning."

Did Abraham say, Let us have forced integration? Let's compel these people to live together! No! with decided significance.

In all humility and asking no more for myself and the large group of people whose ideas I represent—I ask nothing more than the upholding of the Constitution of the United States and the laws of the Government of the Universe.

To the members of this Honorable Assembly I appeal to your religious duty to see how unscriptural and outlandish and insane the policy is of forcing people upon one another against their wishes, and I sincerely hope you will vote as a bloc for the Amendment—120.

LOBBYIST FOR MARYLAND PETITION COMMITTEE, INC.

STATEMENT BY THE REV. ROBERT T. WOODWORTH, PASTOR OF OPEN BIBLE TABERNACLE, 5814 HARFORD ROAD, BALTIMORE, MARYLAND, IN BEHALF OF THE TAXPAYERS INTEREST LEAGUE, BALTIMORE, MARYLAND

Whatever positions people may have held on previous civil rights legislation, present proposals have aroused serious concern by thinking citizens. All Americans now have the right and freedom to buy or rent or sell their personal property from or to whomever they will. What is proposed is that we remove that freedom of choice and replace it with federal control. The civil right to own and dispose of ones own property is an inheritance of free men. Collective control, on the other hand, is a characteristic of communism. The issue is personal freedom versus state control. In God's name, I appeal to freedom. On the question of equality, Jesus replied in a parable, "Is it not lawful for me to do what I will with my own?" (Matthew 20:15) The question is rhetorical. God never intended that the masses would dictate to property owners how they could dispose of their own property. It is not civil nor right for any to expect the government to restrict the rights of all for the benefit of some.

Our American concept of freedom is the product of Christian men and minds and morals. We recognize that God is the Author of liberty, and that all men are endowed by their Creator with certain unalienable rights, and among these are life and liberty. Thomas Jefferson added, "God who gave us life gave us liberty. Can the liberties of a nation be secure when we have removed the conviction that these liberties are the gifts of God? Woodrow Wilson wisely observed, "Liberty has never come from the government. Liberty has always come from the subjects of it. The history of liberty is a history of resistance. The history of liberty is a history of the limitations of governmental power, not the increase of it." God gave us the liberty we enjoy in America to own and buy and sell and rent our real estate as free men. Americans do not now intend to surrender that liberty to government even under the deceitful title of "civil rights." As Edmund Burke wrote, "The people never give up their liberties except under some delusion." The modern delusion is that government can grant rights to some by taking away the rights of everyone.

The abrogation of personal property rights in order to promote social change is an abuse of governmental power, an infringement on the rights of all free men, and an offense toward God. A man's house and land are his greatest lifetime investment, and control of personal property is tantamount to control of personal lives. This is unthinkable in a free society. It is rather the duty of government to protect its citizens and their property. John Locke wrote that "The great and chief end thereof, of men's uniting into Commonwealths and putting themselves under government, is the preservation of their property."

Furthermore, any legislation which would make a man defend his reasons for refusing to sell or rent his own property to another man places a judgment on that man's thoughts. It proposes that a free man can be guilty of thinking prejudicial thoughts in the judgment of his neighbor. Thomas Jefferson de-

nounced any such audacity in his famous declaration: "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man." Making a man defend his thoughts and then presuming to judge whether those thoughts are right or wrong is the worst kind of tyranny.

The choice before us is personal freedom or governmental control. And I appeal to freedom—freedom under God, freedom from government, freedom from pressure by the masses, freedom from defense of convictions. Liberty is deeply rooted in the nature of our people. It was given by God to Moses, and God's people down through the ages have defended their liberty with both pen and sword. Let us now preserve liberty at home with the pen as we are now liberating with the sword on foreign battlefields. As our revered Liberty Bell tolls "Proclaim liberty throughout all the land unto all the inhabitants thereof." (Leviticus 25:10) Let there be no legislation which would restrict the rights of the people to dispose of their real property.

STATEMENT BY ALABAMA REAL ESTATE ASSOCIATION, INC., IN OPPOSITION TO H.R. 14765

The Alabama Real Estate Association, Inc., an affiliate member of the National Association of Real Estate Boards, and comprising some 2,000 members in Alabama, would like to present the views of the members of this Association in opposition to Title IV of the pending Civil Rights Act, H.R. 14765.

We do not believe that the bill in question will accomplish its intended purpose which is to provide "fair housing" to the peoples of this country. On the contrary, it will deny every citizen who is a property owner the right to sell or rent to a person of his choice; it will deprive every property owner of a basic, fundamental and individual freedom—the right to dispose of his private property as he chooses. It is incomprehensible that the same Constitution which provides the right to own property would deny the right to dispose of that same property to a person of ones' choice.

As members of the National Association of Real Estate Boards we support the statement of policy adopted by the delegate body of that organization on November 18, 1965, in Chicago, which is quoted in part as follows:

"We reassert our support of the principle of equal opportunity in the acquisition and enjoyment of real property and the right of individuals to determine the disposition of that property. This principle does not and should not establish special privileges for any particular group."

This is the first civil rights legislation aimed specifically at housing. All of the civil rights legislation previously introduced into Congress have sought to insure civil rights against the actions of local and state governments which were operating to deny certain civil rights to minority groups, or the actions of persons catering to the public. This piece of legislation, on the other hand, would abrogate the private rights of every home owner to dispose of his property as he chooses.

The issue is not open occupancy or equal opportunity to obtain housing for all people regardless of race, color, religion or national origin. The issue is whether government should be permitted to introduce an element of compulsion in the dealings of a property owner with the person who seeks to buy or rent his property.

The purpose of this so-called "fair housing" bill, it would seem, is primarily sociological and secondarily the alleviation of economic distress. If racial integration were a subordinate consideration, and if the primary purpose of this legislation is to afford people in minority groups a greater supply of quality housing, such can be accomplished without abridging the right of free decision on the part of the seller and rental owner of real estate. This need can best be met by the expenditure of public funds of this purpose and the establishment of private capital to augment the housing supply and meet the demands of minority groups for housing. A giant forward step was made in this direction through the enactment of the recent Rent Supplement Law.

This bill, if enacted into law, could be used as a weapon for forcing an unwilling owner to enter into a contract and would rob him of his freedom as an individual to enter, or not enter, into an agreement. If an individual lacks the right to dispose of his property freely and fully, within his own discretion, he is

not truly the owner. Thus, the reality of this human right depends upon freedom of contract in disposition. This is a fundamental right in our society of free men. No segment of our people, including racial and religious minorities, can be well served by destroying it.

Title IV is premised on the mistaken belief that any rejection of an offer to buy or rent from a member of a racial minority is necessarily an act of racial discrimination. This view is presumptious. Undoubtedly there are some persons who do refuse to sell a house primarily on racial considerations. However, there certainly are numerous other home owners who do not. Even though race might not be the reason a home owner declines to sell he could, under this bill, become involved in expensive and lengthy litigation trying to prove that his refusal to sell was not because of race.

Plain and simple justice would require that a seller or renter not be subject to the risk of financial loss at the hands of government without corresponding protection from the government which imposes that risk of loss. This bill makes no such provision.

The Alabama Real Estate Association is NOT against open occupancy nor equal opportunity to obtain housing. The Association believes this is a forced, not a fair, housing bill that deprives our citizens of the basic individual freedom of the right to dispose of their private property as they choose. We are faced with the issue of whether one person should be given the right to force an unwilling owner to enter into a contract at the expense of the owners' individual, human right. To deny any property owner freedom of choice erodes the rights of all the people.

Let us consider what would happen if Title IV should be enacted and our freedom of choice in the selling or renting of residential property is taken away. Will this end the matter? Clearly it will not. Open occupancy laws, once accepted as legitimate exercises of the police power, would eventually lead to a vast expansion of regulatory police legislation far beyond the legislation which is presently under consideration. This is certain to result because open occupancy laws will not accomplish the goals their proponents seek to bring about. Today open occupancy legislation would most surely lead to other and more vigorous measures.

If individual freedom is worthy of preservation, it behooves the Congress to mark well the distinction between public and private affairs and sparingly employ the force of law to coerce human conduct in the latter area.

We believe that the injection of the element of compulsion, of legal coercion, in the relations between a property owner and the person with whom he may do business, is not in the best public interest and is inimical to the long range interests of members of minority groups; that progress in race relations will be retarded—not advanced—by this attempt to deny people freedom of choice. The solution to the problem of biracial living will come ultimately from the temporarizing influence of the church, school and men of good will, and other such extralegal sources, and not through exercise of the police system. The objectives of the struggle to obtain equal opportunity in housing are already being achieved. A change in our social structure of such magnitude will not be attained overnight. Voluntary actions to this end should be given every encouragement. Such efforts merit the earnest concern of all Americans, for the future of our free institutions may well be contingent upon its successful outcome.

The use of force—the employment of the police system, the destruction of the human right of real property ownership, the suppression of freedom of contract—are all destructive of the objective of biracial understanding. We ask, therefore, that Congress choose the traditional American way of voluntary effort and reject the alien way of the police expedient.

In conclusion we would like to quote Everett R. Treblicock, Counsel for the Michigan Board of Realtors, who, in our opinion, has so ably expressed the feelings of the great majority when he said: "America, while declaring itself to be a nation under God, has reserved to each of its citizens freedom to accept or reject the Deity as Their moods and convictions may dictate. We hold to the belief that it is totally inconsistent with such a tradition now to employ the force of government to compel the acceptance of one's fellow man in our private lives and affairs. For, in both our spiritual and our temporal lives, there can be no enduring fellowship with or respect for either our God or our fellow man which is not freely given each to the other."

RESOLUTION OF THE ARIZONA ASSOCIATION OF REALTORS

Whereas, the Arizona Association of Realtors has officially gone on record as being opposed to racial, religious or ethnic discrimination in all areas, particularly in the ownership and enjoyment of real property, and are committed to that end, and

Whereas, the Arizona Association of Realtors has always espoused the right of all men, regardles of race, color or creed, to contract for, own and enjoy their homes, upon which right our great country was founded and has prospered, and

Whereas, the principles of freedom to contract, by all of our citizens, is seriously endangered by certain legislation now introduced into the Congress of the United States, and

Whereas, the right of our citizens to own, enjoy and contract for private real property has been the main bulwark in our battle against Communism, it being a fact that nowhere on earth has a country fallen under Communist domination until that country had first deprived it's people of those rights: Now, therefore, be it

Resolved, That the Arizona Association of Realtors considers Title IV, H.R. 14765 as introduced into the House of Representatives, and Title IV, S. 3296 as introduced into the U.S. Senate, to be abhorrent to the fundamental truths upon which our democracy has endured and prospered; be it further

Resolved, That the right of freedom to contract is sacred to all men and legislation designed to deprive any citizen of that right is not in the public interest and is detrimental to the long range interests of minority groups.

Therefore, the Arizona Association of Realtors, in the interest of justice for all, strongly urges the defeat of Title IV, in both H.R. 14765 and S. 3296.

Unanimously adopted on this, the twenty-first day of May, One Thousand Nine Hundred and Sixty-six, A. D.

KEITH WINN, *President.*

Attest:

W. J. B. SCHIMFESSEL, *Secretary.*

ATLANTA REAL ESTATE BOARD,
Atlanta, Ga., May 19, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: We sincerely urge that you not allow the Civil Rights Bill, HR 14765 out of your Committee with part IV as a part of it.

You and I both know that Title IV would deny every home owner freedom of choice in contracting for the sale or rental of our property. People everywhere in our country feel strongly about this human right of real property ownership.

I feel especially strong about it. Won't you please weigh all of the rights involved in this proposed legislation and in so doing, you would be compelled to insist that Part or Title IV be omitted!!!!

Yours respectfully,

HARRY NORMAN, Jr., *President.*

BEAUFORT COUNTY BOARD OF REALTORS,
Beaufort, S.C.,

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR SIR: The members of the Beaufort County Board of Realtors, representing all of the professional, and full time realtors, of this area of South Carolina have asked me to express to you their opinions as to H.R. 14765 and S. 3296.

In our opinion the enactment of these bills would crush out fundamental and basic rights of citizens of the United States. We believe that the very groups the bills are designed to help would in the long run be the most hurt. We who are in the field of property transfer appreciate what property means to the individual, and what part the right to private property has meant in the progress of this country.

Enactment of a bill of this type intended to grant greater freedom to certain of our citizens will in actuality result in tyranny of our government over its citizenry. We ask you to please prevent this bill from being imposed upon this country.

Yours very truly,

WYATT B. PRINGLE, *Secretary-Treasurer.*

STATEMENT OF THE CALIFORNIA REAL ESTATE ASSOCIATION OPPOSING TITLE IV H.R. 14765

The California Real Estate Association in its continued struggle to preserve freedom of the individual in the disposition of his property, is opposed to Title IV Civil Rights Bill—1966.

Title IV destroys an individual's freedom of choice in contracting for the sale or rental of his property. This means that the Federal government could force the individual to sell or rent his property to a person not of his choice whether his property is his home, rental housing, a room for rent in his home or boarding house or land to be used as the site for housing. If an individual insists on exercising freedom of choice in contracting for the sale or rental of his property, a complaint may be filed against him in a Federal District Court. This court setting without a jury, may order him to sell or rent to a person not of his choice. It may also assess unlimited damages against him. If the Complainant alleges he cannot afford a lawyer, he will be furnished free counsel. On the other hand, the property owner will have to pay his own lawyer in an attempt to defend his freedom of choice. If the Attorney General wants to make an example of the individual property owner, he can intervene in the case. Then the property owner will have to fight the complainant and the United States Government.

The people throughout the United States, have always voted for retention of their freedom of choice in the disposition of their property when they have been given the opportunity to vote on the question.

Title IV subordinates the freedom of the owner in possession to the will of one demanding possession.

Title IV would prevent an individual from exercising freedom of choice in the rental of his home for a six month period during his absence. The law would compel him to rent his home under those circumstances to the first comer.

Title IV would deny to an individual his freedom to select those to whom he would lend his money for the purchase, construction, improvement, repair or maintenance of a dwelling.

Title IV in all of its manifestations is an attempt to invade the mind of an individual to determine what he is thinking about when he exercises freedom of choice.

Title IV would destroy freedom of contract. In other words, the property owner would be compelled to act under legal compulsion in contracting with a purchaser regarding the sale, lease or rental of his home.

Title IV would make it impossible for a Jew, Scotchman, a Japanese, Norwegian, or one of any race of people to select those of his own race for the sale to or rental of his property; and by the same token, anyone of a given religion could not choose to have others of his religion occupy his home. Whoever first presents himself to purchase or rent an owners property, will be supported by the government in his demand to acquire it.

In 1964 4,526,460 Californians voted to retain their freedom of choice in the disposition of their property by approving a Constitutional Amendment to the State Constitution which provided that neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses. This Constitutional amendment, has been recently held to be unconstitutional by the Supreme Court of the State of California. The California Real Estate Association has filed a petition for rehearing with the California Supreme Court; and, should its ruling be adverse, this Association will carry an appeal to the United States Supreme Court.

The action of the California Supreme Court in striking down the Constitutional Amendment, has revived a forced housing law which provides for the imposition of sanctions upon certain owners of certain types of residential property if they refuse to sell or lease such property upon grounds of race, color, creed or the na-

tional origin of prospective purchasres. The property owner may exercise freedom of choice only up to the fifth unit where his freedom ends.

For an alleged violation of the California statutes, the property owner could be hailed, through various procedures, before the State Fair Employment Practice Commission where he must defend his action at his own expense; and, if found to have transgressed, be subject to having served upon him an order requiring him to cease and desist and to take one of the following affirmative actions, as in the judgment of the commission, should be required:

1. The sale or rental of the housing accommodation to the aggrieved person, if it is still available.

2. The sale or rental of a like accommodation, if one is available, or the next vacancy in a like accommodation.

3. The payment of damages to an aggrieved person in an amount not to exceed Five Hundred Dollarss ($500), if the commission determines that neither of the remedies under 1 or 2 is available.

The California Real Estate Association is taking all necessary steps to repeal the Forced Housing Law in California by taking the matter again to the people by initiative petition.

The California Real Estate Association is unalterably opposed to any law, State or Federal, containing provisions analogous to those in title IV, which would strike down a cherished freedom of all Americans, i.e., their freedom of choice in the disposition of their property.

It is our contention that the constitutional right to own and possess property, includes the right to sell to one of the owners own choice subject only to a valid exercise of the police power for the protection of all the people. It is our contention that there is nothing in the Federal Constitution which gives to one citizen the right to acquire property from another citizen who does not wish to sell it to him even if the refusal to sell is based on race or religion.

It is our further contention that every person regardless of his race, color or religion, as an incident of the right to own, possess and enjoy real property, has the right to sell or lease, or to decline to sell or lease his property to anyone regardless of the race, color or religion of the person with whom he is dealing.

We contend that the passage of Title IV, would violate all of those fundamental and basic rights and freedoms enunciated above, and for those reasons, we respectfully request the honorable members of the House Judiciary Committee take the necessary action to strike Title IV from H.R. 14765.

CENTRAL MONTGOMERY COUNTY BOARD OF REALTORS, INC.,
Norristown, Pa., May 10, 1966.

Representative EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: The Central Montgomery County Board of Realtors, representing 90 Realtor members and 100 salesmen, is strongly opposed to Title IV of H.R. Bill 14765 relating to the prevention of discrimination in the sale or rental of housing (The Civil Rights Act of 1966).

We are in opposition to any bill which purports to grant to one group an alleged right by taking away the basic and fundamental rights of others. We believe in the American tradition of freedom of contract—the right of the individual to choose to sell or not to sell his property to whomever he desires.

We request that you consider our opposition to this Bill when it is presented for vote.

Sincerely,

OLIVER H. REED, Jr., Secretary.

CHARLOTTE BOARD OF REALTORS, INC.,
Charlotte, N.C., May 19, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: The Board of Directors of the Charlotte, North Carolina, Board of Realtors has studied very carefully H.R. 14765 and have gone on record as unanimously opposing Part IV of the Civil Rights Act of 1966.

We feel that when you take away a property owner's right to sell or lease to whomever he pleases that you are taking away a basic freedom. We cannot conceive of property owners in America being subjected to such an unfair and unjust law.

Our Board of Directors represent the thinking of over four hundred of our membership, and I know that many of them will write you and make their views known. I urge you, therefore, to consider the wishes of all property owners and defeat this proposal.

Yours very truly,

C. H. TOUCHBERRY, *President.*

CHEYENNE BOARD OF REALTORS,
Cheyenne, Wyo., May 19, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: This bill has come to the attention of our group and to say we are concerned would be an understatement.

We just want to emphasize the fact that we are opposed to discrimination in any form and will insist that every person have full benefit of every right to which he is entitled. We do object to any usurping of the rights of any one group under the guise of protection for the rights of another.

The passage of this bill would certainly be an act of trampling on the basic and fundamental right of every individual to dispose of his personal property to any person of his choice. Also, this bill would be an encroachment upon the individual's right of contract. There are many further inadequacies in this bill of which we are sure you are aware.

We ask that you vigorously oppose this bill or any future proposed legislation that would so obviously deny the rights of the individual.

Respectfully yours,

H. J. MYERS, *President.*

COBB COUNTY REAL ESTATE BOARD,
Marietta, Ga., May 11, 1966.

Congressman EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR MR. CELLER: We strongly urge that the house bill, H.R. 14765, be introduced deleting Title 4. We feel that this bill is a threat to our constitutional rights and an encroachment on our individual rights.

Sincerely,

J. M. JACKSON, *President.*

CONCORD BOARD OF REALTORS,
Concord, N.H., May 24, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: At a meeting of the Concord Board of Realtors the other night the members voted to voice to you their strong objection to Part IV of the Forced Housing Law (H.R. 14765).

We feel that every effort should be exerted to defeat such a proposal which would strip from home and property owners the right to sell or rent their own homes to persons of their own choice.

This, we feel, is a right granted us under our constitution and any legislation by Federal government to deny this right is inherently dangerous to the future of our country and its democratic processes.

Therefore, the Concord Board of Realtors of Concord, New Hampshire, wish to go on record as being strongly opposed to the above mentioned legislation.

Yours very truly,

IRIS H. HEINS, *President.*

DANVILLE REAL ESTATE BOARD,
Danville, Va., May 16, 1966.

Representative EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: The Danville, Virginia Board of Realtors wish to take this means of expressing their dissatisfaction regarding the passage of Bill H. R. 14765.

We do not believe the passage of this bill would be in the public interest, since in our opinion, it involves the basic right of an individual to rent or dispose of private property to the person of his choice.

We sincerely hope that you will give this bill most careful consideration and do whatever possible to prevent its passage.

Yours very truly,

RICHARD S. BENDALL, *President.*

DUBLIN REAL ESTATE BOARD,
Dublin, Ga., May 12, 1966.

Hon. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR SIR: This is to advise that the Dublin Real Estate Board has gone on record as unanimously opposing Title IV of H. R. 14765. If this provision is left in this bill, the property rights of all citizens will be seriously and irreparably impaired.

We earnestly solicit your support in the defeat of this measure. We also ask that you do everything possible to prevent any similar legislation from being passed in the future which would affect the constitutional rights of the individual to this extent.

We thank you for giving this matter your serious consideration.

Yours very truly,

THOS. B. KELLAM, *Secretary.*

EDINBURG REAL ESTATE BOARD,
Edinburg, Tex., May 19, 1966.

Representative KIKA DE LA GARZA,
House Office Building,
Washington, D.C.

DEAR MR. DE LA GARZA: We of the Edinburg Real Estate Board feel that H.R. Bill No. 14765, if enacted, would be an additional step taken by federal authorities in their attempt to control business operations. We further feel that if the above H.R. Bill No. 14765 is enacted that it will do much toward discouraging the building of new homes and rental units.

It is our understanding that Representative Jack Brooks of Beaumont is chairman of the sub-committee which is studying this bill. We urge you to use your influence with Representative Brooks to not let this bill out of committee. We shall appreciate your exerting all of your efforts toward the defeat of this bill.

Will you please send us 100 copies of H.R. 14765 so that we let the property owners know what the bill contains.

Very truly yours,

FRED C. BENNETT, *President.*

FLORIDA ASSOCIATION OF REALTORS,
Orlando, Fla., May 31, 1966.

Airmail

Hon. EMANUEL CELLER,
Member, New York, U.S. House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: With 10,400 members, we are the nation's 4th largest state association of Realtors.

On behalf of the Florida Association of Realtors, we respectfully urge you, as Chairman of the House Judiciary Committee, to oppose Title IV of this legisla-

tion—legislation, so un-American and so viciously contrary to the liberty and freedom of *all* men and women of this great land of ours.

We are against the injection of the element of legal compulsion, of the police power, in the relations of a home owner or any other residential property owner and the one who seeks to buy or rent his property.

The proposed law to compel the home owner to enter into a contract against his will, with a person not of his choice, would destroy our American heritage of FREEDOM OF CONTRACT—the right of any citizen to choose, for whatever reason, to sell or not to sell his property to whomever he desires without governmental coercion.

Unlike any previously introduced Civil Rights measure, Title IV makes possible the granting of an alleged right by trampling on the basic and fundamental rights of others.

Your opposition to this legislation will indicate to everyone that you are upholding one of the basic individual rights of *all* the American people.

Respectfully yours,

WALTER B. DECKER, *President.*

FORT LAUDERDALE BOARD OF REALTORS, INC.,
Fort Lauderdale, Fla., May 16, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN: At a meeting last Thursday, May 12, the Board of Directors of this 1,017-member organization, unanimously opposed enactment of Part IV of the Civil Rights Act of 1966.

As a group, we are not opposed to racial, religious or ethnic discrimination. However, we feel very strongly that the injection of the element of compulsion, of legal coercion, in the relationship between a property owner and the person with whom he may do business, is not in the public interest.

A recent NBC radio poll revealed that approximately 60 per cent of those polled were opposed to any law which forced a home owner or other property owner to sell or rent his property to a person or persons not of his choice. In every instance where this issue has been put to referendum, the people have rejected forced housing laws by better than two to one majority. California, Tacoma, Seattle and Akron are typical examples. A forced housing law has never been approved by referendum.

The issue is not open occupancy. The issue is whether the government should be permitted to introduce an element of compulsion to deprive a property owner of his right to make a contract with the person or persons of his own choice. To give one group an alleged "right" by trampling on the rights of others is not good legislation, and certainly not the intention of the Constitution and the Bill of Rights.

We urge you to do everything possible to defeat this bill in its present form.

Sincerely,

GUY BASS, *President.*

RESOLUTION OF THE GEORGIA ASSOCIATION OF REAL ESTATE BOARDS

Whereas, In a message to Congress on April 28, 1966, President Johnson urged enactment of the Civil Rights Act of 1966, and

Whereas, Title IV of this Act will take away from us, as owners and/or agents, and the millions of property owners we represent, the basic and fundamental right to sell, rent, lease, or make available a dwelling to the person of our choice, and

Whereas, Said Title IV of this Act will grant one group a right to trample on the rights of others, and

Whereas, Said Title IV of this Act will affect every home owner in the United States, and

Whereas, In every instance where this issue has been put to referendum, the people have rejected forced housing laws by better than a 2 to 1 majority, and

Whereas, Although we, the members of this Association, are opposed to racial, religious or ethnic discrimination, we do insist, however, that the injection of the element of compulsion, of legal coercion, in the relationship between a property owner and the person with whom he may do business, is not in the public

interest, and will be viciously detrimental to the long range interests of members of minority groups, and

Whereas, we further insist that the solution to the problem of biracial living will come ultimately from the temporizing influence of the church and school and men of good will, and not through the exercise of the police system: Now, therefore, be it

Resolved, That this Association, in quarterly session convened, this 30th day of April, 1966, with 237 in attendance, unanimously requests our representatives in the United States Congress and Senate to use every effort and influence at their command to have said Title IV deleted from this Civil Rights Act.

W. CLAGGETT GILBERT, Jr., *President.*
MARION C. IVEY, *Secretary.*

MAY 27, 1966.

GREATER DES MOINES BOARD OF REALTORS,
Des Moines, Iowa, May 17, 1966.

EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR MR. CELLER: Title IV, in our opinion, represents legislation that would retard, and not enhance, the progress being made to date in race relations.

Our defense of the right of freedom of contract is not in derogation of open occupancy. We are opposed to racial, religious or ethnic discrimination. However, we insist that the injection of the element of compulsion, of legal coercion, in the relationship between a property owner and the person with whom he may do business, is not in the public interest, and is inimical to the long range interests of members of minority groups.

The solution to the problem of biracial living will come ultimately from the temporizing influence of the church, school, men of good will, and similar extralegal sources, and not through the exercise of the police system.

We urge your opposition to this Federal Forced Housing Law, Part IV of the Civil Rights Act of 1966.

Sincerely,

ROBERT M. MADDEN, *President.*

GREATER ERIE BOARD OF REALTORS,
Erie, Pa., May 19, 1966.

To Members of the House Judiciary Committee:

The Greater Erie Board of Realtors are greatly alarmed at the invasion of fundamental rights of free contract as contained in H.R. 14765, which provides for compulsory selling of homes to minority groups under penalties provided by this law.

It is our sincere belief that the acceptance of minority groups must come about by public change and not by force of law or bureaucracy as this could be very detrimental to the cause of any group and could create additional strife and social bias.

We therefore request you to vote and work against the forced housing law H.R. 14765.

Sincerely yours,

ROBERT S. SCHLURAFF, *President.*

GREATER PITTSBURGH BOARD OF REALTORS,
Pittsburgh, Pa., June 1, 1966.

Mr. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
Subcommittee No. 5,
Senate Office Building,
Washington, D.C.

DEAR CHAIRMAN CELLER: Your Subcommittee No. 5 is currently holding hearings on H.R. 14765 (S. 3296) which is a bill denying every property owner the right to sell or rent to persons of their choice.

We believe this is a forced, not fair, housing bill that deprives everyone of a basic individual freedom—the right to dispose of your private property as you choose.

The Greater Pittsburgh Board of Realtors is not against Open Occupancy, or equal opportunity to obtain housing; and, further not only the City of Pittsburgh but the State of Pennsylvania is covered by legislation, and intervention by the Federal Government is strongly opposed by the Board. The real issue is whether one person should be given the right to force an unwilling owner to enter into a contract at the expense of the owner's individual, human right. To deny any property owner freedom of choice erodes the rights of all the people.

We further believe that progress in race relations will be retarded—not advanced by this attempt to deny people freedom of choice. Under the influence of church, school, and men of good will, the objectives of the struggle to obtain equal opportunity in housing are being achieved. Voluntary efforts to this end should be given every encouragement. A forced housing law that tramples on a fundamental right will not advance this important cause.

We strongly oppose intervention by the Federal Government which would succeed in only denying everyone freedom of choice.

Respectfully yours,

PAUL H. RITTLE, *President.*

HARLINGEN BOARD OF REALTORS,
Harlingen, Tex., May 18, 1966.

Hon. ELIGIO DE LA GARZA,
U.S. Representative,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN DE LA GARZA: The Harlingen Board of Realtors urgently requests that the portion of TITLE IV, HR 14765 of the proposed Civil Rights Bill of 1966, pertaining to housing be killed in the Sub Committee.

This proposed portion of the bill, under the guise of guaranteeing some civil rights under the housing section proposes to take away from you and your constituents the right to sell, rent or otherwise use or dispose of their real estate as they see fit.

This bill would deny the property owner the right to exercise his freedom of choice in contracting for the sale or rent of his property. This amounts to the Federal Government forcing an individual to sell or rent his property to a person not of his choice.

Yours very truly,

GLENN BERCOT, *President.*

KENTUCKY REAL ESTATE ASSOCIATION,
Louisville, Ky., May 31, 1966.

Hon. EMANUEL CELLER,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: The Kentucky Real Estate Association wishes to express its opposition to Title IV, HR 14765, which is now before you, as Chairman of House Judiciary Committee Sub-Committee No. 5. Our opposition is based on the fact that such a Bill will, in our belief, create more problems than the ones it is trying to cure. Certainly, open occupancy is a much to be desired goal in housing across the country. However, we do not believe that HR 14765 will accomplish the goal as many a proponent argues.

Basically, our opposition to the Bill centers around the fact that it would allow the Federal Government to become a party to contracts between clients and their real estate agents, therefore, prohibiting freedom of choice. As Realtors, we feel that HR 14765 would abrogate the freedom of a person to contract and would be another step to total government control of all individuals.

We earnestly request that you vote to remove Title IV from HR 14765 when the Bill is reported to the House of Representatives.

Very truly yours,

BOB HUNT, *President.*

KINSTON BOARD OF REALTORS,
Kinston, N.C., May 13, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: The Kinston Board of Realtors, Inc. met in special session on Wednesday May 11, 1966 and voted unanimously against legislation of the above referenced bill. As we are strongly opposed to the Federal intervention which will sound the death knell to the right of private property ownership in America, we voted as a board and as individuals to carry this message to all citizens of Kinston.

We feel that this bill is unconstitutional in that it strikes at the very heart of a basic freedom and right of the individual to own and dispose of his property, each according to the dictates of his own heart. We do not believe that this is a question of civil rights but an extension of the arm of the Federal Government into the rights of the individual.

As Realtors, we have an obligation to our clients to use our abilities to give them the best service possible by screening our prospects and showing their properties only to qualified prospective purchasers. Should this bill become law, we would then be severely handicapped in our service to our clients, as we would be compelled to show their properties to anyone desirous of inspecting them or run the risk of being brought into court on the grounds of a discrimination charge.

We believe that the majority of Americans irregardless of their race, color, religion or national origin, if made fully aware of the contents of this bill, would overwhelmingly oppose this legislation taking away a right granted by our Constitution established by our forefathers. The Kinston Board of Realtors, Inc. strongly urges your support in defeating this bill while it is still in your committee.

Very truly yours,

WALTER R. POOLE, *President.*

STATEMENT OF FRANK W. GRIGSBY, PRESIDENT, LOUISIANA REALTORS ASSOCIATION, INC.

The citizens of the State of Louisiana feel very strongly about the human right of real property ownership. We believe that Title IV of HR 14765 denies them the right to exercise freedom of choice in contracting for the sale or rental of their property.

We further believe that to deny any property owner freedom of choice erodes the rights of all the people.

Certainly progress in race relations will be retarded, not advanced, by this attempt to deny people freedom of choice. Voluntary efforts toward the objective in obtaining equal opportunities in housing should be given every encouragement and a forced housing law that tramples on a fundamental right will certainly not advance this important cause. We urge the Congress to reject this legislation because it is destructive to the rights of all persons.

MALHEUR COUNTY BOARD OF REALTORS,
June 3, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: Please vote no on Civil Rights Bill—H.R. 14765 and Senate Bill S. 3296, which discriminates against the basic rights of the home owner as guaranteed by our Constitution.

Respectfully yours,

C. C. CUNNINGHAM, *President.*

STATEMENT OF MASSACHUSETTS ASSOCIATION OF REAL ESTATE BOARDS

The Board of Directors of the Massachusetts Association of Real Estate Boards at its annual meting May 25, 1966 voted unanimously to vigorously oppose Title IV of the Civil Rights Act of 1966 as it now reads.

The Commonwealth of Massachusets for several years has had a law against discrimination in the sale or rental of housing because of race, color, religion or national origin. It has been administered by an understanding commission which has obtained excellent compliance through education and conciliation with a minimum of court action.

The proposed Federal Law contains certain undesirable features which go beyond the provisions of Massachusetts law.

By automatically throwing complaints alleging discrimination into United States District courts or state or local courts and authorizing the commencement of a civil action without payment of fees, costs or security is not proper procedure.

Authorizing the court to award the plaintiff the cost of attorney's fees plus damages for humiliation, mental pain and suffering as well as punitive damages up to $500 opens a "Pandora's Box" of potential abuses of great magnitude.

We are convinced that personal prejudice and discrimination cannot be eliminated by the legal "shotgun approach" which is so obvious in this proposed legislation. We believe the end result of this legislation if enacted as written will bring about widespread harassment of private property owners and will "boomerang" against the desirable objective of equal rights in housing.

STATEMENT OF MICHIGAN REAL ESTATE ASSOCIATION TO THE JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES IN OPPOSITION TO H.R. 14765

Gentlemen, on behalf of Michigan Real Estate Association and its 2,000 members, this statement is submitted for the purpose of recording Michigan Real Estate Association's opposition to H.R. 14765, insofar as it pertains to private housing practices. Michigan Real Estate Association desires that this statement indicate to the Judiciary Committee the substance of its underlying objections.

Preliminarily, one must note that the provisions of H.R. 14765 as these pertain to private housing, rest on infirm constitutional grounds. The rental and sale of private real estate is inherently local in character and its connection with the free flow of commerce between the several states is neither apparent nor real. If local real estate transactions are amenable to the exercise of Federal controls, based upon the commerce clauses, there is virtually no commercial transaction which remains without its scope. To contend that such is the case, is to argue for the demise of the Federal system itself. Such will be the inevitable result if the commerce power of the Congress is perverted from its legitimate purposes in order to accomplish an end having no qualitative nor quantitative relationship to interstate commerce itself. The power to regulate interstate commerce was not conceived by the founding fathers to serve the end of race relations, and its employment for that purpose is patently illegitimate and plain legal gimmickry.

Nor can H.R. 14765 be countenanced on the basis of the 14th Amendment to the United States Constitution.

Ever since the decision in the *Civil Rights Cases*, it has been uniformly held by Federal Courts that the thrust of the 14th Amendment is against discriminatory governmental action and not private action. Thus, our legal tradition in this and other areas, alieniates the public from the private aspects of life and it is to the former and not to the latter that the 14th Amendment applies. Here again, the provisions of H.R. 14765 fly in the face of all legal principles by insidiously shifting the objects of the 14th Amendment from those serving the end of equality before the law to that coerced egalitarianism in the private lives of our citizens.

Serious legal objections to H.R. 14765 undoubtedly are philosophic underpinnings and implicit policy should be even more disturbing to thoughtful citizens. To private housing, the provisions of H.R. 14765 clearly negate the following propositions and considerations, which all Americans from heretofore regarded as implicit in our societal relations:

> That America is large enough and flexible enough to permit each American to seek out and live among those of his racial, creedal or ethnic group, to whom he feels the most affinity and among whom his private life will be most satisfying.
>
> That no man may force upon another the assumption of contractional relationships, except by the precedent willing assumption of obligation on the part of the latter.

That private real estate is not subject to any public servitude which any government may invoke to implement a given social policy of the moment.

That no man has any legal right to acquire the private property of another save by commitment of the latter, voluntarily given.

That no racial, ethnic or creedal group may fairly invoke the power of our common government to eradicate choice of preference of any group to live amongst its own, the human drive which is inherent in the world's peoples from ancient times to the present day.

The Michigan Real Estate Association submits that the principles before mentioned must be preserved inviolate if, in solving the problems of intergroup relations, all may yet remain free men. Once these principles of policy are disregarded, there is no logical bounds to the regimentation of men in their private lives. Evermore stringent methodology can and will be proposed to the end that conformity and intergroup relations may be the more firmly coerced. Result may be a classless society, but such a society will no longer be free. Liberty for all Americans, white and black, born and unborn, depends on the resolute refusal to utilize coercive law, exemplified by H.R. 14765, as an expedient in the solutions of race relations in private life.

This is not to suggest however, that government has not a role to play in the benign adjustment of intergroup differences and conflicts as these arise in the field of private housing. Although the function of law should be neither to proportion of integration nor the promotion of separation in private living, governmental power is properly utilized to insure that any willing buyer and any willing seller can have the opportunity to meet in a free market place and deal with one another as they may see fit. The course of moderation may well dictate activity on the part of government addressed not to integration but toward facilitating the building of more adequate housing for minority groups in need of such accommodations. The cry of "guilded ghettos" although frequently addressed to modern housing built for a market comprised primarily of minority groups, is a mere epithet and obscures the fact that what our Negro people need first and foremost are decent living accommodations, comparable in quality and surroundings to those available to the w' 'te market. If government were to demonstrate ingenuity in seeking ways and means for the construction of new residential accommodations for distressed minority groups, which is even roughly the equivalent of the ingenuity being employed to bring about integration to a legal force, housing accommodations for minority groups could be greatly enhanced. Hereto we submit private capital has a role to play and it should not lose the opportunity to do so. If the underwriting of any special risks that may be involved be required, this is a matter which could properly become a governmental function. Such a line of attack upon the problem of housing for minority groups we submit would be responsive to statesmanship. These approaches and not those embodied in H.R. 14765 are those which the American people can expect of representatives of a free society to follow.

MID-VALLEY BOARD OF REALTORS,
Weslaco, Tex., May 17, 1966.

Representative E. (KIKI) DE LA GARZA,
House Office Building,
Washington, D.C.

DEAR GARZA: The Mid Valley Board of Realtors ask you to please oppose the above House Bill when it comes up before you.

We feel that this bill should not pass and trust you will use your influence to see that it does not.

Yours very truly,

MRS. VERA SHIELDS,
President.

STATEMENT OF VERNON MILES, PRESIDENT OF THE MISSOURI REAL ESTATE ASSOCIATION IN OPPOSITION TO TITLE IV OF H.R. 14765

Gentlemen, as President of the Missouri Real Estate Association I wish to go on record for the Realtors of Missouri as being opposed to Title IV of H.R. 14765 for the following reasons:

This bill is presented for your consideration as a civil rights bill and still there is a serious question in my mind as to whether or not this is a civil rights matter.

Civil rights have been defined by the Supreme Court of Nebraska Winnett v. Adams, 71 Nebr. 817 in the following terms:

"Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc."

This bill is presented to your committee as a civil rights bill when in fact it would deny all citizens of this country the right of freedom of contract. How can we honestly say that the destruction of rights provides rights for anyone.

This section of the bill is an invasion of one of the most sacred property rights our nation knows, this is the right to sell ones property to whom they please and upon whatever terms and conditions they choose. Historically home ownership and the right to dispose of property has been one of our finest human rights.

In the past, civil rights legislation has been based on the theory of protecting minority groups from local or state governments, but Title IV reaches and affects every home owner in the nation.

The members of the Missouri Real Estate Association have given long and serious thought to the problem of minority housing. We have a most active committee in this respect. It is called the Committee on Equal Opportunity in Housing. Our local boards have such committees and we subscribe to the principle that as Realtors it is our function to serve all people impartially in accordance with the wishes of our principal, the property owner.

In the 1965 session of the legislature the principle of forced housing was considered by the House Judiciary Committee and was not reported out of committee. It was felt by the members of the committee that progress was being made in this area and that a bill of this kind would inflame rather than solve any problems which the proponents claimed for this bill. I was present at these hearings and the proponents talked in broad general terms but in several hours of testimony they were only able to present one single concrete case of a person who has been unable to obtain the kind of housing he wanted because of his race.

This week two of our members appeared on a radio program in Columbia, Missouri and mentioned that this bill was pending in the United States Congress and made some explanation of it. The next fifty calls received by that radio station, KFRU in Columbia, Missouri, were in opposition to this bill and there was not one call in support of this bill.

Sub-Section 403E would provide for anyone to have access and participation in Multiple Listing Services. Multiple Listing Services are a unique and helpful service to property sellers of this country. They have been successful because those people who are members of Multilist are people in our business who have proven to be knowledgable and ethical. There would be no way a Multilist Service could function as such if everyone were to have access to it as provided by this bill.

Section 406 and the rest of Title IV would put the force of the U.S. Government against its citizens to prove that someone had been humiliated or suffered mental pain because of a real estate transaction. How can humiliation, a very personal feeling be adjudged by another person? Some people are quite calloused while others are very sensitive. It seems inconceivable that our great republic would pit its strength and energies against its citizens on such tenuous grounds as this.

Our Association believes that this bill is unsound and by reason of the efforts of Realtors throughout the country this bill is unneeded. We sincerely believe that as brokers in the real estate business we understand the implications of the housing problems of minorities better than many of the racial extremists. We have seen great progress in the past few years in providing to any citizen the opportunity to buy property within their economic means and Title IV of H.R. 14765 will in our state, in our opinion delay the solution of this problem rather than solve it.

We therefore respectfully request that your committee reject this portion of this bill.

MORENO VALLEY BOARD OF REALTORS,
Sunnymead, Calif., May 12, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR SIR: *Our defense of the right of freedom of contract is not in derogation of open occupancy.* We are opposed to racial, religious or ethnic discrimination.

However we insist that the injection of the element of compulsion, of legal coercion, in the relationship between a property owner and the person with whom he may do business, is not in the public interest, and is inimical to the long range interests of members of minority groups. The solution to the problem of biracial living will come ultimately from the temporizing influence of the church, school, men of good will, and similar extra-legal sources, and *not through the exercise of the police system.*

CHARLES ZUPPARDO,
President.
IDA OLSON,
Secretary.

NASHVILLE REAL ESTATE BOARD,
Nashville, Tenn., May 14, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR MR. CELLER: At the request of the directors and membership of this organization, I am writing to express our strong opposition to H.R. 14765 and S. 3296.

The issue in this potential legislation is not open occupancy or equal housing for all people regardless of race, color, religion, or national origin. The issue is whether government should be permitted to introduce an element of *compulsion* in the dealings of a property owner with the person who seeks to buy or rent his property. In this piece of legislation, there is being proposed the granting of an alleged right by trampling on the basic and fundamental right of the individual to dispose of private property to the person of choice.

A recent poll revealed that approximately 60% of those polled were opposed to any law of this type and, of course, in every instance where this issue has been put to referendum, the people have rejected it by better than a two to one majority.

We are opposed to racial, religious, or ethnic discrimination. However we insist that the injection of the element of compulsion of legal coercion, in the relationship between a property owner and the person with whom he may do business, is not in the public interest, and is inimical to the long range interests of minority groups. The solution to the problem of biracial living will *not come through the exercise of a police system*, but will come from extra-legal sources.

Don't abrogate the fundamental right of private property ownership.

Yours very truly,

GEO. D. THOMAS, Jr., *President.*

NEBRASKA REAL ESTATE ASSOCIATION,
Lincoln, Nebr., May 27, 1966.

Mr. EMANUEL S. CELLER,
Chairman, House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR CHAIRMAN CELLER: In 1665, a bill LB 661, was introduced in the Nebraska legislature which advocated "forced housing" under the guise of civil rights legislation. LB 661 was referred to the Miscellaneous Subjects Committee for consideration. The bill was never reported out of committee because committee membership failed to see any need for such legislation in Nebraska.

This bill was not as encroaching on property rights and far reaching as the present legislation under your consideration in Title IV of the Civil Rights Bill now before your committee.

The Nebraska Real Estate Association feels very strongly that such legislation will result in a major set-back in the workable program on a voluntary basis of equal opportunity in housing, in Nebraska.

We, therefore, urge that Title IV be completely deleted from HR 14765.

Sincerely,

STANLEY L. PORTSCHE,
President.

REALTORS ASSOCIATION OF NEW MEXICO,
Santa Fe, N. Mex., May 27, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: Without benefit of Federal legislation, our state has provided undiscriminated housing for all races, creeds and colors. Our system works. It has for over 350 years.

The Realtors Association of New Mexico respectfully asks your indulgence in recognizing our policy regarding Title IV of HR 14765, the Civil Rights Act of 1966. We strongly believe that this bill strikes at the very heart of America's greatness—the home, and the inherent rights of property it portrays. We would hope that you Mr. Chairman, and those that serve with you on the Judiciary Committee will search deeply into your conscience and realize that passage of this bill into law can only engender a weakening of our democratic system. The bill purports to afford all the equal opportunity in securing housing of their choice, however, we are certain that its passage will not contribute one iota to the brotherhood of man, rather it could quite conceivably encourage more race hatred. This bill constitutes a demand for equality. No Utopian dreamer can achieve it for another man, although this bill attempts it. Those who desire equality and opportunity must pay for it just as our Forefathers did. The price is character and achievement, not force. There is no known panacea for every ill of man and a cure by force could create after effects. You and your committee can preserve America's property right and the right of you and I to pick and choose, and the continued unencumbered fire in the hearth. We ask that you consider the great effect on the great majority when debating this bill.

Respectfully,

WALTER J. KEESING, *President.*

STATEMENT REGARDING THE CIVIL RIGHTS ACT OF 1966 (H.R. 14765)

I am sure that your committee has been flooded with statements regarding the "Civil Rights Act of 1966 (S 3296) and (HR 14765)." This should be one of the most controversial major pieces of legislation to come before Congress in many a year.

As president of the North Carolina Association of Realtors, I feel an obligation to express to you the feelings of North Carolina Realtors about this bill and its many ramifications. I am referring principally to Title IV as it affects the sale and rental of real estate, and as it affects those of us in the real estate business. I believe that the ideas expressed herein represent the overwhelming philosophy of all North Carolina Realtors.

To begin with we must admit that we are not experts when it comes to the United States Constitution, but we believe that many parts of Title IV must be unconstitutional. If they are not, they certainly should be, for to eliminate the individual right of selection of tenant or purchaser is the beginning of the elimination of private ownership of real estate in this country. You certainly know what it will mean if this is done.

We are positive that the proponents of the bill would say here that it does not eliminate the right of selection: only when there is discrimination based on race, color, religion, or national origin. However, we are sure that you know as well as we do that should this bill be enacted as now written, and should a person be turned down by an owner or his agent, the person is almost sure to claim "discrimination", and seek relief through the courts. Who wants to be confronted with this every time an applicant is rejected? Would it not be easier to take anyone and everyone just to avoid all of the difficulties and expense that would arise? For all intents and purposes, the owner's right of selection would be virtually eliminated.

Our objections to Title IV of the bill are not motivated by problems that it would cause, but rather by the fact that every citizen would lose the right, inherent in the ownership of property in this country, to make a choice when selecting a buyer or tenant. This right is as old as this country, and is one of the foundations of our society.

At this point I would like to comment on provision (e) of Section 403 of Title IV. This section deals with the "discrimination" in the participation

in "multiple-listing services or other services or facilities related to the business of selling or renting dwellings." You may be aware that most multiple listing services are a function of a local community's board of Realtors. The services may be separate corporations; nevertheless, they are usually formed, regulated, and administered by the local board, and to be a member you must first be a member of the board.

After understanding this, then it should be clear that we are talking about admittance to the local board of Realtors, and not just multiple listing.

It should be noted here that Realtors are extremely conscious of the prestige and other advantages that go along with being one of the professions. For this reason, we are doing everything within our power to make our business more professional and to be recognized as such by the public. Many things contribute to the making of a profession: education, ethics, standardization of procedures, and public confidence are some of these things. One of the means that we have found that will strengthen a board of Realtors and make its individual members more proficient and professional is the careful screening of applicants for membership in the board. The emphasis is placed on quality rather than on quantity. Should this bill be enacted, again the old cry of "discrimination" will be heard time and time again when an applicant is rejected regardless of the reason for his rejection. Most boards are, for all intents and purposes, non-profit making organizations, and cannot afford to engage in law suits. Therefore, many years of work toward improving the ability and public image of the Realtor is poured down the drain by being forced by government coercion to throw the doors open to any and all. Being a professional yourself we are sure that you can understand our thinking here.

May we just comment very briefly on the bill's intent to enforce its provisions through the "interstate commerce" route. If interstate commerce can be read into a local personal contract between two individuals in the sale and purchase of real estate, then there is nothing to prevent federal government from regulating personal contracts of any kind, and then may the Lord have pity of us all. We will be very surprised if our Congress is taken in by this absurd stretch and interpretation of what constitutes interstate commerce. Is this not clearly unconstitutional?

We cannot help but feel that under the guise of "liberty for those being discriminated against," this law would deny *every* citizen in this country the traditional freedom of contract—the right of the individual to choose without coercion from his government. The government should not and cannot guarantee a right to one by taking the rights of others. Many people fail to understand that a question such as the one this bill purports to resolve cannot be solved by legislation such as this. The final solution will come from the hearts and minds of men.

NORTH CAROLINA ASSOCIATION OF REALTORS, INC.,
KEMP C. CLENDENIN, Jr., *President.*

NORTH CENTRAL MISSOURI BOARD OF REALTORS.
Chillicothe, Mo., May 11, 1966.

Mr. EMANUEL CELLER,
Chairman House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR MR. CELLER: As Secretary Treasury of our North Central Missouri Board of Realtors I am acting under instruction of our entire six county group, which voted unanimously for me to convey to you, our feelings of opposition regarding the Bill H.R. 14765; or Civil Rights Act of 1966. We feel this would grant the so called "Minority Groups", not equality, but alleged rights over others, by trampling on the rights of others. It would eliminate the basic and fundamental right of you and me to dispose of our private property. Forced Housing Law (Title IV) represents legislation which would retard the progress being made to date in race relations.

Furthermore we feel it is not constitutional to inject an element of compulsion or legal coercion in the relationship between a property owner and the person with whom he may do business, is not in the public interest, nor is it in the long range interests of members of minority groups to exercise a police system.

Very Respectfully Yours,

Mrs. EUNICE CASSITY.

NORTH DAKOTA ASSOCIATION OF REALTORS,
May 31, 1966.

HOUSE JUDICIARY COMMITTEE,
Eighty-ninth Congress, Second Session,
Washington, D.C.:

The following comments made on behalf of the North Dakota Association of Realtors; and to be made a part of the record of your committee in its consideration of Section IV of HR 14765.

As an Association of men and women actively engaged in the economic field of developing, managing, trading and otherwise dealing in real estate, we are vigorously opposed to the enactment of Section IV of HR 14765 and consider such legislation inimical to the traditional American concepts of individual and personal liberty and to the very goals which such legislation is intended to accomplish.

A close study of the proposed bill indicates that its adoption would make the real estate agent directly responsible for the racial, religious or ethnic makeup of the community in which he resides. While the real estate agent is well aware of his personal responsibility to use his individual and professional influence to make his community a more desirable place to live for people of all races, religions and ethnic backgrounds, and would most assuredly welcome conditions under which such factors do not enter into real estate transactions, nevertheless he is still an *agent*. As an agent, he is not acting on his own behalf but in a representative capacity for a seller or buyer, a landlord or tenant. The proposed bill makes the agent directly responsible and liable for attitudes and decisions of his client or principal; attitudes and decisions for which he is in no way responsible and over which he exercises no control.

In addition to the above, we are opposed to Section IV of HR 14765, for the following reasons:

(1) It will deny property owners the right to exercise freedom of choice in the disposition or rental of their property.

(2) It will delay and inhibit the closing of real estate transactions by encouraging civil actions in the already overburdened Federal and State Courts.

(3) It will result in "forced" sales and contracts which is repugnant to our free society.

(4) It offers no protection to the agent for the attitudes and decisions of his principal.

In the interest of assuring the American citizen that he truly lives in a country that guarantees his freedom and personal liberty we strongly urge your committee to recommend that Section IV of HR 14765 be killed.

Respectfully Submitted.

ROBERT A. PETERSEN, *President.*

NORTHSIDE REALTY ASSOCIATES, INC.,
Atlanta, Ga., May 13, 1966.

HON. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: The provision in HR14765 (S3296) which prohibits discrimination on the part of a private property owner in the sale or rental of housing on the grounds of race, color, religion, or national origin is shocking, in its implications. To deny an individual the right to contract to sell his own property to anyone whom he choses is an infringement on every basic concept of freedom the people of this country have always known. Such a forced housing measure is discriminatory in itself in that it grants one group a right to buy or lease while denying a seller the right of choice of a buyer or tenant.

I cannot conceive of any provision in our Constitution that could possibly be interpreted to deny me the basic right to dispose of my private property to a person of my own choice.

To undertake to bring about mixed housing through legislation cannot possibly be in the public interest any more than the old "Prohibition Law" turned out to be. Actually such a law could very well in the long run backfire, and hurt minority groups rather than help them.

I urge that you use your good influence toward the elimination of this section of HR14765 (S3296).

Respectfully yours,

A. H. STURGESS, Sr.

NORTH SIDE BOARD OF REALTORS,
Jerome, Idaho, May 13, 1966.

Mr. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR SIR: The North Side Board of Realtors held their regular monthly meeting in Wendell, Idaho, May 11, 1966.

During the course of the business meeting a discussion was carried on pertaining to housing bill H R 14765.

The board voted unanimously to go on record in opposition to the forced housing provisions of bill H R 14765.

We feel the bill is discriminating against our industry.

Please give this your sincere attention.

E. G. PETITT, *Secretary & Treasurer.*

STATEMENT OF THE REALTORS' OHIO STEERING COMMITTEE, THE LEGISLATIVE AND GOVERNMENTAL AFFAIRS COMMITTEE OF THE OHIO ASSOCIATION OF REAL ESTATE BOARDS TO SUBCOMMITTEE NO. 5, HOUSE JUDICIARY COMMITTEE, CIVIL RIGHTS ACT OF 1966

Mr. Chairman and members of the Committee, we appreciate the opportunity to present this statement to the Subcommittee registering our opposition to Title IV of H.R. 14765, Civil Rights Act of 1966. This type of legislation would make the American homeowner subservient to compulsion not only by the Federal Government but also to harassment by individuals by private litigation. For centuries we have been taught, and rightly so, that a man's home is his castle and real property shall ever be held inviolate.

On January 13, 1966, the Ohio Association of Real Estate Boards at its Board of Trustees meeting in Columbus, Ohio, voted unanimously in opposition to Forced Housing Legislation.

Whereas all men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety. Most certainly if laws were ever passed or organizations would ever propose voluntarily limiting of sales of property to a certain race, color, religion, national origin or ancestry, this Association would oppose with equal vigor. Whether or not Forced Housing Legislation is a proper exercise of the police power given to the Congress by the people, is in question.

The naked assertion of the Attorney General of his confidence in the power of Congress to act, in the face of a specific Supreme Court ruling to the contrary, hardly supports the constitutionality of Title IV.

The constitutional basis for the regulation of property rights by the Federal Government must be found in the Commerce clause of the United States Constitution. (Article 1, Section 8, paragraph 3.) While the elasticity of the Commerce clause has proved to be remarkable in recent years, this proposed extension would totally emasculate the limitation of that constitutional provision.

After exhaustive research, we feel there is no authority which would permit the Federal Government to enact this type of legislation pertaining to the regulation of immovable property connected with private, intra-state, contractual dealing.

We agree with the statement of Senator Dirksen in which he said:

"If you can tell me what interstate (transaction) is involved in selling or renting a house fixed to the soil——,"

Professor Paul Freund, the eminent scholar from Harvard, has pointed out:

"If this were purely private restriction without any state support, I would think it hard to bring in the Fourteenth Amendment."

We conclude that the proposed Federal Housing Bill is therefore questionable on constitutional grounds.

We urge the Subcommittee to reject the concept proposed in Title IV of the Bill.

OREGON ASSOCIATION OF REALTORS,
May 27, 1966.

Congressman EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN CELLER: Whereas, The Realtors of the State of Oregon, believing in the principles of equal rights for all of its citizens, regardless of race, color or national origin; and

Whereas, for many years the State of Oregon has had in effect civil rights laws pertaining to public accommodations and housing, and because these laws have been strongly enforced and generally recognized and accepted, the Realtors of the State of Oregon, believing the existing laws to be adequate and substantial, do hereby strongly object to and oppose House Resolution 14765.

For centuries it has been recognized that a man's home is his castle, and the Constitution of the United States has given encouragement to defending his home with arms, if necessary, and to dispose of his contractual rights to whomever and whenever he desires.

While we are concerned with many of the sections of H.R. 14765, we consider the public health and welfare to be endangered by Section 406.

Section 406. Permanent or temporary injunction restraining order or other order.

It could be easily assumed that a property owner desiring to immediately dispose of his property through personal or financial necessity could be deprived of such action, and because of adverse conditions caused by the permanent or temporary injunction, the property owner could be caused not only humiliation, mental anguish and suffering, but also unwarranted financial loss and possible bankruptcy. Because of assumed and unproven discrimination, the property owner would be deprived and delayed from disposing of his property and obtaining the necessary funds from the sale or rental to improve his position as to housing or employment in this or any other state.

PENALTIES OR DAMAGES

The language in this bill as it pertains to penalties or damages is totally unacceptable in that it forces the property owner because of an assumed and unproven charge of discrimination to seek necessary defense through legal counsel with possible burdensome expense to the property owner, while the complainant who claims discrimination is given legal counsel and assistance at the taxpayer's expense.

It should be recognized that the Realtors of the State of Oregon, joining with their colleagues in the other 49 States of this great nation, believe in and support the Constitution of the United States and the principles for which it has fought for these many years. We must oppose H.R. 14765 because of the proposed legislation's denial of the rights of its citizens as it pertains to property ownership. Freedom has been a cherished symbol of this nation since its existence, and wars have been fought and are now being fought to defend this ideal throughout the world. We cannot believe the legislative body of the greatest nation that has ever been known to mankind would now deprive all of its own citizens the individual freedoms that have given this country its greatness.

Sincerely,

E. G. STASSENS, *President.*

THE OTTUMWA BOARD OF REALTORS,
Ottumwa, Iowa, May 9, 1966.

Hon. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

SIR: It being the duty of all citizens to make their opinions known to their duly elected representatives in government, it is my purpose here to apprise you of our strenuous opposition to the above mentioned bill.

In our opinion this proposed legislation violates the right of the individual to enter into, or refuse to enter into, a contract.

It further abridges the freedom of the elderly individual property owner and tax payer who finds its necessary to augment an inadequate income by rent-

ing out one or two rooms in his home. Under this bill he would no longer have any freedom of choice as to who would live under the same roof with him.

Under Sec. 405, the property owner would be intimidated, threatened, coerced and interfered with by the Federal Government in his freedom to enjoy, dispose of or rent or lease his property.

It would appear that in the effort to assure certain rights to a minority, the Administration is attempting to abrogate the inherent rights of the very people who, through the payment of confiscatory taxes, are supporting this country.

Don't you agree it is about time that the Civil Rights Hysteria be brought under control and we return to constitutional government, with the Congress reassuming its role as the law making body?

Yours very truly,

J. L. HARNESS, *President.*

PENNSYLVANIA REALTORS ASSOCIATION,
Harrisburg, Pa., June 6, 1966.

Hon. EMANUEL CELLER,
Chairman, Subcommittee No. 5, House Judiciary Committee
Rayburn House Office Building, Washington, D.C.

DEAR MR. CELLER: I appreciate the opportunity to submit this letter expressing the views of the Pennsylvania Realtors Association in opposition to Title IV of H.R. 14765, the "Civil Rights Act of 1966".

Our opposition is based on the coercion implicit in Title IV. We simply do not believe that centuries of legal precedent should be overturned to the detriment ofthe owner of real property. Erosion of property rights, after all, affects the owners of *all* property, not just a select few. It is stated by many proponents of this type of legislation that owners of property are subject to all kinds of regulations and restrictions by state and local law such as zoning, building codes, etc. This may be conceded, but I know of no state or local law that touches on the freedom to dispose of property except the law of condemnation. To the extent that a federal court can order a seller of a home to sell it to someone not of his choosing, or a landlord to rent to someone to whom he does not wish to rent, then the action is just as confiscatory as if the property had been condemned. The "rights" to have property conveyed, furthermore, is granted to one individual against another in a completely private transaction, without the usual limitation of public purpose.

It may be argued that the analogy fails because condemnation applies to an unwilling owner, whereas Title IV applies only to those owners who have voluntarily placed their property on the market. The point is that any person who is forced to convey against his will and without a written contract, as provided in this bill, is by all standards an unwilling seller. In addition, by the very fact that the determination of the rights of the parties under section 403 of the bill hinges on intent, the burden of proof must necessarily rest with the property owner and not the one seeking to take it away.

We also take note of the recurring reference by proponents of the bill to the existence of "ghettos" and to segregated suburban communities as evidence that some kind of a conspiracy exists among the elements of the real estate industry to perpetuate these patterns of housing. Indeed, the Attorney General stated in his testimony that "builders, landlords, real estate brokers, and those who provide the mortgage money" are those who "maintain housing patterns based on race." We submit that the evidence does not support this conclusion. For example, William Levitt testified before the Subcommittee that the percentage of minority families in his integrated developments was very small, and cited as the primary reason the inability of most of these applicants to qualify financially. In our State, there has been no wholesale exodus from the central city as a result of the President's Executive Order pertaining to FHA and VA housing, nor to suburban apartment houses as a result of our own state forced housing law. My point, however, is not that Title IV is undesirable because only a handful of persons would be able to use it. I refer to these facts only as evidence that the existence of predominantly white suburbs is not *per se* an indication of a conspiracy, and is therefore not as persuasive an argument for Title IV as the proponents would have the Subcommittee believe. It is easy to use the conspiracy argument, and it is used with hypnotic regularity, but careful analysis of the plight of our cities will show—as hearings on housing bills before Congress have shown—that the underlying causes of the influx of

minority groups into central cities and the resulting housing patterns are far more complex than any alleged concerted action on the part of the real estate industry.

In Pennsylvania, for example, we have encountered little difficulty in finding housing for members of minority groups who are qualified financially. Each Board in the state has a committee of Realtors to whom any client of a member of the Board can go if he is not satisfied with the service he is receiving from such member, for any reason whatsoever. This voluntary method is far more satisfactory than an adverse court proceeding. In addition, many of our Boards have Negro members whose access to the multiple listing service is the same as any other member's. Finally, the Code of Ethics of the National Association of Real Estate Boards, to which all Realtors must subscribe, and the law of agency require the Realtor to transmit to the seller all *bona fide* written offers.

I think that the Attorney General and other proponents of Title IV underestimate the good will and tolerance of the American home owner. Mr. Levitt testified that integration in his communities proceeded with no disturbance whatsoever. He also, however, supported Title IV on the grounds that it was needed for competitive reasons. The implication might be drawn that home owners need it as an incentive for successful integration. We submit that successful integration does not require the threat of forced housing legislation. It has happened in Pennsylvania, which does not have such coercive legislation with respect to owner-occupied residences. Surely these results can be achieved, and have been achieved, by voluntary methods and goodwill, and should not be sought by the use of the injuncture and contempt powers of the federal courts.

I would appreciate this letter being made a part of the record of the hearings on H.R. 14765.

Sincerely yours,

JOHN W. DUTTON, *President.*

STATEMENT OF WILKINS NORWOOD, PRESIDENT, SOUTH CAROLINA ASSOCIATION OF REAL ESTATE BOARDS

I, as President of the South Carolina Association of Real Estate Boards, do hereby respectfully file, in behalf of the Realtor members of this Association, a statement of unequivocal opposition to the inclusion of Title IV in the pending 1966 Civil Rights Act, H.R. 14765.

Our organization is a real estate Trade Association comprised of 635 Active Real Members, approximately 250 Associate (Salesmen) Members and approximately 200 Affiliate Members in 25 local Board of Realtors throughout the State; the parent organization for this Association is the National Association of Real Estate Boards comprised of more than 83,000 Realtor Members in more than 1,500 local Board of Realtors in every State of the Union.

After a careful study of the contents of Title IV, we believe that this is *not* just another civil rights measure, but instead is an encroachment on the rights of *all* property owners which will result in the destruction of their right to exercise *freedom of choice* in contracting for the sale or rental of their property.

To enact legislation allowing the Federal Government to compel the individual citizen to contract for the sale or rental of his private property to those of other than his own choice *cannot*, we respectfully submit, be classified as "fair" housing legislation, but instead, must be classified "forced" housing due the mere element of compulsion which is included in the language of the bill; and in effect grants one group of our citizens an alleged "right" while trampling on the basic and fundamental rights of another group of citizens.

This bill could be used as a weapon for forcing an unwilling owner to enter into a contract and would rob him of his freedom as an individual to enter, or not to enter, into an agreement. The right to own property surely means also the right to dispose. If an individual lacks the right to dispose of his property freely, and fully within his own discretion, he is not truly the owner. Thus the reality of this human right depends upon freedom of contract in disposition. This is a fundamental right in our society of free men. No segment of our people, including racial and religious minorities, can be well served by destroying it.

And has it been considered that a great many refusals to dispose of one's property to a member of the racial minority might not necessarily be an act of racial discrimination on the part of the property owner? Be this the case, to decline to sell could involve one in an expensive, lengthy litigation, trying to

prove that his refusal to sell was not because of race while the prospective buyer has at his disposal the powerful forces of the Federal Government to prove that racial discrimination was involved, all without cost to the complainant.

We *do not* believe the issue in Title IV is open occupancy, or equal opportunity of housing for all people regardless of race, color, religion, or national origin; we *do* believe the issue is whether government should be permitted to introduce an element of *compulsion* in transactions between a property owner and the person who seeks to sell or rent his property. And we insist that the element of compulsion, of legal coercion, in the relationship between a property owner and the person with whom he may do business, is not in the public interest, and is inimical to the long range interests of members of minority groups.

Further we believe that progress in race relations will be retarded—not advanced—by this attempt to deny people *freedom of choice.* In every instance where this issue has been put to referendum, the people have rejected forced housing laws by better than two to one majority.

Therefore, we strongly urge the members of the House Judiciary Committee to reject that section known as Title IV in the 1966 Civil Rights Act prior to its introduction on the floor of the House.

SOUTH DAKOTA ASSOCIATION OF REALTORS,
Sioux Falls, S. Dak., May 31, 1966.

HOUSE JUDICIARY COMMITTEE,
Washington, D.C.

The realtors of South Dakota have gone on record as being *opposed* to any legislation which would abolish the liberty of contract for a seller or lessor of private property.

At the February, 1966 session of the South Dakota legislature bill number 790 was killed in committee due to the public sentiment against this bill which would deny our inherent right to buy or sell property to whomever we should choose.

CLAUDE HONE, *President.*

TAOS COUNTY BOARD OF REALTORS,
Toas, N. Mex., May 12, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR MR. CELLER: I am writing to you at the request of the Taos County Board of Realtors who wish to make known to you their feeling on House Bill #14765 also known as the Civil Rights Act of 1966. Our membership feels that the Title IV section of this bill is particularly distressing with its forced housing provisions infringing upon a basic right of our citizens.

Our members would like to make it plain that our feeling is not segregationist. Taos is one of the happy places where Indian, Spanish-American, Anglo, negro, in fact all live in harmony and will continue to do so. We simply feel that taking a basic right away from so many in an attempt to help others is not the proper approach to the problem as it may exist elsewhere.

We hope you will use your best efforts to defeat this bill.

Sincerely,

KURT ZIEBARTH, *Secretary.*

TUCSON REALTY & TRUST CO.,
Tucson, Ariz., June 2, 1966.

Hon. GEORGE F. SENNER,
House Office Building,
Washington, D.C.

DEAR SIR: HR 14765 has been given the currently popular title "The Civil Rights Act of 1966." It it is allowed out of committee as it is now written, it should be more correctly named "THE EROSION OF RIGHTS BILL OF 1966."

It is a proper philosophy and has been true in the past, that Civil Rights legislation be provided to deal with insuring the rights of our citizens against those state and local governments operating to deny such rights of minority

groups and against the actions of people catering to the public whose actions upset the dignity of some minorities.

NOW—we are faced with Title IV, The Forced Housing Section, which destroys and violates a Constitutional Right of our citizens, regardless of race or creed, the Right of private property ownership to sell or rent, and to contract with parties of his own choice.

Our great country has been built solidly upon fundamental rights of property ownership. Those rights must prevail—they must not be trampled in the name of protecting alleged rights of other groups. To deny the freedom of choice to contract with those of one's own choice, to insert in the law the element of legal compulsion, can not do anything but retard the progress made to date in the matter of race relations. It also destroys the right for property owners of the minority group. Ultimately, the solutions to our many problems in this area shall manifest through the efforts of minorities earning respect of majorities by displaying a regard for the law, for the rights of others, and by the realization that with every Right there is an accompanying responsibility. Solutions will evolve through the influence of the church, men of good will, school, and legal sources. NOT BY THE EROSION OF THE RIGHTS OF OTHERS THROUGH THE USE OF A POLICE SYSTEM. The thing mostly wrong is the element of compulsion and force. Then, "to the victor belong the spoils."

I am personally against racial discrimination but can not rationalize that it is more nearly correct to trample the rights of others to satisfy the screams of the righteous whose technique is to put on the legislative pressure, make the wheel squeak the loudest, threaten withdrawal of voting power, and who do not realize that with every right there is a responsibility.

Title IV can only serve the devil by retarding progress made to date in the matter of race relations. Title IV is unconstitutional.

Strike it out. Kill the forced housing law.

I respectfully request that this letter be read to the Judiciary Committee.

Sincerely yours,

JAMES MAY, *Vice President.*

UTAH ASSOCIATION OF REAL ESTATE BOARDS,
Salt Lake City, Utah, May 31, 1966.

Representative EMANUEL CELLER,
Chairman, House Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR REPRESENTATIVE CELLER: The Directors of the Utah Association of Real Estate Boards have carefully read H.R. 14765 relating to discriminatory practices in housing. It was the unanimous feeling of those Directors that the proposed bill is one that should never be passed for the following reasons.

1. This bill abridges the right of free choice and the right to choose has made America great.
2. Contracts made under duress always used to be illegal and this bill certainly could produce such contracts.
3. It discriminates against any property owner regardless of his race or color.
4. It abrogates the right to choose ones neighbors.
5. It could force people to associate, business wise, with persons not of their choosing.
6. It could bring about financial ruin to many small rental owners.
7. It will bring about many unfair and unnecessary law suits.
8. It is a one way street. The minority can harass the majority and there is no way to fight back. The owner is presumed guilty until he proves otherwise.
9. It is against the American tradition of free enterprise and opportunity.
10. No jury trial is provided.
11. It will never accomplish what its backers think it will.
12. The cost of defense of spurious claims will create immense hardships.

The Utah Association of Real Estate Boards believes in open occupancy. It abhors discrimination but it feels that police methods and force tactics are wrong. It knows that minorities will fight much harder for special privileges than they will for equal rights.

You know and so do we that 25 years ago a bill of this kind would have been declared unconstitutional. Today the Constitution means only what the Supreme Court says it means. Probably the Court will say it is lawful and proper.

We ask you to use your great influence to defeat this unfair discriminatory legislation.

Respectfully,

B. A. WEIGHT,
Secretary and Treasurer.

STATEMENT OF THE WASHINGTON ASSOCIATION OF REALTORS AGAINST TITLE IV OF H.R. 14765

Probably the most critical issue in our time—nearly fatal to the American way of life—is now in Congress as Title IV of H.R. 14765.

The obvious purpose of this bill is to deny home owners and other real property owners the right to dispose of their property, through sale or rental, to persons of their choice.

The American people are striving toward the solution of the problem of the minority ghetto, and the solution is attainable. Yet in every instance where state legislation comparable to the pending bill was submitted to a referendum of the people, it has been rejected by overwhelming majorities. In 1964 a city ordinance in Seattle, Washington, was defeated by a count of 112,448 to 53,453, more than two to one. A city ordinance in Tacoma, Washington, was even more soundly defeated, 23,026 to 7,470—more than three to one.

However, voluntary efforts are achieving what legislation has not been able to do. A year ago, the Washington Association of Realtors approved a "Code of Practices" which was adopted by all our 28 member Boards. In this past year there has not been one single complaint against us for discrimination in housing, in spite of the fact that the executive secretary for the Board Against Discrimination stated publicly that he was seeking housing cases, and could not find any.

It is worthy of note that although this Nation from its inception has declared itself to be under God, the Bill of Rights of its Constitution has unequivocably declared that the power of the state may not be invoked either in aid of or in opposition to belief or disbelief of its citizens in Divine Providence. Now there are those who urge that the power of government shall be used to compel one individual to accept all individuals and prescribe penalties for those who fail to conform.

The use of force—the employment of the police system, the suppression of freedom of contract—are all destructive of the objective of biracial understanding. It is our firm belief that the element of force and legal coercion to deny any person the right of freedom of contract is inherently evil and will sound the death knell of the right of private property ownership—one of the principal rights that made our country great.

WINTER HAVEN BOARD OF REALTORS, INC.,
Winter Haven, Fla., June 2, 1966.

Hon. EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: The second session of the 89th Congress has before it legislation which we have viewed with alarm; namely, H.R. 14765 and S. 3296.

We note that the bill would require any person identified with real estate to be available at any time at the whim of the most casually interested person to render services for the rental or purchase of properties, regardless of the inquirors ability or earnest desire to consummate negotiations. This is, in effect, forced labor carrying with it the threat of police action.

The bill would deny the basic rights of ownership and deprive individual owners of the basic freedom of choice in the disposal of their property.

Perhaps the most critical aspect of the bill is that which opens the door for irresponsible persons to threaten or bring legal action, backed by the United States Government, against responsible agents and homeowners at no cost to the

complainant. The agent or homeowner, however, would be forced to defend themselves at great cost; both financially and with respect to personal and business reputation.

We sincerely question the giving of rights to one for the denial of rights of another. This is not the concept upon which our Constitution was based, nor was freedom intended to be used as a weapon to deny others freedom.

The rights of ownership are basic and precious and are gained, in most instances, through diligent effort and sacrifice. If home ownership should be further burdened by the jeopardy of police action, then the desire and incentive of home ownership will have been killed forever. Pride of ownership will be exchanged for fear and the standards of our nation will perish.

We earnestly ask that you give the many ramifications of this bill your thoughtful consideration.

Sincerely,

G. CARLTON DORR, *President.*

WISCONSIN REALTORS ASSOCIATION,
Madison, Wis., May 25, 1966.

CHAIRMAN,
House Judiciary Committee,
House Office Building,
Washington, D.C.

DEAR MR. CHAIRMAN: Wisconsin's forced housing law in effect for a little over five months has produced 6 cases only one or two of which had any basis in fact—this poor showing in spite of a vigorous speaking and newspaper campaign soliciting complaints of discrimination in housing.

Wisconsin legislators did recognize the traditional right of a homeowner to sell or not to sell for his own private reasons by exempting from the application of the law owner-occupied dwellings up to and including four family units.

Nevertheless the existence of any such law places in the hands of a government agency fearful powers of investigation and reprisal. It is our observation that administration of forced housing laws invariably is placed in the hands of zealots who in their eagerness to force housing lose objectivity. Before me is a characteristic finding by a so called Human Rights Commission that "* * * Realty Co. failed to display toward * * * the zeal for renting property that is normally demonstrated by one in the real estate business."

Another unfortunate characteristic of housing laws is that the burden of proof rests on the defendant. If a colored person complains that he was refused housing the presumption is that the refusal was because of race or color. The defendant must then prove that he refused to rent or sell for a reason other than color—and there are reasons other than color for refusing—lack of financial means, children, pets, etc.

Forced housing laws lead to such silly situations as that reported in the February 19, 1966 issue of the Milwaukee Sentinel.

"Concern to keep the public housing projects integrated has caused the City Development Department to go out and recruit Negroes. . . . In 1961 when Convent Hill was ready there was not a single negro applicant. We interviewed applicants then on the waiting list . . . and finally found negro tenants for four of the 120 units."

As opposed as we are to forced housing legislation, we find now in Wisconsin that we have more to fear from the administration of it than the law itself.

For example, the Wisconsin law contains a Declaration of Intent which states in part:

"It is the intent of this act to render unlawful discrimination in housing where the sale, rental or lease of the housing constitutes a business."

Yet the administrator of the housing law was quoted in the Milwaukee Sentinel March 25, 1966, as saying "* * * the real value of the law is its broad intent."

Under this questionable interpretation the administrative agency has accused appraisers of discrimination, has by innuendo charged block busting and has made the observation although not within its province that white flight, not negro arrival drops property value.

This leads us to the point that housing laws are not concerned with housing for minority groups. The emphasis is on integration. Integration exists in a neigh-

borhood up to the moment the last white departs that neighborhood. It follows therefore that you can achieve integration only through legislation controlling the movement of people. Are you prepared to force the heretofore free citizen of this country to get a permit from city hall to move from one area to another? Will he be required to justify his intent to move?

Finally in your deliberations will you consider the attached "Brief History of the Comprehensive Testing Program, Philadelphia, Pennsylvania—a frightening report of deliberate provocation and resulting entrapment.

You cannot legislate morality but in the effort to do so you will set up a monstrous Gestapo.

Because civil rights belong to all people, we urge you to vote against Title IV of the Civil Rights Bill.

Sincerely yours,

G. ROBERT VIELE, *President.*

BRIEF HISTORY OF THE COMPREHENSIVE TESTING PROGRAM, PHILADELPHIA COMMISSION ON HUMAN RELATIONS, AUGUST, 1964 TO MARCH, 1966

Exploring

In August, 1964, field representatives in the housing division normally assigned to the handling of complaints began to "test" apartment buildings in West Philadelphia, a racially-mixed area which had been the source of the largest proportion of complaints due to discriminatory policies of apartment buildings. A Negro staff member and a white staff member would apply for apartments at the same buildings within a short time of each other. The results were then compared. Thirteen buildings appeared to be discriminatory.

Staff then requested the Commission to rule as to how these cases might be handled and recommended that the buildings be sent warning letters. After the warning, the buildings were to be retested and, if still discriminatory, a CHR complaint would be initiated. Commission counsel assured that such testing could not be ruled "entrapment." The Commission agreed to the program.

Gearing up

In the 12 months that followed, Commission field representatives continued testing, aided by a field inspector assigned, first parttime, then fulltime, to housing testing. Ninety-four apartment houses were tested conclusively with 42 (45%) found discriminatory. In addition, the first tests were made on real estate offices in the late summer.

In September, 1965, staff brought to the Commission a request to file complaints on the basis of one conclusive test, omitting the intermediary step of the warning letter. The request was based on several factors: 1) Nearly 800 "visits" to apartment buildings were necessary to test conclusively only 94 buildings, due to the fact that superintendents were frequently out, often there were genuinely no vacancies, and sometimes the information given was vague and misleading, but not clearly and conclusively discriminatory or nondiscriminatory. 2) Not only was it extremely time-consuming to make the initial test on a building, but also it was even more difficult to secure a second conclusive test after the warning letter had been sent. 3) Staff had previously determined that a far more efficient use of their time would be made of the program now concentrated on real estate offices, rather than individual buildings, since the Commission had recently determined that the Philadelphia Fair Practices Ordinance does fully cover brokers' operations under the public accommodations provisions; it was felt that brokers should not need to be informed of the provisions of the law through a warning letter, but should be well aware of their legal responsibilities.

The Commission granted the staff's request.

Acting

Staff continued to test, focusing on real estate offices, and (as of November 8, 1965) had made 1,000 visits, finding 88 of 150 offices conclusively tested apparently practicing discrimination. Various areas of the city showed 26%, 52%, 65%, 67%, 75%, 78%, and 100% of offices tested were apparently discriminatory.

During the fall testing program, the Commission decided to hold public investigatory hearings into the nature and extent of housing discrimination in Philadelphia and authorized the use of the testing program data, including names, places and dates, in the public hearings. Although the major focus of

the six full days of hearings was on the effect of the current exemption of owner-occupied dwellings from legal coverage, a total of 44 testing cases where violation of the ordinance was apparent, were presented.

The Commission permitted complaints to be filed on all cases used in the hearings as well as those that were not. A total of 71 complaints against brokers and 131 complaints against owners were filed up to January 31, 1966.

Thus far nearly all of the cases have been settled rapidly through the signing of a Consent Order and Decree by the Respondent and the Commission. The Orders bind the Respondent to obey the Fair Practices Ordinance; failure to fulfill the agreement may result in a contempt citation.

The Commission has now requested the City Law Department to initiate the first contempt case.

The Commission is now considering whether or not Consent Orders offered to Respondents in CHR-initiated testing cases ought not to include the voluntary payment of a $300 fine. Brokers who refused such a conciliation would then go through the usual public hearing procedure where, if the Commission made a determination of discrimination, it would request legal action to have a fine imposed.

Institutionalizing

Because all Commission testers revealed their identity at the public hearing, staff has been unable as yet to retest most of the brokers who have signed Consent Decrees.

The Philadelphia Civil Service Commission has granted the CHR the privilege of hiring temporary employees for the purpose of testing, each of whom will serve no more than 3 months. We hope to test over 200 brokers per year.

Results

Only the second round of testing will determine the extent to which the program is increasing compliance with the law. Nevertheless, we can at this point state several positive results of the program:

(1) Through the excellent TV, radio and newspaper coverage of the public hearings, the public knows more of the existence of the law, the widespread violation by brokers, and the determination of the Commission to prosecute. A firm basis has been made for the Commission's forthcoming efforts to strengthen the law and its enforcement procedures.

(2) Real estate brokers now clearly know their responsibility under the law. It is probable that, although they will continue to practice more subtle forms of discrimination, they may reduce the outright refusal to show accommodations to Negro applicants.

TESTING MANUAL

A test for discrimination in housing is usually undertaken either to provide evidence to accompany a formal complaint, or as part of an aggressive program designed to discover the rental or sales policies of building owners or real estate offices. In the latter case, the test is the base from which a Commission complaint may be initiated. Even when no complaint arises from the test, it provides a record that may be useful in future contacts with the same owners, managers, or agents.

Doing a test means constructing a situation in which the person tested will clearly discriminate, if it is at all his usual practice to do so. The situation is controlled so that comparison can be made of the treatment given white as against non-white seekers of housing accommodations. The majority of tests are aimed at finding out, quite simply, which owners or agents are *lying* to non-white house or apartment seekers.

Rental practices

In order to show discrimination at the inquiry stage of renting an apartment, we must demonstrate that a certain apartment is available to whites at a given rental rate and under certain terms, and that the renter is denying availability of the apartment at that rate under those terms to a non-white, without any valid reason. A valid reason would be the non-white's insufficient income, or his having children where children are as a matter of building policy not allowed. The chief method of determining whether the apparent differential treatment of a non-white is valid is to incorporate the non-racial factors into

a test; this would happen only in case testing. For example, a couple with four children complains to the Commission that they were denied rental of a two-bedroom house because they are Puerto Rican. One kind of a test would be to send a white couple who claim to have four children to try to rent the house. Another kind would be to send a Puerto Rican couple who claim to have no children to try to rent the house. The owner's acceptance of the first test couple, or rejection of the second test couple, would tend to substantiate the complaint.

In the testing program one of us takes the part of the non-white apartment-seeker, and the manner in which he is handled is checked against the way in which a white tester is received. There are three types of tests, if considered according to the minimum number of contacts needed to get a clear view of rental policy.

1. Non-white tester is shown everything he has asked for, and terms are reasonable without doubt; he is encouraged to make application. Or, a tester is able to observe with certainty that the building is integrated. The latter is not a certain thing, since the apartment building may have taken in Negro tenants under a policy either of tokenism or quota renting.

2. a) Non-white inquiries: no available apartments. b) White tester inquires within 24 hours afterward: apartments available and shown. It is important that the time lag be short. If it goes over a day or two, the validity of the test may depend on what the white tester can learn about when the renters started showing these apartments.

3. a) White inquiries: apartments of certain type available, which he is shown. He leaves situation open for further contact. b) Non-white inquiries: apartments not available, or, available but "with strings attached". c) Clean-up: white returns and apartments are still available, without strings. This test is obviously the most clear-cut and decisive, in deciding whether an apparently all-white building has a discriminatory policy.

In all testing of real estate offices, and in most tests of large apartment buildings, type three is used.

A tester must first of all seem a genuine apartment seeker. Although it possibly will not come up in the encounter, have a background ready for yourself: an occupation and a place of employment, as well as a reason for moving from your present location. Have in mind a size and price range you can stipulate if asked. Be able to cite areas you might be interested in. The goal is to obtain as much hard evidence as possible about the policy of the realty office or building, but this can be gained best by being the epitome of the serious, determined but open-minded apartment-seeker; on top of this add alertness.

Surface information.—Observe the correct name and address of the office or building under test. Some buildings are large enough to have more than one street address, and all may be needed for filing a complaint. At a realty office, note the names of the broker and salesmen as listed on the window, or inside on desk plaques. At a building notice the name of the superintendent or resident manager, often posted near the mailboxes, and get his apartment and phone numbers if they are in evidence. If a sign tells what firm manages the building, take down this information.

Contact.—In a realty office, apartments may be handled by a particular salesman, or by an anonymous receptionist. Sometimes the "woman in the front of the office", competent to tell white applicants about apartments, tells non-whites that a certain salesman is the only one knowing about apartments, and he won't be back until tomorrow. Try to get the name of the person to whom you talk, and note who else was present. Evidence is firmest when both white and non-white testers apply through the same person.

At a building, if ringing the superintendent's bell gets no response, look around on the outside of the building, or knock on the door of the super's basement apartment. Question a tenant if the opportunity arises, to find out what is available or when and where the person responsible for renting can most probably be reached.

Inquiry.—Ask the agent about available apartments. "Available" means anything that you could rent now or within the next couple of months, and this should be made clear to the person you're questioning. "We have no vacancies" is not a satisfactory answer always because "vacancy" is an ambiguous word; there may be an apartment which, though not vacant, is being shown white

applicants because the present tenants have given notice; the agent tells non-whites the misleading truth, "no vacancy".

You may refer to "for rent" signs you have seen, or you may just ask for "an apartment", being specific only when asked to be. What sort of apartment you ask for depends partly on knowledge of the area. In Germantown, e.g., it is usually more fruitful to ask for a one or two-bedroom apartment. In the University City area, it is better to ask for an efficiency or one-bedroom apartment—for one person. (If the test is tied to a specific complaint, what you request will of course be dictated by what the complainant tried for.)

If you are not the first tester, what you want may be determined by information already obtained. Suppose a white tester has found that nothing is available at a Germantown building except an efficiency. If you are the non-white tester, you will depart from Germantown form and might ask for "an efficiency or a small one-bedroom".

Testers should determine, especially at real estate offices, whether the apartments mentioned to them are the *only* apartments now available. At K. K. Xenophobe Real Estate and Insurance, white applicant A may be told about two apartments and a house. Negro applicant B, also asking for a large apartment, may be told about two other apartments, one a one-bedroom and one in an all-Negro area. A goes back and finds his apartments still available. Demonstration of discriminatory practice isn't firm unless B has gotten a statement from the agent that "nothing else is available". The lie has to be direct.

Terms.—Find out definitely when you could take the apartment. Find out what the rent is, how utilities are paid for, what length lease is required, and what sort of deposit is wanted. Get an application if you can and ask who will examine it and how long the process will take.

Leave situation open.—If there are no available accommodations, or if the situation is ambiguous, and the agent says something may be coming up fairly soon, leave with him your name or cover name and your home phone number.

If you have been told about accommodations and/or have seen some, leave an opening for a return. The tried and true line, of course, is that your spouse will want to have his say. Or you may say that you will have time to look at one or two of the apartments in a couple of days. Or you can say that you still have other buildings to visit, and may call back if this apartment competes well with the others you are going to see.

Examining an apartment or house.—Be credible. Disguise your jaded disinterest. While being shown an apartment get an impression of it and make remarks if this helps. Genuine apartment hunters certainly notice the advantages and disadvantages of apartments and comment on these. If there is need of repairs, ask if the landlord will make them. Assess the closet space, the lighting, the floors.

Flexibility.—The tester has to be ready to adapt quickly to unexpected situations—either to protect his identity or to get information. If the white tester on a follow-up visit is told the place he was going to see has been taken, he might be able to find out that it was taken just an hour ago, (and therefore was available when the Negro tester visited yesterday afternoon). A Negro applicant, told by a broker "Yes there are others but you wouldn't like them", can press to hear about these "unsuitable" apartments, until discrimination takes more definite form.

Testing sales practices

Most of the procedures described for testing rental policy apply with little adaptation to the discovery of discriminatory practices in the sale of homes. Again a "white, non-white, white" sequence is often followed. White tester approaches the broker's office asking for information about available homes in given price range and in certain areas. He may refer to a newspaper advertisement. Possibly he will be shown some of these. Normally he will be told also about homes not advertised; if he is shown a house not owner-occupied, with no "for sale" sign out front, chances are this is being offered on a discriminatory basis.

The non-white tester follows the same procedure, but responds to the broker's probable effort to steer him to traditional non-white areas by asking for properties which may be restricted. He may ask about certain areas, or about specific addresses.

As in rental testing, it is desirable to have all testers involved in a sequence talk with the same responsible person. The situation is more complicated in

sales, testing, however, since more than one salesman may be trying to sell the property. Thus it may be truly ambiguous whether the property is on or off the market, if testers do not deal with the same salesman or broker. Both testers should determine, if they can, whether a given property has other parties interested in it, and what their degree of interest is.

Since discrimination can crop out in the conditions of sale, once a non-white has found out about a house in the discriminatory market, discussion of matters related to purchase of the house or houses in question should be carried on. That is, it may turn out that the white tester is told that FHA mortgaging is available, and the non-white tester is told that it is not. Or, improvements on a house may be offered a white tester, but salesmen may actually emphasize defects of a house to a non-white tester whom they wish to discourage.

Definitions and notes

Deposit.—* * * (1) a "security deposit" that is paid at the beginning of occupancy to take care of damage or default; (2) a deposit made with the application—earnest money—usually $10–25, but sometimes equivalent to a month's rent; (3) deposit of $1–5 left at real estate office when you take key away to inspect an apartment. (Take note of how much asked; this could be a point of discrimination.)

Vacant apartment.—* * * an empty one. Except for when a building is undergoing change of ownership, or extensive renovation, a "vacant" apartment is usually "available". But not all "available" apartments are vacant.

Available apartment.—* * * one that is on the market; one that prospective tenants can be told about; any apartment on which the present tenants have given notice of leaving. The date that the apartment becomes available varies according to the management's policy. Some owners do not show empty apartments until they have been redecorated; others show them and then redecorate to the new tenant's specifications; others will even advertise and show an apartment while the old tenants are still in it.

"Person(s) contacted".—* * * of course it is best to get the name. If you cannot, then describe the person briefly. "Man", "tenant", and "janitor" are inadequate descriptions: "Middle-aged white man, with glasses", "hostile woman tenant, brunettes, snapping at red-headed 2-yr. old child", Negro janitor, wouldn't give name" sound more useful. If the contact is made over the house phone, note this.

"Comments".—* * * put down any possibly relevant fact you notice, as well as considered opinions. For example, if you are the non-white tester and are told that a one-bedroom apartment here is $130, put down whether you think, from the building's location and condition, this rent could have been especially inflated for your sake. If there is a "Vacancy" sign, but you notice that it seems to be one of those weatherbeaten permanent signs aimed only at keeping a list of applicants, write this down. If a woman in the lobby claims to be only a receptionist, but has what appear to be a few completed application forms on her desk, mention this. If the landlord is nervous or belligerent, remark this.

"Accommodations requested".—* * * be very accurate in recording just what you asked for.

WYOMING ASSOCIATION OF REALTORS,
May 27, 1966.

Congressman EMANUEL CELLER,
Chairman, Subcommittee No. 5, House Judiciary Committee,
House Office Building, Washington, D.C.

GENTLEMEN: I would like to make a statement for the record against Title IV of the Civil Rights Act of 1966, on which testimony is being received by your Committee. This statement is being made as President of the Wyoming Association of Realtors, whose members represent a majority of the real estate people throughout the State of Wyoming.

I have just returned from a trip to all sections of the state and had the opportunity to discuss this proposed legislation with a large number of members of the Wyoming Association at local board meetings held for this purpose. During this trip I heard not one Realtor speak in favor of the proposed legislation, Title IV of the Civil Rights Act of 1966.

In Wyoming there has been almost complete freedom of choice in the sale, rental, or lease of real estate to minority groups through the years, and any

segregation of minority groups at this time is a result of economic influences rather than social status. Since the recent Civil Rights Acts the attitude of the general public has been altered to the extent that the Association does not believe the force of law to obtain equal opportunity in housing can be justified in the State of Wyoming. We believe that the cause of improved race relations can only be retarded, not enhanced by this measure.

In every case where a similar law has been submitted to a referendum of the people it has overwhelmingly been rejected. The people of Wyoming, in our opinion, still cling to the century old doctrine that "A man's home is his castle." Title IV certainly will destroy this concept and remove the basic human right of private property ownership.

We further feel that the moral end advanced by Title IV cannot justify the means through which it is sought to be obtained, and that it obliterates the distinction between public and private affairs.

If individual freedom is worthy of preservation it behooves all Americans to mark well the distinction between public and private affairs, and to employ most sparingly the court of law to coerce human conduct in areas of private affairs.

The Wyoming Association of Realtors does assert their support of the principle of equal opportunity in the acquisition and enjoyment of real property, and the right of individuals to determine the disposition of that property. Title IV would seriously impair the freedom of action of the seller in advertising his property. It would, in effect, convert an advertisement into a legally binding offer with respect to any person who alleges violation of section 403. The action of such person, however, would not be for breach of contract, but for violation of an entirely new right—that of the right to buy real property advertised for sale. Thus the placing of an ad incurs legal consequences hitherto unknown to the common law. It would not only restrict the seller's freedom to bargain and negotiate with a number of offerers, but it also restricts his right to withdraw the property from sale.

Sincerely,

GEORGE BOWER, *President.*

SAN FRANCISCO, CALIF., *June 6, 1966.*

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

DEAR SIR: I am President of a real estate development company known as Kay Development Co., located in San Francisco. Our principal business is to build sub-divisions and planned communities in the San Francisco Bay Area, and we have been building between 650 and 1,000 single family residences a year. It has always been our policy to sell homes to anyone financially qualified to buy them and, in connection with that policy, some of our customers have been members of minority races. Our experience has been uniformly excellent insofar as neighbourhood harmony is concerned.

I have reviewed with members of our company Title IV of the Civil Rights Act of 1966, and it is our feelings that its provisions are not only morally equitable but also workable from a practical point of view. I therefore urge favorable consideration of Title IV by your committee.

Very truly yours,

IRVING KAY.

MODERN COMMUNITY DEVELOPERS, INC.,
Philadelphia, Pa., June 5, 1966.

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee.
Washington, D.C.

DEAR MR. CELLER: I write to express the support of our company for title four, the fair housing section, of the civil rights bill of 1966, and to ask that you place this letter in the record, with the enclosure as well.

Our company, which develops integrated housing—as told in the enclosed article from *Harper's*, July 1965—has found that the average white renter or

homebuyer is more concerned with the kind of housing value he is getting than the race of his neighbors.

Through limited partnerships, we've bought and integrated three major apartment developments in a border state area, and only 6 of over 600 white tenants moved on account of race during the past four years.

I live in one of my own developments in Philadelphia, where Congressman Robert N. C. Nix has a home across the street. We find race is no problem. All activities in our communities are interracial—baby-sitting co-op, nursery school, gourmet club.

Many builders have told me they hope fair housing would be put into national law, so that all builders would be bound by that reasonable code of decency—that every man has the right to buy or rent any home he can afford.

Respectfully,

MORRIS MILGRAM, *President.*

[Reprinted from Harper's magazine, July 1965]

THE BUILDER WHO MAKES INTEGRATION PAY

(By Alfred Balk[1])

HOW A PHILADELPHIAN WHO BELIEVES RACIAL JUSTICE CAN BE SOUND BUSINESS HAS PROVED HIS POINT IN MORE THAN A DOZEN AMERICAN CITIES

Morris Milgram is a thin, slightlystoop-shouldered, forty-nine-year old Philadelphian who stubbornly insists that an American should be allowed to buy any home on the market that he can afford. Coming from Milgram this idea is downright unsettling, because he happens to be a builder. For years the unwritten law of the building business has been that new housing is white buyers only.

Eighteen years ago, when his late father-in-law, William Smelo, a small-volume contractor in Philadelphia, invited him to become a partner in the business, Milgram told him. "Only if I can build for all my friends—and some of my friends are Negroes." Smelo readily agreed and Milgram went on to become a kind of Johnny Appleseed of interracial housing, sowing integration wherever he found fertile ground. His developments to date include Concord Park (139 homes) in Philadelphia suburbs and Greenbelt Knoll (19 homes) on the city's northeast side; Maple Crest (25 homes) and Glen Acres (15 homes) in Princeton, New Jersey; the Runnymeade Corporation (12 homes plus 14 more planned) near Wilmington, Delaware; and Country Club Homes (13 houses and 20 more planned) in Waterbury, Connecticut. In addition, Milgram's firm, Modern Community Developers, Inc., and an affiliate, Planned Communities, control apartment buildings valued at $7 million in and around New York City and Washington, D.C., and a 480-apartment complex, which is part of $7.5 million redevelopment project now under way in Providence, Rhode Island. As a consultant, Milgram has helped further integration in Wilkinsburg, Pennsylvania; Lincoln, Nebraska; Grand Rapids, Michigan; and other cities.

Milgram is not the largest builder of interracial housing. Eichler Homes in California, for one, builds more than seven hundred houses annually and has sold them to people of all races for several years. Both small and large subdivisions elsewhere, including "Levittowns" in New York, New Jersey, and Pennsylvania, have been integrated after occupancy (in some cases with attending violence). And immense integrated co-op and public housing projects now exist, mainly in the East. But Milgram is the field's most zealous pioneer; his impact on segregation has been more widespread than that of any other American builder. and it is no surprise that he received the first annual Walter White Award of the National Committee against Discrimination in Housing in 1956.

He is not universally beloved, however. Indeed, citizens of the Chicago suburb of Deerfield—after Milgram's intention to build there was disclosed prematurely by an Episcopal minister—waged a celebrated, and successful, court battle to force his builders out of town. And the *Alabama Journal* in Montgomery called him "a man who makes his living making other people unhappy."

[1] Alfred Balk, whose articles have been published in many national magazines, was formerly a reporter for the Chicago "Sun-Times." For this article, he had assistance from the Philip M. Stern Family Fund. A journalism graduate of Northwestern, Mr. Balk lives in Evanston.

For years, according to George and Eunice Grier, coauthors of the definitive study *Privately Developed Interracial Housing* (University of California Press, 1960), realtors, lenders, corporate and institutional investors, and government agencies have made enterprises like Milgram's difficult, if not impossible. Until 1948, when the Supreme Court ruled race-restrictive covenants unenforceable, even the Federal Housing Administration maintained that "the presence of incompatible racial elements results in lowering of [a property's] rating, often to the point of rejection."

Despite these handicaps, several religious and nonprofit groups managed to establish a few open-occupancy developments. A cooperative named Penn-Craft, organized by Quakers in 1937 for Pennsylvania coal miners, apparently was the first; Negroes occupied five of its fifty homes. In 1946, Edward Tilsen built a commercial development of twenty-four row houses in Minneapolis; half the tenants were Negroes. There were similar projects elsewhere. But they were so little known in 1955, when the Fund for the Republic invited the Griers to undertake their study, that the couple thought it might be wiser to wait a few years.

THE PROPHETIC TYPE

In this climate, Morris Milgram decided during 1951 to stake his future on building housing open to all. He had been in the building business for only four years, and on his own for just the few months since his father-in-law's death. Moreover, to outsiders he seemed hopelessly unbusinesslike. A dark-haired, dark-eyed man with a somewhat boyish face, he neglected to wear well-cut suits and socks that stayed up, and—worse—he often appeared to let enthusiasm overrun prudence. "He is the kind who refuses to be moved by facts—you know, the prophetic type," says one associate. Milgram still has these traits, along with a high-strung temperament; he moves frequently from one chair to another, halts conversation to scribble in a pocket notebook, and rattles off sentences in the Manhattanese of his native Lower East Eide. His peripatetic manner is so conspicuous that a friend once advised him, "Morris, you'd get more done if you slowed down. W-a-l-k s-l-o-w-e-r. T-a-l-k s-l-o w-e-r. S-l-o-w d-o-w-n." Milgram nodded and wrote it in his notebook: "W-a-l-k s-l-o-w-e-r. T-a-l-k s-l-o-w-e-r. S-l-o-w d-o-w-n." Then he slammed the notebook shut and rushed out the door.

More often than not, though, Milgram's energy and ideas yield results, some of them spectacular. One morning, for example, I met him at his office, a cluttered, air-conditioned flat in an apartment building near his home in northeast Philadelphia. "It's been a pretty good twenty-four hours," he announced. "Yesterday in New York I had lunch with a man who's putting $200,000 into a project, and I just got a phone call from another man pledging $500,000 as a down payment on a four-hundred-unit apartment building. We'll close and take possession in three weeks."

Even traveling doesn't slow him down. He always picks up hitchhikers ("What kind of world is it if you can't help a fellow who needs help?" he asks when friends point out the danger). When he learned that a young white newlywed he had given a hitch was looking for a home, he promptly sold him one in a new interracial housing development. A Negro rider recommended a likely investor to whom Milgram later sold $25,000 worth of stock in his firm.

The dominant forces in Milgram's life, however, are his convictions. An agnostic himself, he is the son of Orthodox Jews who were driven from Russia by tsarist terrorists. With four of their six children (Milgram and one of his four sisters were born later), they narrowly escaped. A crowded boat brought them to America—steerage class—and, once here, the Milgram children found jobs in the garment industry and joined union campaigns against "sweatshops."

Milgram learned early about deprivation and persecution, and when he was a student at the City College of New York, he felt strongly enough about constitutional guarantees of freedom and human dignity to lead a demonstration against compulsory attendance at a reception for some visiting Italian Fascists; the college expelled him and twenty other demonstrators. After graduation from a small college in Newark, New Jersey, he spent ten years as a paid organizer for the Workers Defense League, a civil-rights and legal-aid group for tenant farmers and other indigents. From 1941 to 1947 he was its National Secretary. Almost all his speeches and most of his letters include evangelical calls to action against injustice, and memos are imprinted with this verse by Ralph Chaplin:

Mourn not the dead * * *
But rather mourn the apathetic throng
The cowed and meek
Who see the world's great anguish and its wrong
And dare not speak.

He is, in short, a "true believer," and to him racial justice is the preeminent social cause in the United States. The housing ghetto, he feels, is its most institutionalized foe. "Life is too short to do anything else but build the kind of world one believes in," he insists.

Milgram began his crusade for integrated housing after a flare-up in Hartboro, Pennsylvania. He was at a zoning hearing which concerned his firm's property when a young artist stood up. Milgram had built the man's home, sold it for only a modest profit, and donated services of a landscape architect as well.

"Now, Mr. Milgram hasn't told us whether he's going to sell to niggers or spicks," the artist said. Milgram reddened.

"I'm sorry, I don't know what spicks are," he replied. "However, the township president has said in the past that restrictive covenants are unenforceable. In any event, I can tell you now, no Negroes have applied."

The board approved Milgram's request on zoning, but he left in a rage, determined never again to build all-white housing.

Through a friend in the real-estate business, Milgram put a $2,500 deposit on a forested nine-acre tract in northeast Philadelphia. Facing a small woods and surrounded on three sides by hilly, forested Pennypack Park, it seemed an ideally noncontroversial site for an integrated project. He soon learned differently, however. Despite his determination he was unable to build there for nearly four years.

Housing developers need financing: "equity capital" for purchase of land; a "construction loan" for wages and materials; assurance of "permanent" or "mortgage financing" to enable purchasers to buy homes on installments. The builder, or several investors in partnership with him, usually provides the equity capital. He or a mortgage service—which "places" mortgages for a specified fee or commission—next "shops" for a bank, insurance company, or other investment institution which will buy the mortgages on the best terms. Then the builder approaches a bank for a construction loan.

A friend of Milgram's, the head of a large local mortgage company, had assured him earlier of up to a million dollars in risk capital. "When you have the land let me know. We'll be pleased to back you," he said. Now, observing protocol, Milgram took his request to an executive vice president of the firm. The man was skeptical.

"I don't think whites will buy new houses next to Negroes," he said.

"I'll prove it," Milgram replied. "I'll get deposits."

He commissioned an architect to design the homes, and then asked Frank Loescher, who headed the city's Human Relations Commission, to arrange a meeting with local race-relations leaders. Their response, while warm, was not as enthusiastic as Milgram had expected. One man cautioned against "going too fast on these things," and another warned, "Better stick with conventional building. There's a Gresham's law that money goes where the profit is easiest." Nonetheless, with the help of friends he obtained $200 deposits from twelve families, seven white and five Negro. Buoyantly he returned to the mortgage company. Again he was rebuffed. "Fellowship is Maury Fagan's job," the executive said, referring to the president of the Philadelphia Fellowship Commission. "Our job is making money."

"At that point," Milgram admits, "I began getting frantic. I had thought I had a million dollars. Now I had nothing."

BROTHERHOOD VS. THE BUCK

He next sought the help of a multimillion-dollar real-estate investor. "Sounds extremely worthwhile," the man told him. "I'll donate a thousand dollars."

"I don't want a contribution." Milgram said. "This is a business deal."

"Sorry," said the investor. "It's too risky." Wanting to prove interracial housing commercially feasible, Milgram refused what he viewed as a mere "tip." More than a dozen banks and mortgage companies turned him down after that.

He also approached representatives of a large Protestant ministers' and missionaries' retirement fund. Milgram presented his plan to them as "a chance

to make your money work for your beliefs." At first the group argued that they could invest only in commercial properties. Milgram countered that his project was just as safe—it had FHA support. Well, they said, having to evict someone might prove embarrassing for a religious group. Milgram arranged with the Eastern Mortgage Service Company to handle the deal without evicting anyone. Still they said no. "This was one of the hardest blows," Milgram remembers. "It wasn't that these people didn't care—they cared affirmatively for segregation."

Not only was he unable to obtain the risk capital he needed, he also found city authorities slow to approve his subdivision plan, and unwilling to provide necessary water and sewer lines. Then, when his personal assets had melted down to $200 and a stack of debts had shaken his usually unflagging optimism, the American Friends Service Committee came to his aid. In their quiet way, the Quakers were mounting a determined campaign that has since desegregated hundreds of neighborhoods from California to New England, and they knew the demonstration value of a project like Milgram's if it succeeded. They therefore arranged for Milgram to meet George Otto, a prosperous, graying Quaker whose Penn Valley Constructors had been the largest homebuilder in nearby Bucks County for years. Otto was, and is, as conservative as Milgram is liberal, and though he had worked to increase job opportunities for Negroes, he had appeared unembarrassed about building segregated housing. But Otto strongly believes that people who want to live in integrated areas have that right. Consequently, despite their philosophical differences, the two decided to try to work together.

Otto's experience and prestige solved some of Milgram's worst problems. To minimize the risks both of construction and sales snags and of delays caused by zoning and building code authorities, Otto suggested that they build two projects instead of one. Milgram's original site, Greenbelt Knoll, took second place while they planned a larger development, Concord Park, near a small all-Negro settlement alongside the Pennsylvania Turnpike and Old Lincoln Highway.

Otto also recommended that they stop trying to secure mortgages and instead form a stock company specifically for the two building ventures. By April 1954 they had sold their entire $150,000 stock issue to sixty-five people, mostly personal friends. More than half were Quakers. This done, they found a cooperative mortgage service and a bank which verbally agreed to buy Concord Park's mortgages. Then they hired subcontractors and began building.

A few weeks after ground-breaking, however, their bank reneged on its mortgage commitment. Milgram and Otto frantically canvassed banks from Philadelphia to New York City. Finally, the Bowery Savings Bank of New York, long known for making home loans without prejudice, agreed to buy the mortgages. The People's National Bank and Trust Company of Langhorne, Pennsylvania, now merged with Central-Penn National Bank of Philadelphia, provided construction loans.

MORE ROADBLOCKS

There remained the problem of selling the homes. Negroes, restricted to old and inferior housing at exorbitant prices, were eager to buy. The difficulty was in attracting whites. From the beginning Milgram and Otto had agreed on complete frankness about their sales policy. Their newspaper advertisements declared, "Under Quaker Leadership Toward Democracy in Housing"; mailings to 25,000 members of religious and liberal community organizations made the point outright: and sales agents were instructed to introduce the question discreetly by saying, "One of the exciting things about this development is that it practices real democracy." As many as 5,000 persons looked at Concord Park's model on some weekends. Typically, whites remarked, "What a lovely home for the price [$12,000 to $14,000, and no down payment on GI loans]. What a shame that you're selling to colored."

In the first ten weeks, ten homes were sold to whites and fifty to Negroes. Milgram saw his dream fading.

Then, checking, he found that sales agents, who worked on commission, were trying hardest for the easiest sales, to Negroes. (One greeted white prospects with, "You know, there'll be colored here," or "Gee, buddy, I just can't do this to you, living next door to a Negro.") "You can't sell integrated housing unless

you believe in it," Milgram now says. But he had to change sales agents twice before finding one who did believe, a realtor named Stuart Wallace. Still, the next few sales remained in lopsided proportion, and Milgram began having trouble sleeping.

"Morris, you SOB," he said one night, "you're building a ghetto, as sure as Bilbo."

Although he was unhappy with the idea of a quota—which he thinks "basically undemocratic"—Milgram chose what seemed to him the better of two unhappy alternatives: a controlled racial balance, 50 per cent white, 50 per cent non-white. To his surprise, three Negroes on the firm's interracial advisory board concurred and even suggested reducing the Negro quota to the lowest that remaining unsold properties would allow—45 per cent. Further, to prevent "bunching," they decided that no one could select a specific lot, and no more than three houses in a row could have occupants of the same race. This stratagem worked. When the last home was built and sold in 1957, Concord Park was a social and economic success: it had a racial balance of 55 per cent white and 45 per cent non-white (there are several American-Japanese couples), and returned a satisfactory net profit of 6 per cent to those whose purchase of stock had financed it.

Milgram also used a quota system ("fair housing pattern," he prefers calling it) at his second project, Greenbelt Knoll, where homes cost an average of $26,000. But there, to more nearly reflect large cities, population ratios and to guard against resales "tipping" the balance adversely, the ratio was two-thirds white, one-third non-white. Since then, he has abandoned quotas. Instead, he maintains racial balance by selective promotion—recruiting aggressively among prospective white buyers in social-action and fair-housing groups, while seeking Negro buyers mainly by telling leaders of race-relations organizations about vacancies.

By 1958, when he organized Modern Community Developers to finance and supervise other interracial projects, Milgram had developed one of his greatest present abilities, fund-raising. He had also assembled an honorary advisory committee which included the late Eleanor Roosevelt, Episcopal Bishop James A. Pike, U.S. Senators Jacob Javits and Joseph S. Clark, and Negro leaders Roy Wilkins, James Farmer, A. Philip Randolph, Jackie Robinson, and the Reverend Martin Luther King, Jr.

Milgram's *modus operandi*, which evolved slowly, is simple. On invitation of individuals or groups interested in promoting fair housing in their community, he helps organize a local Modern Community Developers affiliate, arrange financing, engage a sympathetic builder, and acquire a suitable site. This, both Milgram and the Griers believe, remains one of the field's most delicate problems. In general Milgram recommends a tract semi-isolated from dense settlement by commercial or physical barriers, and located, if possible, in a school district which is already integrated.

He also insists on "community preparation," preferably beginning even before land is bought. Until building is largely a *fait accompli*, he takes only a few backers into his confidence. It is their job to activate fair-housing committees in churches and civic groups—making them aware of both the economic and the social benefits of integrated housing—and then to collect signatures on "declarations of conscience" for use later as evidence of responsible support. Afterwards, public announcements emphasize the prestige of the development's organizers, the stability of comparable interracial projects, and the characteristics of prospective Negro residents. If all goes well, opposition soon wanes, and the development is quietly completed and occupied.

A WAY TO END FEARS OF MASS MOVE-INS

With apartment buildings, the task is easier. "We buy a building, change its leasing policy, and that's it—instant integration," Milgram explains. So far, no white tenants have moved out because Negroes moved in, nor has it been difficult to maintain racial balance: 10 per cent is the highest ratio of Negro occupancy in any of Milgram's apartment houses (rents range upward from $100 a month). In fact, since local and state fair-housing laws and determined religious and civic groups have increased the supply of housing open to nonwhites, Milgram sometimes finds it hard to get Negro tenants. "This shows that white neighborhoods no longer need fear mass move-ins if they allow the housing market to become truly open," he says. "But Negroes have a responsibility.

They must knock and knock and keep knocking if integration doors are to open."

Laws providing quick depreciation write-offs for rental properties have made Milgram's apartment ventures so profitable that his organization now controls assets which gross more than a million dollars a year. He hopes next to expand operations beyond the East. Meanwhile, he receives an annual salary of $14,000 and, with his wife Grace and their children, Betty and Gene (both now in college), lives comfortably but modestly at Greenbelt Knoll. Most of his assets are invested in integrated housing, and, except for his hobby of stamp collecting, so is his spare time. Since last summer, he has concentrated on organizing a National Committee on Tithing in Investment, headed by Congressman Donald M. Fraser, who with Milgram has already recruited more than three thousand sponsors. The committee hopes to encourage individuals, religious groups, unions, and other organizations to allocate at least 10 per cent of their savings and investment portfolios to furthering residential desegregation. The group now is compiling educational materials, a list of recommended investments, and a roster of banks and savings-and-loan associations where deposits are employed on a nondiscriminatory basis.

The tithing committee could be Milgram's most important project. "All our efforts are chicken feed in this field unless religious groups and others which control not millions, but billions of dollars join in," he says. "We're not suggesting that they throw their money away. We're only suggesting that members tell their investment committees to invest so that the organization's money is where its mouth is, and that, by God, if they can't find a good investment that reflects social concern, they get a committee which can find one!"

And what of the end product of Milgram's main efforts, his interracial housing developments? I visited several recently and found them to be neat, thriving, and in many ways similar to other recently established neighborhoods. Though some are nearly ten years old, all the houses and grounds were well kept. One Negro doctor at Greenbelt Knoll had spend some $15,000 expanding and improving his home and, together with neighbors, had formed an association to build a swimming pool which any resident who pays nominal dues may share. Outwardly the developments seemed in no way unusual.

They have lost some residents whose companies transferred them out of the area or whose families grew too large, but turnover is lower than in the average community, and resale prices apparently all have equaled or exceeded original prices. Only at Concord Park, where the age of homes now makes obtaining large mortgages difficult, has the racial balance changed appreciably. Last summer white families were a minority of 30 per cent. But the Concord Park Civic Association, to which most residents belong, was planning a campaign to attract more white buyers.

"The balance is off, but we're not worried," says Mike Harris, a salesman who was the association's 1964 president. (He is white.) "It happened because nobody paid any attention to it. Once we get busy, we know we can swing it back."

The subdivisions' social environment, several residents maintained, is quite ordinary, except that Negroes and whites of all ages mix freely. "There's a little more 'neighboring' here than in most places," one white accountant in Concord Park said, but at Maple Crest and Runnymeade a Negro chemist, a white lawyer, and a Negro teacher told me that for the most part contacts are only the usual friendly backyard type.

Nobody reported interracial dating or engagements. "How often do *you* hear nowadays of dating or marrying the girl next door?" a white salesman asked. (Almost never, I admitted.) Instead, youthful social contacts follow normal patterns at schools, which are integrated, in community organizations, and in churches, some of which are integrated while others are not.

No junior executives of large corporations live in the developments. "Pressure from family, friends, and professional associates can be tremendous," George Grier says. "A lot of whites admitted that it kept them out." Otherwise it is difficult to generalize. I met a Negro doctor, public-school teachers, professors, salesmen, a carpenter, a chemist, a human-relations consultant, a public-relations man, a minister, and a Negro Democratic Congressman (Robert N. C. Nix of Pennsylvania, who lives at Greenbelt Knoll), among others. Similarly it is impossible to categorize residents' religious and political views, except that none is known to be an extremist of either the Communist left or the John Birch right.

NOTHING TO FEAR

When I discussed living in interracial Maple Crest with Mrs. Frances Saunders, the attractive Virginia-born wife of a testing consultant, she said simply, with an impact heightened by her Southern accent: "We whites have such a rigid pattern of thinking that we think we have everything to give. That's not true. I have found that we get a great deal: a whole new way of looking at things; familiarity with another history, another cultural background, other writers, other thinkers. You feel alive. You feel at peace with yourself. You know that you have been wronging yourself, too, terribly, and you are glad that it is over. You have nothing to fear anymore."

It is, of course, far from over for most Americans. But the trend is unmistakable. Ten years ago, according to George and Eunice Grier, there were only sixty-five interracial developments; now the state of New York alone has at least this many, while the national total is in "the high hundreds" and accelerating rapidly. Morris Milgram and others like him have progressed farther than they may know. Their beachheads, thought scattered, are so numerous as to be impregnable.

THE CATHOLIC INTERRACIAL COUNCIL OF WATERBURY,
Waterbury, Conn., June 4, 1966.

HOUSE JUDICIARY CIVIL RIGHTS SUBCOMMITTEE,
U.S. House of Representatives,
Washington, D.C.

GENTLEMEN: The Catholic Interracial Council of Waterbury urges every effort on your part to insure the passage of the Civil Rights Act of 1966. We propose the following provisions be added to the bill presented by the President to Congress so that it may be strengthened and be fully effective:

1. To provide for administrative enforcement of the housing provisions of the bill.
2. To include state and local governments under the equal employment opportunity provisions of the 1964 Civil Rights Act (Title VII).
3. To strengthen the jury trial titles of the Administration bill by providing more automatic standards for sending in jury commissioners rather than relying upon individual suits by the Attorney General as the Administration bill does.
4. To provide for indemnification by the Federal government to Negroes and civil rights workers injured in the civil rights struggle, with the federal government having the right to sue the offending individual and the state or local government if it is involved.

Yours very truly,

THE CATHOLIC INTERRACIAL,
COUNCIL OF WATERBURY.
By JAMES NOONAN,
Board of Directors.

VIRGINIA BEACH, VA., *June 6, 1966.*

HON. EMANUEL CELLER,
Chairman, House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR MR. CELLER: In the name of the Tidewater Fair Housing Committee, I urgently request your support of Title IV of Bill #H.R. 14765.

We view this proposed law not as an instrument to coerce the few who would deny equal opportunities to all citizens, but rather as an instrument of support for the many people of good will who wish to rid our country of the blight of ghettos. We strongly believe that there are numerous people who, though not committed to groups such as ours, would be encouraged through passage of this bill to follow the dictates of their conscience with regard to equal housing, free of the fear of unscrupulous dealings on the part of others which could cost them their lifetime investment in property.

Your vote in favor of this bill will help to end the perpetuation of racial ghettos and the strife and bitterness they create for our country.

Respectfully yours,

ROBERT O. CLAPP,
Co-Chairman, Tidewater Fair Housing Committee.

LAKE CITY BOARD OF REALTORS,
Lake City, Fla., June 6, 1966.

Hon. EMANUEL CELLER,
U.S. House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN CELLER: I am writing on behalf of the Lake City, Florida Board of Realtors relative to the proposed House Bill Number 14765.

In our opinion this Federal forced Housing Bill will literally strip from home and property owners their traditional right to choose to whom they may sell or rent.

We strongly urge you to exert every effort to *defeat* any attempt to pass this proposed legislation, in order that one of our few remaining freedoms might be preserved.

Thank you for your kind attention to this request.

Yours very truly,

EDWARD J. BOND, *Secretary-Treasurer.*

QUEEN CITY BOARD OF REALTORS, INC.,
Manchester, N.H., June 6, 1966.

Mr. EMANUEL CELLER,
Chairman of the House Judiciary Committee,
House Office Building, Washington, D.C.

DEAR MR. CELLER: The 110 members of the Queen City Board of Realtors, Inc., have voted unanimously to oppose publicly House Bill 14765 and Senate Bill 3296.

We feel that this is a definite threat to the traditional freedom of choice and contract.

As Realtors and homeowners in the Manchester area, we urge you as our Chairman of the House Judiciary Committee to vote against the bill in its present form.

Sincerely,

RICHARD D. BEAULIEU, *President.*
ROBERT W. HERBERT, *Vice President.*
EDWARD C. MURPHY, *Secretary.*
JEANNE R. DUMAS, *Treasurer.*

ALBANY REALTY BOARD,
Albany, Oreg., June 6, 1966.

To CONGRESSMAN EMANUEL CELLER:

The Albany Board of Realtors took up the matter of the proposed Civil Rights Bill H.R. 14765 and Senate Bill S. 3296 at their regular meeting here in Albany on May 24, 1966, and it was voted unanimously by the board to oppose passage of this bill in its present form. Opposition to this bill is based on the discriminatory portion toward the right of a property owner to do as he wishes with his own property, and the loss of any rights to enter into contract with whomever he may choose. The board *is* opposed to racial, religious, and ethnical discrimination, and finds no fault with the tenor of the bill regarding discrimination, but is also opposed to any infringment on the constitutional rights of the property owner to sell, lease, or rent, or to enter in to contract with parties of their own choice.

We strongly urge that you oppose this bill in its present form.

Respectfully yours,

ALBANY BOARD OF REALTORS.
By HAROLD K. EASTRIDGE,
Secretary.

MCKEESPORT REAL ESTATE BOARD, INC.,
McKeesport, Pa., June 4, 1966.

Congressman EMANUEL CELLER,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN CELLER: We Realtors of the McKeesport Real Estate Board are appalled at Part IV of the suggested Bill HR 14765. This forced housing law purports to grant one group an alleged "right" by trampling on

the rights of others. This fact in itself is discriminatory, and discrimination cannot be overcome by creating a new type of discrimination.

You well know that the will of the majority of the people is not for forced anti-discrimination measures. The American people, when forced to fall into a pattern that is unacceptable to them, will develop discrimination and hatred that will be far greater than that which now exists.

The private citizen enjoys certain freedoms under our constitution, and these freedoms must be preserved. We, as business men, contributing to the civic leadership of our own community know that this measure will cause vast harm, dissatisfaction and unrest in this community, as it will in every community across this nation. We urge you to join together with others and strike Section IV, concerning housing, from this Bill before it leaves your committee.

We solicit your help and cooperation in this matter.

Sincerely,

THOMAS J. LEWIS, Jr., *President.*

RESOLUTION

Adopted at a duly called meeting of the Newport News-Hampton Board of Realtors, Hampton, Va., held on the second day of June 1966

Whereas, the Judicial Committees of the House of Representatives and the Senate of the Congress of the United States are considering at this time the proposed legislation known as the Civil Rights Act of 1966, and particularly Title IV thereof; and,

Whereas, under the facade of banning bias on the grounds of race, color, religion, or national origin, Title IV of this bill would deny to owners of real property the right to exercise freedom of choice in contracting for the sale or rental of their property by empowering the Federal Government to force such an owner to sell or rent his property to a person not of his choice, whether the property is his home, rental housing, a room for rent in his home or boarding house, or land to be used as the site of housing; and,

Whereas, this Board of Realtors does not oppose open occupancy or equal opportunity to obtain housing, and considers the objective of open occupancy as praiseworthy; nevertheless, true and lasting acceptance of neighbors by neighbors can, in the decided opinion of this Board, be accomplished only by understanding and education, fostered voluntarily by churches, schools, and all men of good will; and,

Whereas, it is the considered opinion of this Board that the objectives of elimination of bias and discrimination cannot be achieved by the Federal Government's utilizing its vast powers in actions which serve to deprive all citizens of their hereditary and heretofore protected and secured freedom of choice and contract; and,

Whereas, the citizens of this country have demonstrated in every instance in which they have had an opportunity to express their views at the polls their strong feeling with regard to this human right of real property ownership by decisively rejecting forced housing in every referendum that has been held on this subject; and,

Whereas, efforts to provide equal opportunity in housing are underway quietly and effectively in this and other communities throughout the country without emotional and political upheaval; and,

Whereas, it is the considered opinion of this Board that the deprivation of human rights in real property ownership which is implicit in this legislation will result in anxiety and resentment on the part of the citizens of the country and will serve to defeat mutual respect and understanding; and,

Whereas, it is widespread enjoyment of ownership and unfettered disposition of real estate which has resulted in a responsible citizenry alert to the preservation in this democracy of the free institution which are its glory; and,

Whereas, any assertion of power which abridges the right of an individual citizen to own, lease, and dispose of his property is an abrogation of traditional freedoms and a step toward the ultimate loss of all rights;

Now, therefore, be it resolved, that the Newport News-Hampton Board of Realtors, for the reasons above cited, does hereby record its opposition to the proposed Title IV of the Civil Rights Act of 1966;

And, be it further resolved, that copies of this resolution be forwarded to Congressman Thomas N. Downing. Senators A. Willis Robertson and Harry F. Byrd, Jr. of the Commonwealth of Virginia, and to all members of the Judiciary

Committees of the House of Representatives and Senate of the Congress of the United States, and to the President of the United States.

Given under our hand this second day of June 1966.

NEWPORT NEWS-HAMPTON BOARD OF REALTORS.
By ERWIN B. DRUCKER, *President.*

RESOLUTION

The Panama City Board of Realtors of Panama City, Florida, hereby resolve that it go on record as being unalterably opposed to the passage by The Congress of the United States of America of any bill which will, in any manner, interfere with a property owner's freedom of contract to sell, rent or lease residential structures to whomsoever he desires and upon such terms and conditions as he may prescribe.

And:

Whereas, on May 2, 1966 Mr. Celler introduced in the House of Representatives of the United States of America in Congress assembled a bill designated as "H.R. 14765", which contains, in Sections 401 to 411 inclusive thereof, certain proposed provisions which, if enacted into law, will completely destroy the time honored Anglo-American concepts of freedom of contract and of the right to own property; and

Whereas, we believe said bill designated as "H.R. 14765" would, if enacted into law, be completely repugnant to the constitutional safeguards of the right of the people to domestic tranquility; of the right of the people to not be deprived of private property without due process of law; and to the right of the people that no private property be taken for public use without just compensation; and

Whereas, it is recognized that a determination of what is illegal by being contrary to "Public Policy" should preferably be decided by the legislative part of our government, rather than by the courts, nevertheless it is a sad truth that the "loudest and most confident assertions as to what makes for the general welfare" and happiness of mankind are made by the demagogue and the ignoramus. The wise man knows that he does not know and therefore speaks softly and less often." And

Whereas, we believe that the great majority of the citizens of this Nation do not want any law enacted whereby a property owner is prohibited from selling, leasing or renting his privately owned residential structures to whomever he desires and upon such terms and conditions as are now deemed legal and proper.

Now, it is further resolved that the individual members of the Senate of the United States of America and the individual members of the House of Representatives of the United States of America be petitioned by a copy of this Resolution to cast their vote against the enactment of the bill designated as "H.R. 14765" entitled: "A bill to assure nondiscrimination in Federal and State jury selection and service, to facilitate the desegregation of public education and other public facilities, to provide judicial relief against discriminatory housing practices, to prescribe penalties for certain acts of violence or intimidation, and for other purposes."

This resolution formally adopted at Panama City, Florida, this 16 day of May, 1966, and the individual members sign hereunder to attest thereto.

H. Savely McQuagge, President, Panama City Board of Realtors, Kelly Taylor, Emerson Sweat, Robert H. Round, Jr., William L. Counce Skipper, Laquina O'Connor, Brown Howell, Richard H. Wills, Frank Rhyne, Carl A. Boone, J. S. Mewbern, L. E. Merriam, Jr., William H. Elerill, Lois G. Tharp, Fil Fovata, H. L. Snodwith, H. Harper, Bettie Powell, not a realtor but a property owner.

ASSISTANT SECRETARY OF DEFENSE (MANPOWER).
Washington, D.C., June 9, 1966.

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

DEAR MR. CHAIRMAN: I am now in a position to forward to you the enclosed Report setting forth the facts and surrounding circumstances of the difficulties and problems encountered by Negro and other minority group personnel in the

Armed Forces in obtaining adequate housing on a nonsegregated and nondiscriminatory basis in the communities adjacent and near to Defense installations. It is the policy and commitment of the Department of Defense and the Military Departments to eliminate, insofar as our authority will permit, all vestiges of discrimination practiced against our personnel and to foster and encourage equality of opportunity and treatment both on-base and off-base.

This Report sets forth the affirmative action and the leadership which has been exercised by our military commanders in the area of housing. It also shows conditions, as evidenced by a representative sampling, of the continuing problem which still besets Negro and other military personnel in their quest for adequate housing. As is stated in the Report, racial discrimination in off-base housing is the most pervasive and stubborn problem afflicting our Negro and other minority group personnel in all sections of the nation.

I hope that the information being forwarded is in accordance with the requirements of your request.

Sincerely,

(Signed) THOMAS D. MORRIS.

REPORT

RACIAL DISCRIMINATION AGAINST NEGRO AND OTHER MINORITY GROUP SERVICEMEN AND THEIR DEPENDENTS IN OFF-BASE HOUSING, JUNE 2, 1966

The Department of Defense and the Military Departments place high priority on the housing available to Armed Forces personnel and their dependents. This applies to the quarters provided on-base by the Services and to the housing required off-base in the communities adjacent and near defense installations. The kind and quality of housing afforded our personnel is an important factor affecting morale and military effectiveness.

The adequacy of off-base housing for military personnel is measured by specific criteria:

1. Proximity of housing to the duty station.
2. *Cost of housing.*

When the rental costs, including utilities (except telephone) exceed the maximum allowable housing cost, the unit is considered inadequate. Under certain conditions cost of transportation to and from the duty station are considered part of the total housing cost.

3. *Physical condition and environment.*

The unit must be a complete dwelling unit with private entrance, with bath and kitchen for sole use of the occupants, and so arranged that both kitchen and bedrooms can be entered without passing through bedrooms. The unit must be well constructed and in good state of repair with heating and kitchen equipment provided, and it must be located in a residential area which meets acceptable standards for health and sanitation and which is not subject to offensive fumes, industrial noises, and other objectionable features. The unit must be adequate in size for military families.

The problem of adequate housing for military personnel takes on added significance when other facets of his situation are recognized. First, the soldier, sailor or airman is not in a community by personal choice, but because of the necessary requirements for the nation's security and defense. Second, the frequency of change of duty station places an additional serious hardship on the serviceman and his family in terms of adjustments, dislocations and uprooting. Assuming normal circumstances a civilian employee and his family come to a community, locate a home, puts their children, if any, in school, establish a relationship with the institutions and their services, adjusts to the social and physical environments and sinks roots in the community. Stability and relative permanence is achieved. The situation for military service personnel is quite different. The Army states that their personnel move on the average every 2½ years, while the Navy moves its personnel every 3 to 3½ years. This means that there is a high frequency of mobility causing the soldier, sailor and airman and their families to pull up tent and roots, move to a new community and start all over again the process of searching for and locating housing, establishing new relationships, having the children adjust to new schools and school situations. In fact, they must start all over again.

The very nature of the process incident to adequate housing with frequency of change is a difficult matter of accommodation and adjustment. Add to this segregation and discrimination based on race and color and the difficulty be-

comes compounded and aggravated. Adequate, decent off-base housing for Negro personnel in the Armed Forces is the most stubborn and pervasive form of segregation and discrimination affecting Negroes in the Army, Navy (including the Marine Corps) and the Air Force. The problem is nation-wide. It is encountered in the North, as well as in the South. It is along the Atlantic, as well as the Pacific Coast, and it is also found in the Middle West.

Since 1963 the Department and the Military Services have given increasing attention to eliminating every vestige of segregation and discrimination in the Armed Forces, both on-base and off-base in the communities near defense installations. In 1963 the United States Commission on Civil Rights published a Staff Report—*Family Housing and the Negro Serviceman.*[1] The report reflected the findings of the Commission's staff on the patterns of discrimination and segregation in housing to which the Negro soldier, sailor and airman had been subjected.

In June 1963 the President's Committee on Equal Opportunity in the Armed Forces, in its Initial Report,[2] called attention to the difficulties and problems experienced by Negro servicemen in their quest for housing in communities near their duty stations. On the basis of the many complaints directly called to their attention, base commanders were seeking guidance in dealing with these difficult problems from the Chiefs of the Military Departments.

By March of 1963 the Department of Defense was sufficiently cognizant of the dimensions of the problem to take the first of its corrective actions. On March 8, 1963, DoD issued a Memorandum on Nondiscrimination in Family Housing[3] that, among other things, required that the leases for all family housing include a nondiscrimination clause consistent with the provisions of the President's Executive Order No. 11063 of November 20, 1962. The Memorandum also directed the housing offices at defense installations not to maintain any listings of housing units that were not available to all personnel without regard to race, color, creed or national origin.

A further step was taken on July 26, 1963 when the Secretary of Defense issued a Directive on Equality of Opportunity in the Armed Forces[4] clearly reaffirming and articulating the Department's commitment to equal treatment for all of its military and civilian personnel. The Directive said:

"It is the policy of the Department of Defense to conduct all of its activities in a manner which is free from racial discrimination, and which provides equal opportunity for all uniformed members and all civilian employees irrespective of their color.

"Discriminatory practicies directed against Armed Forces members, all of whom lack a civilian's freedom of choice in where to live, to work, to travel and to spend his off-duty hours, are harmful to military effectiveness. Therefore, all members of the Department of Defense should oppose such practices on every occasion, while fostering equal opportunity for servicemen and their families, on and off-base."

The Directive also provided the Military Commander with renewed and reinforced authority to deal with discriminatory conditions, including segregation and discrimination in housing, affecting his men off-base. It said—

"Every military commander has the responsibility to oppose discriminatory practices affecting his men and their dependents and to foster equal opportunity for them, not only in areas under his immediate control, but also in nearby communities where they may live or gather in off-duty hours. In discharging that responsibility a commander shall not, except with the prior approval of the Secretary of his Military Department, use the off-limits sanction in discrimination cases arising within the United States."

Military Commanders provided with this new Directive of July 1963 began to give leadership through negotiation, conciliation and conference in getting the real estate industry in the adjacent communities to remove racial barriers in the housing field. In some few instances the commanders were successful in overcoming the resistance to accord equality of opportunity in housing to Negro servicemen. During 1964, the Office of the Deputy Assistant Secretary of Defense

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[1] U.S. Commission on Civil Rights Staff Report—Family Housing and the Negro Serviceman

[2] The President's Committee on Equal Opportunity in the Armed Forces Initial Report, "Equality of Treatment and Opportunity for Negro Military Personnel Stationed Within the United States," dated June 1963.

[3] Memorandum dated March 8, 1963, "Nondiscrimination in Family Housing."

[4] Department of Defense Directive 5120.36, "Equal Opportunity in the Armed Forces," dated July 26, 1963.

for Civil Rights conducted informal negotiations and conferences with the Intergroup Relations Office in the Federal Housing Administration with a view toward obtaining their cooperation in respect to alleviating discrimination against Negro servicemen in communities near defense installations. It was informally understood that they would lend their good offices in affected communities and would provide information upon request of the commanders as to the properties covered by FHA insured mortgage loans. On February 8, 1965[5] a formal understanding was arrived at in which the FHA agreed to maintain current listings with base commanders showing the housing units in their area covered under the provisions of the FHA and which were subject to Executive Order 11063. It was agreed to provide base commanders with a list showing properties which had been obtained through FHA mortgage insurances and were either being repossessed or placed in the default status because of default in the terms of the mortgage.

The Department of the Army on July 2, 1964 issued their Army Regulation "Equal Opportunity and Treatment of Military Personnel",[6] and the Air Force issued its revised Air Force Regulation on the same title on August 19, 1964.[7] The Navy in February 1965 issued its Sec Nav Instruction entitled "Equal Opportunity and Treatment of Military Personnel."[8] In each of the aforementioned documents, guidance was provided the commanders in reference to their responsibility in using their good offices and leadership resources to achieve equal and adequate housing for Negro and other minority group personnel in off-base housing.

Another action taken by the Department was in June and July 1964 when it undertook to obtain from state and local Commissions on Civil and Human Rights their cooperation in eliminating racial discrimination and making available their good offices in assisting local base commanders in carrying out their responsibility.[9] Twenty-four such state commissions agreed to participate in this effort. In spite of these actions the problem still persists.

In a recent survey required by the Department of Defense of 235 installations of the Army, Navy and Air Force it was found that Negro servicemen encountered discrimination in meeting their needs for off-base private housing. Commanders at 102 Defense installations (43%) reported that their men encountered many forms of severe discrimination in seeking either to buy or rent. They were refused rental houses and apartments because of their color. They were required to live at places distant from their duty stations, in inferior dwellings in deteriorated neighborhoods and often charged inordinately high rentals and often when attempting to purchase the price would be doubled. It was reported that 39 trailer parks situated near the 235 installations refused to accept Negro soldiers, sailors and airmen.

Even though our Base Commanders have exercised more affirmative leadership, mobolized community support, utilized existing state and local agencies in the field of civil and human rights the fact still remains that our Negro and other minority servicemen and their families still encounter racial discrimination in off-base housing. While there has been some substantial progress made in the reduction of this form of segregation and discrimination, it still remains the most pervasive and stubborn, morale impairing social evil confronting the Negro servicemen off-base.

Set forth below are brief descriptions of cases cited to the Department of Defense by the Military Departments as illustrative of the problems and difficulties encountered by Negro and other minority group servicemen in their attempts to obtain off-base housing:

ABSTRACTS OF CASE HISTORIES OF OFF-BASE HOUSING DISCRIMINATION ENCOUNTERED BY MEMBERS OF THE ARMED FORCES

Case #1

The Commander of a Defense installation in the northeastern part of the United States says: An analysis of the housing conditions affecting Negro personnel reveals that white and Negro personnel of comparable economic status

[5] Memorandum dated February 8, 1965, "Family Housing Units Covered by Executive Order 11063 (Equal Opportunity in Housing)."
[6] Department of the Army Regulation 600-21 dated July 2, 1964, "Equal Opportunity and Treatment of Military Personnel."
[7] Department of the Air Force Regulation 35-78 dated August 19, 1964, "Equal Opportunity and Treatment of Military Personnel."
[8] Department of the Navy SecNav Instruction 5350.6 dated January 1965, "Equal Opportunity and Treatment of Military Personnel."
[9] Memorandum dated July 30, 1964, "State Commissions on Civil Rights."

do not in fact enjoy equal opportunity for adequate off-base housing in this state, particularly in the vicinity of this installation. White personnel can rent or purchase a home any place they desire provided, of course, they can afford to pay the cost. There is little difficulty for white personnel to secure mortgage loans. Generally they need only a perfunctory credit check. Conversely, in order for Negro personnel to get a mortgage loan, credit checks are thorough, cumbersome, and delayed over a protracted period of time. As a result, Negro personnel find themselves forced to accept properties in predominantly Negro or mixed areas. Also, as a general rule, desirable housing for sale is about twice the cost for Negro personnel as for white personnel for the same piece of property. It can be readily seen that the high cost of desirable property places Negro personnel in a position of financial hardship considering the initial cost and the maintenance outlay.

Case #2

A Commander at an installation near the Nation's Capitol states: An allegation was made by a Staff Sergeant that he was refused housing when he attempted to rent living quarters from a private apartment project that advertised in the base newspaper. He was told by the apartment management that they did not rent to Negroes. The matter was investigated and finding the facts to be substantially as alleged the base newspaper discontinued acceptance of advertising from this and any other private housing projects that might be identified with such a policy in the future.

Case #3

A commander at a Defense installation in a Southern state says: It is anticipated that off-base housing will not improve in the immediate future as concerns Negro personnel assigned to this station. This, in all probability, will be that last area to remain segregated, in the local area. The local community is essentially a resort community of a high level with careful and studious efforts to allow only the "acceptable" modes of construction and occupancy in the primary areas of the city. In view of the fact that this is an area not fully covered by the proscriptions of the 1964 Civil Rights Act, the officials of the base are left to few devices except the power of persuasion. In the past, this effort, however skillfully applied, has not changed in a very serious condition.

Case #4

From a Defense installation in the far northern region of the Middle West it is stated: In December 1965, a Negro Lieutenant complained that he was refused housing by ten landlords in the largest civilian community near this base because of his race. The Equal Opportunity Officer referred him to the Fair Housing Committee, with instructions to return if he did not get satisfaction. He did not return and elected not to file an official complaint.

Case #5

It is reported from an installation in the central northwestern portion of the United States that: During 1965, one of our Negro servicemen answered a newspaper add looking for living quarters for his family. The agent would not rent him the house when it was discovered that he was a Negro.

Case #6

In the north central United States, the Commander of a Defense installation states: A Negro Sergeant attempted to purchase a house through a real estate broker. When the broker realized the prospective purchaser was a Negro, he advised him that the owner of the home would not sell to a Negro. This complaint was referred to the Federal Housing Administrator at the nearest regional office who indicated that he would investigate this matter. Shortly thereafter, the Negro indicated he desired to withdraw the complaint as he had found another house to purchase.

Case #7

A Commander of a Defense installation in the central midwest of the United States says: Three cases of discrimination in off-base housing occurred in the Spring of 1965 in which military personnel assigned to this installation were involved. Two cases involved off-base housing and the third involved off-base trailer courts.

Case #8

The Commanding Officer of an important training center in the southwest reports: A female Negro nurse assigned to a hospital registered a complaint against one of the apartments in August 1965, alleging refusal by the manager to rent her an apartment because of her race.

Another female Negro nurse rented an apartment in the largest city adjacent to this installation on Februray 3, 1966, making an advance payment of rent. On February 4, 1966 the apartment manager informed her that because of complaints from other tenants he was returning the advance rent and asking her to move. She was served with a three-day notice to vacate.

Case #9

The Commander of an important Defense installation guarding the security of the Nation's Capitol states: Off-base housing in the form of separate houses and/or apartments can be obtained within reasonable commuting distance. However, there are both apartments and separate houses where Negro personnel can neither buy or rent. During the past year, three off-base housing complaints have been investigated with no solution provided nor available since the property constructed did not involve the use of Federal Government funds.

Case #10

From a Defense installation in the central midwest of the United States comes the report: On 27 October 1964, a serviceman enroute overseas complained that he had attempted to obtain a parking space for his mobile home throughout the greater portion of this large metropolitan area without success. Trailer parks in local areas were also contacted and most professed to be "filled up." The serviceman departed for overseas on 12 November 1964. A desirable convenient site was obtained at ———, ———, however, the serviceman's dependents residing in the metropolitan community failed to accept same since they were now going overseas to join the serviceman.

On 22 November 1965, a female officer attempted to rent in the ——— Apartments, in the community near the installation by telephone. She was advised that vacancies existed, however, upon arrival she could not obtain a commitment until further checking by the resident agent. Later she was advised all apartments were taken, that the last family was expected to move in within three weeks. The officer subsequently located an apartment in the nearby area.

On 9 May 1966, a serviceman complained that he was unable to obtain suitable quarters for his family in the nearby community, though he did find and is occupying housing he described as not suitable. This case is still being processed.

Case #11

From an important Defense installation along the Atlantic Coast in the northeastern United States it is reported: On 25 April 1966, a Staff Sergeant complained that he was unable to find a suitable trailer camp in which to place his trailer. At that time, the sergeant was given the names of six trailer courts in the areas near the Defense installation which were listed in base family services as trailer courts which did not discriminate against renters on the basis of race, creed, color or national origin. Shortly thereafter, he chose one of the six trailer courts in which to relocate his trailer and says he is very satisfied at this time.

On 2 May 1966, a female officer complained that she was unable to rent an apartment in ——— Apartments, Inc. located in the adjacent community because of her race. She was advised that she had no redress under the existing laws. The law expressly excludes the sale or rental of houses, apartments and other dwellings as a place of public accommodation. The Federal Housing Administration office in the community has advised us that the subject apartments have not been financed by federal loans, nor have any loans to the apartments been guaranteed or insured by the federal government. The officer was advised that she had no redress under neither the Civil Rights Act of 1964, nor the President's Executive Order for Equal Opportunity in Housing.

Case #12

From a Defense installation in the southern portion of the United States, the Commander reports that: On April 7, 1965, a formal complaint was received from a serviceman stationed at the base against the owners of a newly built apartments in one of the cities adjacent to the installation. Inquiry revealed that these apartments were not subject to the Civil Rights Act of 1964, however, the officer

received assistance in preparation of a formal request for suit over his own signature.

On September 20, 1965, a 26 year old serviceman with 4½ years service complained about off-base housing accommodations available to Negro military personnel and their dependents.

Case #13

The Commander from a large Defense installation in the southwestern United States reports: A Negro Lt. Col. on 7 December 1965, indicated that he had signed a contract with a large construction firm for the construction of a home. The president of the firm, refused to fulfill the contract after it was determined that the Negro Colonel desired to have the house constructed in a district that did not contain other Negro homes. The president of the company directly stated to the Commander that the construction would not be accomplished because of the Colonel's race.

The Post Staff Judge Advocate provided assistance to the Negro Colonel in transmitting the circumstances to the FHA. In addition, the Commanding General wrote the Chamber of Commerce requesting an inquiry and corrective action. The Colonel departed for Vietnam without favorable resolution of the problem.

Case #14

From the same Defense installation, the Commander writes: A Sgt. First Class on 13 April 1966 contracted with the agent for a realty company for purchase of a home in a surburban community near the Defense installation. The Sgt. presented $250 as a contract binder on 17 April and offered additional funds to the builders. Subsequently, changes were made in the contract without the Sgt.'s agreement involving payment for certain miscellaneous services and materials. These additional requirements made it impossible for the Sgt. to comply with the new purchase price. This appeared to be a deliberate attempt by the owners to void the contract. A letter was initiated by the Sgt. to FHA providing details of the transaction and requesting assistance. The Commanding General has contacted the local Chamber of Commerce for assistance.

Case #15

From an important training center and military department school, the Commanding Officer reports: A Staff Sgt. on 12 April 1966 contacted a realty company in the community almost at the gate of the installation to rent a house. He was advised that the house could not be made available because of his race. He subsequently contacted another representative of the firm and was again denied consideration because of his race. The Commanding General of the installation advised the Mayor, the Secretary of the Board of Realtors, and the Biracial Civic Committee of the refusal to rent to the Negro Staff Sgt. and requested corrective action.

Case #16

An important Defense installation near the Nation's Capitol reports: A Negro Lt. Col. during January 19, 1966 attempted to secure rental housing in two communities neighboring the installation and was denied because of his race. As a result of this denial the Negro officer found it necessary to purchase a home in another community further away from his duty station and incurring increased financial burdens because of the racial discrimination he had encountered.

The Commanding Officer contacted the realtors and management personnel involved in the rental and sale of housing in the communities and communicated with various civic organizations in efforts to secure housing without discrimination for Negro applicants. Notwithstanding these efforts, excepts in the case of FHA-sponsored units, rental housing on a mondiscrimination basis is generally not available in the area near the defense installation.

From the same Defense installation the Commander reports that: A Negro Lt. Col. was scheduled to depart for Vietnam and desired to relocate his family from on-post quarters prior to his departure for overseas. He attempted to purchase a home in several communities near the base. His purchase application, however, was denied because of his race. The Colonel contracted in November for the construction of a home in another community and immediately left for Vietnam. The Commanding Officer of the base has authorized the continued occupancy of on-post quarters for the Colonel's family until completion of their home.

Case #17

A high-level official of one of the Military Departments in reporting on their findings of discrimination in housing in the farwest state said: One of the Military Departments made an extensive survey in order to determine family housing needs for the FY-1967. From data obtained in the survey, the department stated that 89 service members stated that their dependents did not accompany them to their present duty station because of racial discrimination in off-base housing. These persons were presently located in 13 states in every section of the country. An officer of one of the Military Departments says that the area in which discrimination is felt most severely is in off-base housing. Continuing, the officer said that although there has been a great deal of progress recently made in this area, the attitudes and practices of some realtors, landlords and home owners associations still reflect discriminatory policies.

Case #18

The Commander of one of the Defense installations in the West Coast stated that:

Whereas families of minority groups are found in virtually all areas of the base city and the surrounding communities, it is a fact that Negroes are concentrated and located in one particular area. Trailer parks, with two exceptions, are not available to Negroes in the community and adequate housing is not available except in a particular area in a city near the base.

Case #19

From a Defense installation in a farwestern state the Commander reports:

One man stated that, in the Summer of 1963, he arrived from overseas and attempted to contract for several rentals. On one occasion he was denied a rental because of his racial origin. Another man reported that, in May 1965, on two or three occasions he was told frankly that the landlords would not rent to him because he was a Negro.

In another community, the Commander reported a complaint in which a Negro alleged discrimination in a trailer parker because of his race. Another factor contributing to the refusal was the size of the serviceman's trailer which was too large for accommodation in the trailer park. The commander pointed out that some Negroes have to be separated from their families who can only find housing accomomdations in a larger metropolitan community, thus causing additional expenses for increased commuting time, commuting expenses and family separation.

Case #20

The Commander of a Defense installation in the south says: Negro personnel does not have equal opportunity as to the location of adequate housing off-base, but in one of the communities near the installation they do have equal opportunity in the quality of the dwellings.

In another nearby community the Commander reports that all off-base housing for personnel in that area is substandard, inadequate and is separated from the white areas. Recently, however, new units of low cost for off-base housing has been built. 26 are designated for occupancy by whites and the remaining 14 are set aside for non-whites. As to trailer parks the commander says: Trailer parks in the area, with one exception profess to be nonsegregated. About one-half of them would probably accept colored tenants and the others, except one, grudgingly. One will positively accept only white tenants. The only specific complaint by an individual concerning housing involved a newly married officer of Mexican extraction and swarthy complexion, who was refused dwelling accommodations in white neighborhoods. He was transferred by headquarters as a solution to the problem. It is not believed that he would have been offered suitable housing in this area although the president of the local real estate board was brought in on the case. He was offered government housing which was refused.

Case #21

From another southern state the Commander of a Defense installation says: There is limited integration in housing. Segregation is practiced on an individual basis. The community is divided into the white community and the Negro community. Sales and rentals are handled on a racial basis and the

majority of houses available to Negroes are below average. Negro visitors in housing occupied by whites are resented by landlords. Tenants may be evicted if they have Negro guests.

Case #22

From far away outpost of the United States, a Commander relates that: A large number of his military personnel, approximately 80 in number, reported experiencing difficulties in securing adequate rental housing. The command stated that the evidence was sufficient to conclude that discriminatory practices against Negroes by individual realtors and landlords is prevalent.

Case #23

The Commander of a Defense installation of a midwestern state says: The only apparent condition adversely affecting equal opportunity for military personnel and their dependents is off-base housing which tends to be segregated. Our off-base located Negroes live in areas that are predominantly all Negro. These areas are not created by governmental restrictions in any way, but are rather imposed by local property-home owners and real estate men whose personal prejudices and interests foster segregation. All other services and facilities are completely integrated. However, those facilities in predominantly all-white or all-Negro residential areas tend to be segregated. This segregation, it appears, is due to choice of the clientele and/or the owner, or operator, but not by local or state governmental directives.

The letter from twelve officers assigned to various base activities addressed to the Secretary of Defense, dated 8 October 1965, also discusses the housing problem in the area near the base.

Case #24

The Commander of a Defense installation of a northern state says: Two complaints were received alleging that de facto discrimination exists, despite the command's requirements that the landlord or owner certify that they will not object to a person on the basis of color, creed or national origin when listed with the base housing office. The landlords involved were de-listed.

Case #25

The Commander of a Defense installation of an eastern state says that: Generally, segregation exists, either admitted or de facto, in the entire off-base housing community (20-mile radius). Housing available to Negroes is almost entirely limited to that located in time-honored Negro housing neighborhoods. Most personnel live in title 8 housing, now Public Quarters, adjacent to the base. Other apartments and homes are available. Usually there are few homes available for purchase by Negroes, and these are frequently in substandard areas. About half of all off-base apartment owners will rent to Negroes. There is no local "fair housing law" and there is general, passive resistance to any change in historically established general segregation by color.

A Negro Sgt. was refused an apartment for rent in 1965 in this area and another Negro Sgt. was refused realty service.

Case #26

The Commander of an installation in a southern state says: Negro personnel are restricted to housing in the colored sections of the city. In most cases this is substandard. However, Negro personnel living off-base do so by their own choice in that Capehart housing is available with an average four to six weeks waiting period. In addition, there are no integrated trailer parks in this area.

Case #27

From another southern state, the Commander of a Defense installation says: In one area, 83% of the Negroes who have dependents presently live in public quarters. Only 55 live off-base. Housing is in segregated areas.

Trailer parks and the "for sale" and "for rent" housing in one of the counties in this area remain largely segregated. The housing problem for Negro personnel at one of the camps in this area is mitigated to a degree by the availability of government housing. Approximately 10% of the government-owned trailers, now disposed of, were rented to Negro families in 1965. 88% of the Negroes who have dependents presently live in public quarters. There is a deficient military-civilian community housing market. An annual survey completed on 31 May 1963 confirmed a gross deficit of 4,224 adequate family housing units in the military and civilian communities.

Case #28

From another southern state the Commander says: New apartments are being constructed. It is reported that these are segregated, being located in either all-white or all-Negro neighborhoods.

Local housing pattern has predominantly Negro and white areas. Most housing available is on a segregated basis. The elimination of government trailers caused a problem since there was no other suitable available housing aboard the base. There are no trailer parks which lease to Negroes.

Case #29

A First Lt. of the Marine Corps tells in a letter to his Commanding Officer some of the details of discrimination encountered in the effort to get off-base housing: Since my arrival in this area on 6 January 1966, or there about, I have been trying to rent a house for myself and my wife, without success. As I stated to you when I made my request for a waiver of children requirement to Capehart, I had tried almost a dozen places. Over the phone, they all had places "to show and rent." However, upon seeing me in person, * * * "have just rented or * * * nothing left." As example:

a. A First Lt. who rented his place from a realty company, called the realtor and told him he had a friend, me, looking for a place to rent. The realtor's wife took the call as her husband was in the hospital for a few days. She stated they had two (2) places coming up for rent within the week, and I could have my pick; one at $105.00 per month and the other at $110.00 per month. She told the First Lt. to bring me by and she would talk to me about the apartments. When I met her in person * * * "Don't know when they will be vacant."

b. The manager and his wife, reside in one of the apartments. I went there with a First Lt. and ENS who wanted an apartment. There were two available, they took one. A week later, I called the manager and his wife answered the phone. I identified myself, she stated she remembered me. I asked what they had available in two bedroom apartments. She stated there were two (2) unfurnished and could have my choice; (this was on Monday, 31 January 1966). I told her I would be down Wednesday to give a $50.00 deposit on one of the apartments. She said fine, she would hold one for me. The next day, I heard from the First Lt. telling me not to send a deposit as the manager stated * * * "We have nothing available." I called the manager the following morning and asked him the reason for the sudden change. He simply stated * * * "Fella, we don't have anything nor do I know when anything will be available." "Fella." Nice address.

c. I was riding with a First Lt. and we made a wrong turn. I saw a sign "House for Rent." I called the mentioned number, and spoke to the realtor. He stated the house was for rent. I made an appointment to see the house that afternoon. The First Lt. drove me to the house. We got out of the car and approached the realtor. There was a smile on his face as he looked at the First Lt. When I spoke and introduced myself, the smile left. He showed us the house and told me he would "call me tomorrow." The call never came. I called his office for the next four (4) days. His secretary answered each time, and when I introduced myself * * * "He is not in, I'll have him call you." The call never came.

d. I made an appointment with a man of a realty company as a last effort to get housing (buy). Upon meeting me in person, he asked * * *. "Are you a Syrian?" If you are, O.K., if not, we cannot rent to non-white skin people! He stated also * * *. "The real estate men are not allowed to rent or sell to non-white skin people in this block of homes." FHA Financing even!!

e. And so it went with several other realty companies and a private house for sale, "Nothing available."

Case #30

Twelve commissioned officers of one of the Military Departments forwarded a memorandum to the Secretary of Defense via the chain of command and the Civilian Secretary of their Department in reference to racial discrimination and recommendations concerning the subject. Their comments on discrimination in housing are relevant. They said:

We would all readily agree that this (housing) has been our greatest problem area. All of us are married, most have children, and we were all subjected to overt racial discrimination as we sought to find decent public housing for our

families. In some cases, civilian advertisers who indicated to housing authorities that they would rent or sell without regards to race refused to accommodate us. We often saw white non-rated men move into facilities which were "unavailable" to us. In many cases we were separated from our families for long periods as we watched persons reporting to the area after us acquire accommodations and rejoin their families. Often persons have recommended "nice colored" locations usually served by "nice colored" schools which offer our children substandard education. Fortunately and unfortunately most of us have been given priority on the base housing list due to our "handicap." Whereas we realize that this was necessary, in fact we usually requested it; we take no pride in being given "special consideration." We simply want to be able to find decent housing just as easily (or with as much difficulty) as anyone else. When a door is slammed in our faces because we are Black, we feel that the full stature and determination of (the Military Departments) should back us up * * *. It appears that something more than a half promise from a local official is needed. Often it is said that our situation is understandable and everyone sympathizes with us but very little can be done * * *.

We suggest that the full economic and diplomatic weight of the government be brought to bear in areas where this problem is proven to be prevalent. (That would include most of the country). This has been suggested and in fact ordered in the past but the situation remains basically unchanged. We feel that if certain accommodations are not open to all military personnel, no military personnel should be allowed to acquire those accommodations. With regards to housing we are desperately in need of assistance and support.

Statement of Howard M. Squadron on Behalf of the American Jewish Congress

The American Jewish Congress supports the Civil Rights Bill of 1966, introduced in the House as H.R. 14765. The need for additional legislation to secure for Negroes in particular the rights guaranteed by our Constitution is underscored by the recent shooting of James Meredith. As stated in the editorial of the *New York Times* of June 7, 1966: "The nation cannot and will not any longer tolerate any place within this Union where whites hold Negroes in economic servitude and political impotence and physical terror." In order to make the Civil Rights Bill of 1966 a stronger, more effective bill, we respectfully urge that this Committee add five amendments to the bill.

Four of the five amendments we support are those proposed by the Leadership Conference on Civil Rights, of which we are a cooperating organization. These four amendments provide for:

1. The indemnification of those injured or killed because of their race or because of efforts to establish racial justice.
2. The enforcement of the fair housing provisions of the bill through an administrative agency rather than through individually initiated court litigation.
3. The inclusion of state and local governments under Title VII of the Civil Rights Act of 1964 so as to require them to provide equal opportunity in employment.
4. The creation of an automatic trigger device leading to the introduction of federal jury commissioners where there is a pattern of discrimination in jury service (similar to the automatic introduction of federal registrars under the 1965 Voting Rights Act).

All of these amendments are discussed in detail by Roy Wilkins, Chairman of the Leadership Conference on Civil Rights, in the statement presented to Subcommittee No. 5 of this Committee on May 17, 1966. We heartily endorse that statement and those amendments.

The American Jewish Congress also urges the adoption of an additional amendment deleting from Section 1865(a) of the bill the requirement that prospective jurors disclose their religion to the federal government.

The Terms of the Bill

Discrimination in the selection of juries, in Federal and state courts, would be prohibited by Titles I and II of the bill. The relevant provision of Title I is Section 1862, which provides:

"No person or class of persons shall be denied the right to serve on grand or petit juries in the district courts of the United States on account of race, color, religion, sex, national origin, or economic status."

Title I differs from Title II in its methods of enforcement. Section 1863 provides for the creation of a jury commission for each district. Section 1864 provides that the jury commission shall maintain a "master jury wheel" from which prospective jurors will be selected. Various provision in Section 1864 seek to insure that the names placed in the wheel are a true random selection of those people residing in the district. Subsection (f) provides that the master wheel shall be emptied and refilled between November 15 and December 31 of each even-numbered year.

The next section, 1865, must be discussed in detail. Prospective juror's names are drawn from the jury wheel. Pursuant to a summons sent by certified mail, each person whose name is drawn must appear before a federal court clerk and fill out a "juror qualification form," unless he claims exemption from jury service.

In the language of the statute:

"The form shall elicit his name, address, age, sex, education, race, *religion*, occupation, and citizenship and whether he has any physical or mental infirmity, is able to read, write, speak and understand the English language, and has been convicted in any federal or state court of record of a crime punishable by imprisonment for more than one year and has not had his civil rights restored by pardon or amnesty." [Emphasis added.]

The section goes on to provide that the clerk must determine whether the form is filled out completely and shall call any omissions to the prospective juror's attention "who *shall* make such corrections and additions as *necessary*." [Emphasis added.] Section 1865(a) concludes:

"Any person who fails to appear pursuant to such order or who fails to show good cause for *non-compliance with the summons* may be fined not more than $100 or imprisoned not more than three days or both." [Emphasis added.]

Since completion of the form without any omissions is necessary pursuant to the summons to appear for jury duty, failure to disclose to the government one's religion would constitute failure to comply with the summons, and would subject the prospective juror to as harsh a penalty as three days in jail and a fine of $100. The fact that the prospective juror is compelled to answer the governmental inquiry into his religious beliefs makes the provision more onerous.

Section 1865(b) provides that a party who is exempt from jury service can return the summons indicating the basis of his exemption. Section 1866 states that the jury commission will determine solely on the basis of information provided in the juror qualification form or the returned summons whether a person is qualified or exempt from jury service. Such determination along with the grounds for the action is then entered on the juror qualification form. The section then sets forth those grounds for which a person may be disqualified for jury service.

Section 1867 allows defendants in criminal cases to move to dismiss the indictment or stay proceedings against them on the ground that the jury selection procedure set forth in Title I has not been complied with. In civil cases, any party may move to stay proceedings on the grounds of failure to comply with this Title.

In the event that the party raising the issue of failure to comply with the provisions for jury selection set forth in Title I produces "some evidence" in support of his position, he is allowed to examine and introduce into evidence any relevant records and papers the jury commission used in the performance of its duties, even though they are not available to the public. The juror qualification form is designed to be used as a record to prove discrimination in violation of Section 1862.

Section 1868 provides:

"After the master jury wheel is emptied and refilled pursuant to section 1864(f) of this title, and after all persons selected to serve as jurors before the master wheel was emptied have completed such service, all of the records and papers compiled and maintained by the jury commission before the master wheel was emptied shall be preserved by the commission in the custody of the clerk for four years or for such longer period as may be ordered by a court and shall be available for public inspection."

Thus, after the end of the next even numbered year in which the prospective juror is called, that is, after the emptying of the jury wheel, the juror qualification forms containing all prospective jurors' religious beliefs becomes a matter of public record. The access of the public to these juror qualification forms further adds to the onerous nature of the religious disclosure requirement.

Title II, like Title I, contains a provision, Section 201, prohibiting denial of the right to serve on grand and petit juries on account of race, color, sex, national origin or economic status. Because of constitutional and traditional limitations upon federal interference in state courts, however, the method of enforcement is substantially different. In particular, there is no provision for querying prospective jurors as to their religion or other factors. That the methods of insuring compliance differ under the two titles underlines the fact that whatever method is used is secondary to the goal—prohibiting invidious discrimination in jury selection. In considering whether to delete the federal inquiry into the prospective juror's religion, it must be remembered that that inquiry, as embodied in Section 1865(a), is only a supplementary provision designed to improve the enforcement of the prohibition against discrimination on the basis of religion.

The Position of the American Jewish Congress

We believe that the underlying prohibition against religious discrimination in selection of juries contained in Sections 201 and 1862 should be retained. We believe some cases of such discrimination exist and must be dealt with. Although such discrimination is unconstitutional (as is discrimination on the basis of race), the detailed provisions of the bill are necessary to provide a broad panoply of remedial powers to correct existing evils. Omission of religion from an act designed to prevent all invidious discrimination in jury selection would indicate that Congress either approved of, or was not concerned with preventing, such religious discrimination.

The need of a ban on religious discrimination in the selection of juries, however, does not automatically justify any and all methods that may be chosen for its enforcement. We believe that the possible benefits of the provision in the bill mandating questions of prospective jurors as to their religion are far outweighed by its evils, particulary its doubtful constitutionality. In our view, any governmental inquiry into an individual's religious belief, whether compulsory or not, initiated solely because he is a prospective juror, is unconstitutional and in opposition to the American concept of the privacy of the individual's thoughts and religious beliefs.

The First Amendment to the Constitution provides in part as follows: "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof. * * *" The U.S. Supreme Court on four separate occasions has repeated the following gloss on that section of the Constitution:

"*Neither a state nor the federal government* can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force or influence a person to go or remain away from church against his will *or force him to profess a belief or disbelief in any religion.* [Emphasis supplied.] *Everson* v. *Board of Education*, 330 U.S. 1 (1947); *McCollum* v. *Board of Education*, 333 U.S. 203 (1948); *McGowan* v. *State of Maryland*, 366 U.S. 420 (1961); *Torcaso* v. *Watkins*, 367 U.S. 488 (1961)."

Similarly, in the case of *Schempp* v. *School District of Abington Township*, 374 U.S. 203 (1963), a case in which the U.S. Supreme Court held that Bible reading or praying in the public school system violated the First Amendment, the Court said:

"The Free Exercise Clause, * * * withdraws from legislative power, state and federal, the exertion of any restrain on the free exercise of religion. Its purpose is to secure religious liberty in the individual by *prohibiting any invasions thereof by civil authority.* [Emphasis supplied.]

There is an inherently coercive quality in compelling any person to characterize and label his religious belief to a federal official. This is particularly true since his religious beliefs will become a matter of public record when the master jury wheel is emptied and refilled at the end of the next even-numbered year. It may even become a public record at an earlier date if his juror qualification form is an exhibit in a court proceeding under Title I.

Even if answering such an inquiry were made voluntary, and the answer never became a matter of public record, much of the coercive quality in the inquiry would remain. A prospective juror should not be placed in the position of having to choose between telling the government his religion, proving that he has nothing to hide, and telling the government that his religion is none of the government's business.

The inherently coercive nature of such an inquiry violates both the Establishment Clause and the Free Exercise Clause of the First Amendment. To the extent that a person intimidated by the knowledge that as a prospective juror

he will be forced to disclose unpopular religious beliefs tends to conform to more popular beliefs, Section 1865(a) imposes the religious convictions of the majority on the minority and violates the Establishment Clause. Similarly, to the extent that knowledge that he will be asked as a prospective juror to disclose his religious beliefs inhibits the free exercise of his religious beliefs, Section 1865(a) violates the Free Exercise Clause. It is this inherently coercive quality of government inquiry into personal religious beliefs which has led the Supreme Court to state repeatedly that neither a state nor the federal government can force a person "to profess a belief or disbelief in any religion."

But even if the constitutional objections are ignored, without a showing of a major problem of religious discrimination and no alternative solution, this requirement of religious disclosure would not be justified. Embodied in our Constitution, laws and history is a concept of the individual human being as an entity separate from the state and all other human beings, with a right to think whatever he wishes. This right is protected by insuring to him the privacy of his thoughts and beliefs. It is this concept that is the basis of the tradition that the individual's relationship to church and God is literally none of the government's business.

What we have said above should not be taken as raising any question as to the propriety or desirability of including a question as to *race* on the juror qualification form. The information obtained in response to this question would undoubtedly aid materially in enforcing the ban on the widespread practice of racial discrimination in jury selection. And, as to this question, the constitutional considerations set forth above have no relevance. Unlike the commitment of the mind to a particular set of religious values, one's race is not subject to change through coercive pressure.

CONCLUSION

For the reasons set forth above, we respectfully urge this Committee to report favorably to the House the proposed Civil Rights Act of 1966, H.R. 14765, with the four amendments proposed by the Leadership Conference on Civil Rights, together with an amendment striking the word, "religion," from Section 1865(a) of Title I.

Respectfully submitted,

HOWARD M. SQUADRON,
Chairman, Commission on Law and Social Action, American Jewish Congress.

JOSEPH B. ROBISON,
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Of Counsel.

JUNE, 1966.

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