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

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.

65-313 O—66——1

"§ 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 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 purusant 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.

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 reques. 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 jurors 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 constitutional 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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Union Calendar No. 762

89TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPT. 1678 Part 2

CIVIL RIGHTS ACT OF 1966

JULY 14, 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

ADDITIONAL AND MINORITY VIEWS

[To accompany H.R. 14765]

On June 30, 1966, the Committee on the Judiciary filed its report on H.R. 14765, as amended, 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.

Pursuant to unanimous consent granted by the House of Representatives there is hereby filed the following additional and minority views of members of the Committee on the Judiciary on H.R. 14765, as amended.

65-006 O—66——1

ADDITIONAL VIEWS

ADDITIONAL VIEWS OF HON. EMANUEL CELLER

General Statement

The following discussion of the various titles of H.R. 14765, as amended, is presented in supplement to the committee report filed on June 30, 1966, and to afford a fuller understanding of the provisions of the bill.

TITLE I—REFORM OF THE FEDERAL JURY SYSTEM

Present statutes governing the selection of jurors in the Federal courts (28 U.S.C. 1861–1869) generally reflect the constitutional requirement that Federal juries be impartial and be drawn from a representative cross section of the community, however, they are imperfectly designed to insure that these constitutional requirements are uniformly met. The basic defect is that these laws vest broad discretion in the jury officials of the various districts as to the manner in which Federal jurors are to be selected, exempted, or excused. No uniform source of names of potential jurors is prescribed and the subsequent steps in the selection process are also largely left to local determination. Moreover, although objective qualifications for Federal jury service are prescribed (28 U.S.C. 1861), some jury officials impose what they deem to be higher qualifications in efforts to obtain so-called blue ribbon juries. And it is difficult to determine how the present system operates because the law does not require the maintenance of adequate records relating either to persons considered for jury service or to those who actually serve as jurors.

As a result of these deficiencies in the present law, varying selection systems are used, actual standards for qualification have differed from district to district, and there exists no readily available means for determining whether, over a period of time, Federal juries are truly representative of a broad cross section of the community. The results have sometimes created an appearance of unfairness, and the diversity of selection systems has opened the door to expensive, time consuming, and—in view of the power of Congress to correct the situation—unnecessary litigation.

Prior to the passage and implementation of the Voting Rights Act of 1965, there was no universally available source of names comprising a broad cross section of the population for use in the Federal courts. Perhaps for this reason, at least 44 of the 91 Federal judicial districts now rely exclusively on the so-called keyman system as their source of potential jurors. Under this system, 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. Persons suggested for jury duty under this system are likely to be members of the social and economic classes to which the keymen themselves belong. Source lists used in some other Federal judicial districts, such as telephone directories,

also contain built-in economic biases which, by the same token, may tend to exclude Negroes and members of other minority groups from Federal jury service.

While the need for reform of the Federal jury system is national and not merely regional, it has been demonstrated that Negroes are now inadequately represented on Federal juries in certain areas of the South. The Attorney General testified that recent informal samplings taken by the Department of Justice in six Southern States showed a substantial disparity in many Federal judicial districts between the percentage of the Negro population of jury service age 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.

Title I of the bill is designed to remedy the deficiencies in the present law. The title prohibits jury discrimination and declares that all qualified persons shall have the opportunity to serve as jurors. In addition, the committee amended the statement of policy contained in section 1861 to declare the right of litigants to a jury selected from a broad cross section of the community in the district or division in which the court convenes.

The qualifications for jury service contained in existing law are retained, including the literacy qualification. However, it is intended that title I set both a ceiling and a floor on juror qualifications, thus ending the practice in some districts of setting higher standards for jurors than are specified in the statute. Anyone meeting the requisite qualifications set out in amended section 1866 must be determined to be qualified. There would be no substantive change in the availability or use of exclusions for cause or upon peremptory challenge.

Title I provides a uniform juror selection system that assures that Federal juries are drawn from a broad cross section of the community and that all qualified citizens will have an equal opportunity to serve. The title also provides a special jury challenge procedure. If the procedural provisions of the title have not been complied with, the court is required to dismiss the indictment when the defect is in the selection of the grand jury, or stay the proceedings when the defect is in selection of the petit jury. "Failure to comply," as that phrase is used in section 1867, is intended to mean some significant departure from the requirements of sections 1864, 1865, or 1866, not a minor deviation from the prescribed procedures. On the other hand, the challenger would not have to demonstrate that he was prejudiced by the noncompliance.

The committee added a provision to the bill (sec. 103(b) of the bill, as amended) which authorizes the chief judge of the district, by rule, to exempt 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.

All three of the statutory criteria must apply to the exempted class. Wage earners as a class could not be exempted under this provision for several reasons, but, most significantly, because such an exemption

would be inconsistent with the ban of section 1862 on discrimination on account of economic status and the policy of section 1861.

The title is based upon article I, section 8, clauses 9 and 18 of the Constitution which authorize the Congress to "constitute tribunals inferior to the Supreme Court" and to "make all laws which shall be necessary and proper for carrying into execution the foregoing powers * * *" and is consonant with the constitutional requirement of trial by an "impartial" jury. (See, *Thiel* v. *Southern Pacific Railway*, 328 U.S. 217, 220.)

TITLE II—ELIMINATION OF DISCRIMINATION IN STATE COURT JURIES

It has long been established that the 14th amendment bans the exclusion of persons from State court jury service on account of race, color, or national origin. (*Strauder* v. *West Virginia*, 100 U.S. 303; *Hernandez* v. *Texas*, 347 U.S. 475. See also 18 U.S.C. 243.) More recently the courts have held that the systematic exclusion of women or of persons of a particular religion from State juries is constitutionally impermissible. (*White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala.); *Schowgurow* v. *Maryland*, 213 2d 475.) And a recent decision of the Supreme Court condemning denial of fundamental rights in the voting area because of economic status, plainly indicates that the equally fundamental right to be considered for jury service cannot be denied on this ground. (See *Harper* v. *Virginia State Board of Elections*, 86 S. Ct. 1079, 1082. See, also, *Griffin* v. *Illinois*, 351 U.S. 12; *Gideon* v. *Wainwright*, 372 U.S. 335.) Beyond that, the Supreme Court has recently declared that under section 5 of the 14th amendment the Congress is entitled to decide for itself what types of State action deny equal protection of the laws and that congressional prohibitions based upon such a determination will not be set aside if they are reasonable. (*Katzenbach* v. *Morgan*, —— U.S. ——, decided June 13, 1966. See also *Fay* v. *New York*, 332 U.S. 261, 282–284 (1947).) Since exclusion of economic classes from jury service is at war with our basic traditions (*Thiel* v. *Southern Pacific R.R.*, 328 U.S. 217, 220 (1946)), a congressional ban on this practice surely meets the standards set forth in the *Morgan* case.

The volume of judicial decisions in which claims of jury discrimination have been sustained shows that constitutional requirements, standing alone, are insufficient to insure impartiality in State jury boxes. The Supreme Court alone has considered this problem in at least 35 cases since 1880. Thus, the Civil Rights Commission's conclusion that "the problem of racial exclusion from jury service is relatively widespread and, in certain areas, deeply entrenched" finds ample confirmation in judicial decisions alone. (See 1961 *United States Commission on Civil Rights Report*, vol. 5 at p. 90.)

A recent decision by a three-judge Federal court in the case of *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala., 1966) illustrates the problem in the context of a Southern "Black Belt" area—Lowndes County, Ala. Approximately 72 percent of the adult male population of Lowndes County is Negro. Nevertheless, the court found that Negroes made up only about 1 percent of the names on the jury rolls and that "[N]o Negro ha[d] ever served on a civil or criminal petit jury" in the county. From this and other evidence, the court found that the county jury officials had "pursued a course of conduct in the administration of their office which was designed to discrimi-

nate and had the effect of discriminating in the selection of jurors * * * on racial grounds" which resulted in "gross systematic exclusion of members of the Negro race from jury duty in Lowndes County."

In another recent case, the same Federal district court found that Negroes had been systematically excluded from jury service in Macon County, Ala., and warned that "[f]ailure on the part of the defendants 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 Macon County jury box." (*Mitchell* v. *Johnson*, 250 F. Supp. 117 (M.D. Ala. 1966).)

Discrimination in the selection of State juries is not confined to racial exclusion. In Alabama, Mississippi, and South Carolina, women are totally barred from service on juries. Although the Federal district court in *White* v. *Crook*, discussed above, held—I believe, correctly—that the Alabama law is unconstitutional, the Mississippi Supreme Court rejected that view only last month. (*State* v. *Hall* decided June 13, 1966.)

The laws of Florida, Louisiana, and New Hampshire also exclude women from juries unless they affirmatively volunteer for service. Such laws place a special burden on women who desire to serve and it is fair to assume that many such women do not know that they must volunteer in order to be considered for jury service. Although the Supreme Court upheld this procedure in 1961 (see *Hoyt* v. *Florida*, 368 U.S. 57), the question was raised there by a defendant in a criminal case, not by a member of the excluded class seeking to obtain equal treatment with men. Compare *White* v. *Crook*, 251 F. Supp. 401 (M.D. Ala., 1966) which outlawed the Alabama total exclusion of women and distinguished *Hoyt* on this ground. Moreover, it is now settled that Congress, in the exercise of its power to enforce the 14th amendment, has wide latitude to define the substantive scope of the equal protection clause. (*Katzenbach* v. *Morgan*, — U.S. — (decided June 13, 1966); see also *Fay* v. *New York*, 332 U.S. 261, 282–284.) These State statutes are inconsistent with the equal protection of the laws.

Invidious discriminations in State court juries is not a regional problem. Although such discrimination with respect to Negroes and women is most aggravated in certain areas of the South, unconstitutional discrimination in jury selection is by no means confined to those areas. Certain State laws and local jury selection procedures have the effect of excluding substantial members of otherwise qualified persons from jury service on account of economic status. Examples are New York's $250 property qualification and West Virginia's "pauper" disqualification. Such direct economic tests for jury service would be nullified by title II.

The Federal Government may not under existing law initiate proceedings to eliminate discrimination in State court juries. Under section 902 of the Civil Rights Act of 1964, the Department of Justice is authorized only to intervene in jury discrimination suits brought by private litigants under 42 U.S.C. 1983. Although, pursuant to this authority, the Department recently has intervened in six such suits (and participated as amicus curiae in five other recent jury discrimination cases) it is clear that the authority of the Federal Government to act in this area should be appropriately expanded.

Title II of the bill is designed to eliminate all forms of unconstitutional discrimination in the selection of State court juries. It expressly reaffirms the ban of the 14th amendment on discrimination on account of race, color, religion, and national origin. In addition, it will invalidate State laws and procedures whose terms or operation make unreasonable distinctions on grounds of sex or economic status.

Title II contains two principal means of implementing the ban on discrimination. First, it would authorize the Attorney General to initiate proceedings for preventive relief against State jury officials engaged in discriminatory practices. Upon a finding of discrimination, the court would be expressly authorized to grant specified types of effective relief, including a decree which would suspend the use of State qualifications or standards for jury service which are so subjective as to vest in the jury officials undue discretion to determine whether any person satisfies such a qualification or standard. For example, if the court found that Negroes had in the past been systematically excluded from service by maladministration of a key man system or by simply not summoning Negroes whose names were drawn from a wheel or similar device, it would be authorized to enjoin the use of vague moral character or intelligence qualifications, even though it did not appear that such qualifications had yet been employed as engines of racial discrimination. Experience in the voting area proved that where officials are predisposed to discriminate on account of race, the courts should foreclose all such ready means of discriminating in order to insure effective relief. (See, e.g., report of the Committee on the Judiciary, House of Representatives, 89th Cong., 1st sess., No. 439, on H.R. 6400 at pp. 10–11.)

The second principal implementing provision of title II is section 204, which allocates the burden of producing information relevant to the issue of whether discrimination has occurred. The mechanics of this provision are clearly set forth in the statute and the committee's initial report on the bill.

The constitutional basis for title II is section 5 of the 14th amendment, under which Congress is empowered to enact all "appropriate legislation" to enforce the amendment.

With respect to the authority granted the Government to sue for injunctive relief against jury discrimination, it need only be noted that Congress granted similar authority to the Attorney General in 1957, 1964, and 1965 in the areas of voting, public accommodations, schools and public facilities, and employment, and that the comparable provision of the 1957 act was sustained in *United States* v. *Raines*, 362 U.S. 17.

The remedial provisions of the title are wholly appropriate. Even without legislation, a court of equity has the power to suspend procedures which invite violations of constitutional rights and to require the keeping of the necessary records to police its decree. See *South Carolina* v. *Katzenbach*, 383 U.S. 301; *Louisiana* v. *United States*, 380 U.S. 145; *Staub* v. *City of Baxley*, 355 U.S. 313; similarly, the court may require use of objective procedures. Congress may confirm this authority and the court's traditional power to appoint a master in appropriate circumstances. (See *United States* v. *Mayton*, 335 F. 2d 153 (C.A. 5, 1965); *United States* v. *Scarborough*, 348 F. 2d 168 (C.A. 5, 1965); Cf. *South Carolina* v. *Katzenbach*, 383 U.S. 301.)

The provisions of section 204 are designed to remove major obstacles to effective enforcement of the requirement of nondiscrimination in jury selection—the inability of complainants to ascertain how jury selection actually operated (due largely to the inaccessibility of official jury records), and the unfairness of requiring litigants to meet a burden greater than a showing of probable cause, where the jury records do not permit a determination of the issue. Section 204 would permit the court which considers a jury exclusion claim to base its decision on a complete record of the questioned events and require the State to assume the burden of disproving that discrimination occurred.

Where the States have not met their responsibilities to safeguard Federal constitutional rights in State court proceedings, section 5 of the 14th amendment imposes an affirmative obligation on the Congress to provide appropriate safeguards for these rights.

Even without implementing legislation, the due process and equal protection clauses of the 14th amendment control many aspects of local procedure. Thus, State courts must respect the privilege against self-incrimination (*Mallory* v. *Hogan*, 378 U.S. 1) and may not permit the State prosecutor to comment on the failure of a defendant in a criminal case to take the stand in his own defense. (*Griffin* v. *California*, 380 U.S. 609.) They must appoint counsel for any defendant charged with a serious crime, at the trial level (*Gideon* v. *Wainwright*, 372 U.S. 325), and on appeal (*Douglas* v. *California*, 372 U.S. 353). They must furnish a free transcript to those who cannot afford to pay for it. (*Griffin* v. *Illinois*, 351 U.S. 12.) They may not apply rules creating presumptions which impinge upon 13th or 14th amendment rights. (*Oyama* v. *California*, 332 U.S. 633; *Bailey* v. *Alabama*, 219 U.S. 219. See also, *Wright* v. *Georgia*, 373 U.S. 284, 289–291; *NAACP* v. *Alabama*, 357 U.S. 449; *Davis* v. *Wechsler*, 263 U.S. 22, 24.) Indeed, the very first civil rights act (act of Apr. 9, 1866, 14 Stat. 27) prescribed nondiscriminatory procedures to be followed in State courts.

Title II of H.R. 14765, as amended, provides the means of assuring that State juries are selected in compliance with constitutional standards, while at the same time leaving those State and local courts which have met their responsibilities free to follow traditional practices.

TITLE III—CIVIL RIGHTS INJUNCTIVE RELIEF

This title was added by the committee to the bill as introduced. It authorizes the Attorney General to initiate civil proceedings against persons who are engaging in acts or practices that deprive others of any rights, privileges, or immunities granted or secured by the Constitution or laws of the United States on account of race, color, religion, or national origin. In my view, the Attorney General should have such broad authority to assure that Federal rights may be freely exercised and enjoyed. The title also authorizes aggrieved persons to bring such suits in their own behalf and it expressly authorizes suits, either by the Attorney General or aggrieved persons, against interference with the lawful exercise of rights of speech, assembly, and petition for the purpose of securing recognition of or protection for equal enjoyment of Federal rights free from discrimination on account of race, color, religion, or national origin.

TITLE IV

Title IV prohibits discrimination on account of race, color, religion, or national origin in residential housing transactions by persons who are in the housing business. It covers real estate brokers, agents and salesmen, and any other persons in the business of building, developing, selling, renting, or leasing dwellings, or any employees or agents of such persons. Section 402(d) of the title provides that a person shall be deemed to be in the business of building, developing, selling, or leasing dwellings if he has participated in three or more transactions involving the sale, rent, or lease of a dwelling or an interest in a dwelling within the preceding 12 months. The title, thus, would not apply to the typical homeowner in the sale or rental of his own home, since he simply does not have the requisite three transactions per year. The committee adopted an amendment redefining and limiting the scope of the title. The intent of the author of the amendment, as I understand it, is to the effect that a real estate agent or broker, in representing an individual owner not covered by title IV, would not be in violation of the prohibitions of section 403(a) in respecting the express instructions of his principal with respect to the conclusion of any sale or rental to any particular person or class of persons. The language of the title is not explicit on this point and should be clarified on the floor, as may be desired by the Members of the House.

In addition to limiting application of the nondiscriminatory sale, lease, and rental provisions to realtors and other persons in the housing business, the committee added a "Mrs. Murphy" exemption. Thus, even an owner who might otherwise be subject to the prohibitions of the title because he was in the business of housing would be exempt with respect to the sale, rental, or lease of a portion of a building which contained living quarters for not more than four families living independently of one another, if he actually occupied one of such living quarters as his residence.

Religious or denominational institutions and bona fide private or fraternal organizations are permitted to give preference to persons of the same religion or denomination or, in the case of private or fraternal organizations, to their own members, or to make such selection as is reasonably calculated to promote the principles for which they are established or maintained.

The title's coverage of dwellings is adequate to prevent outright evasion of the purpose of the title, by for example, a real estate developer who, instead of building and selling houses on land which he is subdividing, sells the vacant lots and contracts to build houses on the lots for the buyers. Thus, the title would apply in the case in which the intention to build a residential structure on vacant land is so clear as to be virtually part of the sale or lease of the land itself as, for example, if the developer or builder were to sell a lot with the understanding that he or a related concern was to construct the dwelling on it after the sale had been consummated.

The prohibition against discrimination on account of race, color, religion, or national origin in the financing of dwellings applies without exception.

The title also prohibits all kinds of intimidation, including economic, threats, coercion, or other interference with any person in the exercise or enjoyment of the rights granted by the title, or because he has exercised or enjoyed or aided or encouraged others in the exercise or

enjoyment of such rights. For example, relief could be had against mobs or disorderly demonstrators attempting to prevent or discourage a Negro family from moving into a previously all-white neighborhood.

Persons aggrieved by a violation could bring an action in a Federal district court or in a State or local court of general jurisdiction within 6 months after the violation occurred. The court could grant appropriate injunctive relief and award actual damages for any injury suffered or, in the alternative, if the defendant had received or agreed to receive compensation for services during the course of which the violation occurred, and if the plaintiff requested such relief, the court could award damages in an amount not exceeding such compensation. In its discretion, a Federal court could waive the payment of fees, costs, or security and appoint attorneys to represent either or both parties, and State and local courts could do likewise to the extent their laws permit.

Provision has been made in the amended bill for staying private court actions brought under the title pending referral to a State or local housing agency in appropriate cases. It is expected that this provision will lighten the call on Federal and other courts, and avoid unnecessary overlapping of procedures, wherever experience has shown that State or local agencies have done, and can be expected to continue to do, an effective job.

The Attorney General is empowered to initiate suits in Federal courts to eliminate a "pattern or practice" of discrimination, and he may intervene in private suits brought in Federal courts if he certifies that they are of general public importance.

The committee added a new section providing for administrative remedies. It establishes a five member Presidentially appointed Fair Housing Board and confers on it and the Secretary of Housing and Urban Development powers to enforce the provisions of the title through administrative procedures. Investigative and adjudication procedures under this section are patterned after those of the National Labor Relations Act except that whereas under the act, investigative and adjudication functions are performed by different divisions of the same agency, under title IV investigative functions are given to the Secretary of Housing and Urban Development, and adjudicatory functions are given to the Fair Housing Board, which will not be subject to the Secretary.

The Secretary of Housing and Urban Development is also given certain more general responsibilities. He is directed to make and publish reports on discrimination in housing, to cooperate with and render technical assistance to private or public agencies combating discrimination, including the Community Relations Service, and to administer his Department's other programs in a manner affirmatively to further the policies of the title.

The power of Congress to prohibit discrimination in commercial housing transactions by persons engaged in the housing business is supported by two independent constitutional grounds: the commerce clause (art. I, sec. 8, clause 3), see, e.g., *Labor Board* v. *Jones and Laughlin Steel Corp.*, 301 U.S. 1; *Wichard* v. *Filburn*, 317 U.S. 111; *Katzenbach* v. *McClung*, 379 U.S. 294; and the enforcement clause of the 14th amendment (sec. 5), see, e.g., *Katzenbach* v. *Morgan*, — U.S. — (decided June 13, 1966). *United States* v. *Guest*, (383 U.S. 745; cf. *South Carolina* v. *Katzenbach*, 383 U.S. 301.

TITLE V—INTERFERENCE WITH RIGHTS

The brutal crimes committed in recent years against Negroes exercising Federal rights and against white persons who have encouraged or aided Negroes seeking equality need no recital. Violence and threats of violence have been resorted to in order to punish or discourage Negroes from voting, from using places of public accommodation and public facilities, from attending desegregated schools, and from engaging in other activities protected by Federal law. Frequently the victim of the crime has recently engaged or is then engaging in the exercise of a Federal right. In other cases, the victim is a civil rights worker—white or Negro—who has encouraged others to assert these rights or engaged in peaceful assembly opposing their denial. In still other cases Negroes, not known to have had anything to do with civil rights activities, have been killed or assaulted to discourage other Negroes from asserting their rights. (See e.g., *"Law Enforcement, A Report on Equal Protection in the South,"* U.S. Commission on Civil Rights, 1965.)

Between 1866 and 1871, the Congress enacted a comprehensive group of civil rights laws which included both civil and criminal provisions designed to prevent or punish both official and private interference with the exercise of newly created Federal rights. For some time thereafter, the Federal Government had an extensive arsenal of legal weapons for use against interference—whether by public officials or private individuals—with the exercise of Federal rights.

Later the Supreme Court restricted the application of certain provisions of reconstruction criminal legislation (see e.g., *United States* v. *Reese*, 92 U.S. 214; *United States* v. *Cruikshank*, 92 U.S. 542), much of which was later repealed.

Today, the principal Federal criminal sanctions against crimes of racial violence are sections 241 and 242 of the Federal Criminal Code. On March 28, 1966, the Supreme Court decided two cases—*United States* v. *Price* and *United States* v. *Guest*—involving the construction of these statutes. The *Price* case arose out of the 1964 killings of three civil rights workers in Neshoba County, Miss. The prosecution in *Guest* arose out of the 1964 killing in Georgia of Negro Educator Lemuel Penn. In both cases the district courts had dismissed the indictments in whole or in part prior to trial for failure to state an offense under Federal law.

Neither the *Guest* nor *Price* case, however, clearly resolved the question whether private individuals not acting in concert with State officials could violate section 241 by interference with 14th amendment rights. The majority opinion in *Guest* did suggest, though, that section 241 may not reach purely private interference with 14th amendment rights.

In sum, it appears that there may be no Federal criminal statute now on the books which reaches racially motivated acts of violence by private individuals against persons exercising 14th amendment rights where no element of "State action" is involved. In view of the many recent incidents of forcible interference with the exercise of Federal rights by private persons this represents a serious deficiency in present law.

There are other significant defects in section 241 of the Federal Criminal Code. The statute is worded in general terms. Section 241

prohibits interference with the exercise of "any right or privilege secured * * * by the Constitution or laws of the United States." But it is not always clear just what rights are secured or protected by the 14th amendment. Due process requires that criminal laws be reasonably specific with respect to the types of conduct prohibited. This is necessary not only so that citizens will know what conduct is proscribed, but also to enable accused persons to prepare a defense against criminal charges and to provide guidance to the judge and jury in determining whether the Government has proved a violation of the law.

The Supreme Court has met the "vagueness" problems which would otherwise be raised by application of section 241 to 14th amendment cases by reading in a requirement that the Government must prove a "specific intent" on the part of the accused to deprive his victim of a particular 14th amendment right. While proof of virtually all criminal offenses involves some consideration of the state of mind of the accused, such a "specific intent" requirement is rarely read into the law in other situations and represents a substantial impediment to convictions. This problem can be mitigated or largely avoided if the statute is reasonably specific with respect to the types of conduct prohibited. Indeed, commenting on the vagueness problem and "specific intent" requirements under 18 U.S.C. 241, Justice Brennan concluded his concurring opinion in *Guest* by saying that "[s]ince 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. * * * [I]f Congress desires to give the statute more definite scope, it may find ways of doing so."

Title V of the bill is designed to meet the problem of present-day racial violence. The substantive scope of the title is clear from the language of the statute itself and is accurately described in the section-by-section analysis contained in the committee report. Two points deserve emphasis here, however.

First, section 501 would not require proof of a "specific intent" such as is required under 18 U.S.C. 242 by the decision in *Screws* v. *United States*, 325 U.S. 91 (1945). This is so because, unlike section 242, title V stands by itself. No reference to the 14th amendment or any other law would be required in order to determine what conduct is prohibited.

Second, the scope of the activities described in section 501(a)(1) to (9) is not limited to the scope of the "rights" created by other Federal laws outlawing discrimination with respect to those activities. Accordingly, in appropriate cases, section 501 of the bill would reach 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 happen to fall within the scope of the 1964 Civil Rights Act; and with common carrier transportation whether interstate or intrastate.

Title V is based upon different sources of congressional power, depending upon the nature of the activity as to which forcible interference is prohibited. It has always been clear, of course, that Congress can provide criminal sanctions against persons (whether they are private individuals or persons acting "under color of law") who interfere with the exercise of rights arising out of the relationship be-

tween the citizen and the National Government or rights created by Federal statutes enacted pursuant to article I, section 8, of the Constitution. (See *Civil Rights Cases*, 109 U.S. 3, 18; *Ex parte Yarbrough*, 110 U.S. 651; *United States* v. *Waddell*, 112 U.S. 76.) Specifically, Congress can punish interference with voting in Federal elections (*Ex parte Yarbrough, supra*) and interstate travel or interstate commerce (*United States* v. *Guest*, — U.S. —).

Nor does any problem arise because, in a few instances, the scope of protection is greater than that afforded by the substantive statutes creating rights based upon the commerce clause. In dealing with violent interference with the right to be free from racial discrimination in interstate activities it is reasonable to conclude that effective regulation requires reaching related local activities as well. Legislation that regulates intrastate commerce in order to insure the effective regulation of interstate commerce is a commonplace, and its constitutionality is beyond serious debate. (See, e.g., *United States* v. *Darby*, 312 U.S. 100, 118–119; *United States* v. *Wrightwood Dairy*, 315 U.S. 110, 119; *Atlanta Motel* v. *United States*, 379 U.S. 241, 258; see also *Southern Railway Co.* v. *United States*, 222 U.S. 20; *Thornton* v. *United States*, 271 U.S. 414; *Currin* v. *Wallace*, 306 U.S. 1.)

Title V also vindicates the right to the equal enjoyment, without distinction on account of race, religion, or national origin, of State facilities or activities (such as public schools, municipal parks, public assistance programs, and the State electoral process). This is, of course, a right secured by the 14th and 15th admendments against denial by officials or agents of the States, and there are many decisions upholding the power of Congress to punish criminally State officials who by force deny this right. (E.g., *Screws* v. *United States*, 325 U.S. 91; *United States* v. *Price*, 34 U.S. L. Week 4313 (1966).) The present title reaches private interference as well.

While the 14th and 15th amendments, of their own force, do not forbid private discrimination in which no trace of "State action" is involved, they do expressly authorize Congress to enact appropriate legislation to "enforce" their substantive guarantees. The scope of this congressional power is broad. (*South Carolina* v. *Katzenbach*, 383 U.S. 301, 326–327.) It surely comprehends legislation punishing private persons who, for racial reasons, engage in acts or threats of violence that obstruct access on equal terms to the facilities and benefits which a State provides its citizens, and thereby thwart the attainment of the promise of the 14th and 15th amendments. Any doubt on this score was laid to rest by the opinions of Mr. Justice Clark and Mr. Justice Brennan (speaking together for six of the nine Justices), in the *Guest* case; they declare in almost the same words that "there now can be no doubt that the specific language of section 5 [of the 14th amendment] empowers the Congress to enact laws punishing all conspiracies—with or without State action—that interfere with 14th amendment rights."

TITLE VI—NONDISCRIMINATION IN PUBLIC EDUCATION AND OTHER PUBLIC FACILITIES

Although considerable progress has been made in the desegregation of public schools and other public facilities since passage of the 1964 Civil Rights Act, it is apparent that racial discrimination still exists

in these areas. Existing Federal authority to deal with this problem has proven inadequate in two respects.

Under titles III and IV of the Civil Rights Act of 1964, the Attorney General is authorized to initiate civil proceedings to enjoin racial discrimination in public schools and facilities, but only after a written complaint has been received from an aggrieved person who is himself unable to sue. Understandably, many Negroes are unaware of the complaint requirement or, if they know about it, are unfamiliar with what they must do to comply with it. Others are intimidated from asserting their rights under the act. Elimination of the complaint requirement will insure that constitutional rights do not go unenforced because of intimidation or unfamiliarity with technical legal requirements.

Title VI would repeal the requirements that as a precondition to bringing suit the Attorney General must receive a written complaint and determine that the complainant is unable to sue on his own behalf. It would also authorize the Attorney General to bring desegregation actions whenever he has reasonable grounds to believe that either public officials or private persons not acting under color of law are interfering with the exercise or enjoyment of rights to nondiscriminatory public education or the nondiscriminatory use of other public facilities. These changes would be effected by repealing certain provisions of title IV of the 1964 act and amending the whole of title III of that act to make it applicable to both public schools and public facilities.

The suits which may be brought by the Attorney General are described as suits for "desegregation," which, as applied to public education, is defined to exclude suits to deal with the assignment of pupils to overcome racial imbalance.

TITLE VII—PRESERVATION OF ELECTION RECORDS

This title was added by the committee to the bill as introduced. Title III of the Civil Rights Act of 1960 requires appropriate State and local election officials to 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. Although the preservation of such records is ordinarily essential to determine whether local officials are engaging in racial discrimination in voting, and for other purposes, experience has shown that it is sometimes unnecessary to require all election officials to retain all records for the statutory period. Accordingly, this title would add a new section to the 1960 act authorizing the appropriate election officials to 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. If in the judgment of the Attorney General the destruction of these materials will not interfere with the accomplishment of the purposes of the Federal statutes relating to nondiscrimination in voting, he may grant the petition in whole or in part, and upon such terms and conditions as he may prescribe.

EMANUEL CELLER.

ADDITIONAL VIEWS OF HON. WILLIAM M. McCULLOCH AND HON. CHARLES McC. MATHIAS, JR.

INTRODUCTION

The objectives of the civil rights movement, as with other like movements in the world's history are difficult to attain, but even more difficult to retain. And characteristic of all such movements whose final objectives are the hearts and minds of men are these expressive lines of Lowell:

> New occasions teach new duties,
> Time makes ancient good uncouth,
> They must upward still, and onward,
> Who would keep abreast of truth.

The Crusaders who overcame many obstacles to take Jerusalem found the real test of their ability lay in holding it once it had been won. Now as then, initial successes in recent years in the field of civil rights only advance us to meet new responsibilities. More subtle and far-reaching duties lie beyond persistent and deeply rooted obstacles.

These sterner challenges are born of the same responsibility which Congress recognized in enacting the civil rights laws of 1957, 1960, 1964, and 1965. We support the civil rights bill of 1966 because it embodies the same historic principles which undergirded earlier bills, and it will advance, as have previously enacted civil rights bills, the fulfillment of our commitment to the goal of equal justice for all.

JURY SELECTION

The Anglo-American jury system was a fixture in every American colony long before the Nation's founding. It has served, in the words of Blackstone, as "a bulwark for individual freedom."

In the early days of a young and struggling nation, the jury served not only as an effective, practical mechanism for the trial of legal matters, but it also stood as an embodiment of the basic concept of our earliest heritage of government for and by the people. History shows that so long as the jury has been constituted as a body independent of other authority, in its selection and operation, it has been a chief source of public confidence in justice under law. Titles I and II are a restatement of the fundamental concept of trial by jury.

Title I will require some changes and adjustments on the part of many judges and court officials. It will work basic changes in the Federal jury selection system, which has operated in recent years without a complaint of discrimination. But it promises, we think, an even higher standard in jury selection to which all citizens may look with renewed pride and confidence.

Title II possibly may be interpreted by some to imply condemnation of State courts, against the most of which no suspicion of bias

has ever been raised, and the majority of which have served as models of justice in juror selection. Careful analysis will show, however, that title II only improves the means of enforcing standards of fairness, justice, and nondiscrimination that have long been a part of Federal law, and which have long been embedded in the practices of these State courts. No State and no court which has maintained these high standards is or will be required to change either law or rule by the provisions of title II.

In short, it is our view that justice has no price, in either Federal or State courts. Equal justice under law, in every courtroom in the land, requires strict adherence to the constitutional rights of all men, and without exception.

CIVIL RIGHTS INJUNCTIVE RELIEF

Title III is a worthy Republican contribution to the bill. Both in its antecedents and in the form in which it was adopted by the subcommittee and approved by the full committee, it expresses concern for the rights of individuals which are far too often threatened by zealous majorities and occasionally by overbearing governments.

In 1957, title III was proposed by President Eisenhower and championed by Attorney General Brownell as a promise of increased protection for individual rights. It passed the House, only to fail in the other body.

In the context of 1966, the present language allows preventive relief by the courts which will serve to compliment the new Federal civil rights criminal provisions of the bill. Additionally it creates a strong barrier against infringements on first amendment rights which the experience of the past 9 years has shown to be at times massive, widespread, and deeply erosive of the efforts of minority groups to help themselves.

HOUSING

One of the highest purposes and loftiest goals of Government is to moderate and resolve conflicts between basic rights on the one hand and fundamental freedoms of its people on the other. In apparent conflict in title IV are basic rights to private property, and the competing claims of human rights, justice, and welfare of all the people.

It is not enough to say that the apparent conflict presented in title IV is a product of recent times. The modernization of America is a major cause of the immediate problem. When America was a nation of towns, hamlets, and farms, racial ghettos did not exist. As the towns and hamlets grew, the ghettos gradually emerged, though in a predominately rural nation they attracted little notice and no real attention.

Now, not only have the cities grown, but heavily populated suburbs have risen up to surround them. New social and economic forces are at work which must be reckoned with when the problems of the ghetto, their antecedents, and their challenges are squarely met. The product of these forces results in the apparent conflict between property rights and human rights we earnestly seek to balance in title IV.

In this light, then, it would serve a useful purpose to recall that before the cities grew in America, the Negro's plight in our land had been born in a conflict between property rights and human rights.

As Carl Sandburg recounted of President Lincoln's issuance of the Emancipation Proclamation:

> The Chief Executive * * * issued the paper by which he declared the slaves to be free * * * nearly $4 million [sic] dollars worth of property was taken away from those who were legal owners of it, wiped out as by fire and turned to ashes. * * *

By the legislation of 1957, 1960, 1964, and 1965, Congress has sought to alleviate the disadvantages accruing from the chattel status the Negro had endured. Now in 1966, more than 100 years later, we take further implementing steps to live up to the promise and high hopes of the Emancipation Proclamation. The property rights that now are involved are rights fully contemplated by that great document.

Achievement of equal opportunity in housing will not be accomplished alone, either by Executive order or by statute. But we believe that aided by the provisions of this title, positive achievements, progress, and a quickened public conscience will result.

For title IV manifests a national moral standard, making it clear that the basic and continuing aim of the Republic—to secure the rights of all individuals—will be pursued in every essential element of American life. It will do more.

Title IV assures that new development housing will be open to all law abiding people who can afford it, and that all housing which is managed and marketed by those who are in the housing business—and thus fairly in interstate commerce—will be available on a nondiscriminatory basis.

Fair and effective enforcement means are provided to insure that the law is available to all people in terms of effective action.

Title IV will do more. It will provide the means whereby the doubts and fears of members of majority groups may be quieted and dispelled. By providing an entry to what is now a virtually closed market, the minority group buyer will be able to participate in the housing market with money that is equal to the housing dollar of the majority of the people. He will have the opportunity to make his own way toward acceptance and understanding, just as his neighbors will have the same opportunity to earn the same respect from him.

Title IV measures commerce: by its terms it does not include the casual rental or sale of a family home or the rental of a spare room or rooms. But by its moral suasion and by providing the means for minority group members to realize a fuller opportunity in selecting a home for their families, it will reach and affect every thoughtful and just householder in the Nation.

Necessary, yet restrained; practical though moderate; title IV (fair housing) if enacted into law, will help to insure a constitutional right and provide a pattern for equality in one of the most essential and basic of human needs.

CIVIL RIGHTS CRIMES

Title V of the bill represents an assumption of Federal responsibility which is long overdue. The title unquestionably would be the most urgent in the entire bill, if priorities were required to be established.

The need for a modern law to deter civil rights crimes has been dramatized by the many and sometimes unbelievable instances of violence against certain of our citizens, which have commanded the Nation's attention in the public news media during the last several years. These crimes, heinous as they are, represent only the most recent in a long series of such incidents which have held Negroes in terror in the South for generations. Aptly described as a "legacy of violence" by the Civil Rights Commission, each new threat or gesture of intimidation serves to invoke the dread weight of possible terror which, if it comes, so often is without remedy.

The importance of title V is that it will free many means of individual self-help from shackles of fear. The full weight of Federal law enforcement machinery can be brought to bear on cases of civil rights violence. With Federal prosecution stripped of the present necessity to prove specific intent to interfere with civil rights, and with a penalty structure that will allow punishment commensurate with the magnitude of the proven crime, title V, when enacted into law, will prove a powerful deterrent. Recent successful prosecutions under the old laws, 18 U.S.C. 241 and 18 U.S.C. 242, have already established the desirability and efficacy of what we conceive to be a jurisdiction concurrent with, but not exclusive of, that of the States.

Title V will work no violence to a sound and viable State-Federal relationship in the area of law enforcement. It is designed to operate only where there is a failure or refusal of justice in the State courts. It will hopefully accomplish more through deterrence than actual appli ation, for that is its prime objective.

CONCLUSION

The additional provisions of the bill represent adjustments to earlier acts of Congress which have been determined to be necessary by developments in their enforcement. Titles VI and VII break no new substantive ground. They are a product of the necessity to keep the laws responsive to the changing needs of the times.

The 1966 proposal, representing a rededication to basic principle and a reaffirmation of our commitment to equal justice, is a worthy successor to preceding measures. It is well to note, as the Congress moves this year toward recognition of these new responsibilities, that the measure requires the acceptance of increasing responsibilities on the part of all of the people. The forces that have caused the condition that require these new measures will not be solved alone by efforts of the Government to make and enforce laws, and the rules and regulations promulgated pursuant thereto. The dissatisfaction and unrest which give rise to the need for this legislation will be remedied by the understanding and good will of individual citizens and of all groups who are benefited or affected by the laws. It is in this spirit that we endorse and will support the civil rights bill of 1966.

WILLIAM M. MCCULLOCH.
CHARLES MCC. MATHIAS, JR.

ADDITIONAL VIEWS OF HON. RICHARD H. POFF AND HON. WILLIAM C. CRAMER

H.R. 14765 is neither wholly constitutional nor wholly unconstitutional. It is neither wholly wise nor wholly unwise. It is neither wholly good nor wholly bad. It is a blend and a mixture of all of these.

TITLES I AND II

We support title I enthusiastically. While even the most zealous civil rights advocates would have to agree that it has not been treated to the thorough analysis usually enjoyed by measures which so closely affect the judicial branch of our Government and the practicing bar, on balance, and with the changes made by the committee, the revision is both workable and timely.

We support title II, with the reservation that the remedial powers given the court upon finding of a single discriminatory act may be overly broad. Section 203 would seem to allow, for instance, a court to suspend a qualification "so subjective as to vest in jury officials undue discretion" to determine a juror's qualifications (such as "good moral character") without a showing that subjective qualifications had been abused. Since there is a complete absence of a showing in the record of a factual necessity for such an automatic device, it will undoubtedly only be used by the courts to suspend qualifications which have demonstrably been abused. To interpret it otherwise would be to cast a cloud of doubt on the validity of so-called subjective qualifications, such as tests of good moral character, which have heretofore been a proper consideration under State laws[1] and appear in the statute books of a majority of the States.[2]

The purposes of the title, however, are of such a fundamental nature as to require its acceptance despite reservations. Those whose property and personal freedom hang on the decision of a jury are entitled to a jury in its full constitutional sense. They are entitled to the unalloyed impartiality and the equal protection that can only be achieved if the selection process remains untainted by discrimination on grounds totally unrelated to jury service, such as race, color, religion, sex, national origin, or economic status.

The result of jury discrimination, injustice, is the same, be it in State or Federal court.

TITLE III

Title III, styled "Civil Rights Injunctive Relief," was advanced in subcommittee and committee as an updated and expanded version of the measure that had passed the House in 1957, only to be rejected in

[1] See *Fay* v. *New York*, 332 U.S. 261, 270 (1947); *Gibson* v. *Mississippi*, 162 U.S. 565, 589 (1896).

[2] Alabama, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, Nebraska, New Hampshire, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, Utah, Virginia, West Virginia, Wisconsin, and Wyoming. Should title II be cast in the broad interpretation, it should be modified—at very least—to restrict the Attorney General to pattern or practice suits

the Senate. If it were no more than that, and if it truly took into account the laws that have been passed in the interim it might merit study and consideration. Having been accepted at the last minute without even being requested by the administration and, with no consideration of its impact, it has not been subjected to the close scrutiny it deserves.

Section 301 bears some resemblance to the 1957 title III in its broad grant of injunctive power to the courts in civil rights cases. It differs markedly, however, in that it allows suits by private individuals as well as the Attorney General, and while in 1957 it only reached persons acting under color of law, and conspiracies, the new version lodges an action against "any person."

In 1957, there were none of the statutes for injunctive relief relating to specific subject matters as now appear in Federal law as a result of subsequent civil rights acts.

The operation of section 301, however, is to rewrite and broaden nearly every one of the statutes presently on the books which now provide for civil rights injunctive relief in certain specified instances. For example, where previously the Attorney General could only bring a "pattern or practice" suit in public accommodations cases—a wise recognition of State-Federal relationships—he now could sue to enjoin "any act or practice which would deprive another of any right * * * secured by * * * the laws of the United States on account of race, color, religion, or national origin. * * *"

Section 302 is a new form of another perennial civil rights measure. It proposes injunctive relief to protect certain first amendment rights in civil rights contexts. It has been rejected in earlier bills and should again be rejected. There is no need to create a preferential class of first amendment rights as the language of the bill would do. Not only is the protection for free speech, assembly, and petition limited to the civil rights area, but only civil rights advocates—not detractors—are protected.

The problems of the complete impracticality of the measure were discussed in hearings and on the floor of the Congress at the time the measure was defeated in the House as recently as 1965. To quote the present Attorney General, who then testified on the same proposal:

> My opinion on it [protection of first amendment rights], Congressman, would be the same opinion that was stated by my predecessor. When you give us that power then you also give us the power for an appropriation to hire the police force that it is going to take to do it. Don't give us the responsibility without the capacity of fulfilling it. * * * Give me the national police force that it may take.[3]

No reasons arising since last year have been advanced for enacting these provisions into law. Certain it is that none exist. The simple fact is that a Federal cause of action cannot be created to cure every wrong or slight. There are no standards in the bill, and no possible way to insulate the courts from the great number of actions which doubtless would be brought by those seeking to use the judicial forum to advance publicity or attract attention to a cause they well know is legally frivolous.

[3] 1965 Voting Rights Hearings, p. 108.

TITLE IV

Title IV is unacceptable, and will be treated last.

TITLE V

Title V is a new Federal criminal statute. Force or threat of force on account of race or color against those lawfully engaged in activities protected by Federal law is defined as a Federal crime. As such, these savage incidents will be investigated by the FBI, indicted by a Federal grand jury and tried by a Federal judge, to a jury in a Federal court under Federal rules of procedure. The penalties will be served in Federal penitentiaries. Like all criminal statutes, the purpose of the title is not only to punish but to deter.

Today, most of the acts proscribed by title V are crimes under the laws of the several States. While we deplore any transfer of jurisdiction from the States to the Federal Government, we deplore even more the use of force and violence against any man anywhere who is lawfully pursuing some activity authorized by law. When it is Federal law which grants the authority, Federal sanctions must obtain against those who defy it, else the authority is hollow. Title V, in its proper perspective, represents no usurpation of traditional State jurisdiction if it is invoked only upon failure of State process.

TITLE VI

Title VI relates to suits by the Attorney General to desegregate public education and public facilities. It is designed to replace the entire title III of the 1964 Civil Rights Act, "Desegregation of Public Facilities," as well as section 407 through 410 of title IV of the 1964 act which relates to suits for "Desegregation of Public Education." The announced need for the change is to remove the limitation under both 1964 titles that the Attorney General must be in receipt of a written complaint by a citizen unable to maintain his own action in order to initiate a desegregation suit.

This year's bill proposed to eliminate several other features which were an integral part of the 1964 act relating to desegregation of schools. Under 407(a) of the act of 1964, the Attorney General is required to give notice of his complaint to the appropriate board or authority. He must thereafter certify to the court that the board or authority has had reasonable time to adjust the conditions complained of and has not done so. The obvious thrust of this requirement was to allow the opportunity for voluntary compliance. But the new title has done away with this requirement.

The chief feature that was eliminated by title VI as reported by the subcommittee was the necessity for the Attorney General to certify that the suit would "materially further the orderly advancement of *desegregation* in public education" [emphasis supplied]. "Desegregation" was defined in the education title of the 1964 act expressly to prohibit suits and orders aimed purely at overcoming racial imbalance. This definition, although remaining in the law, would have been inoperative since the word "desegregation" was omitted from the subcommittee version.

Fortunately, title VI was amended by the full committee to maintain the prohibition against suits designed to overcome racial imbalance.

It is to be hoped that the other omissions also will be cured, though they cannot correct the major fault with this title of the bill.

The fault lies in giving the Attorney General the unfettered right to bring suits completely on his own. This establishes two independent Federal agencies with separate but equal powers to oversee school desegregation. The Attorney General indicated he need not be bound by the views and regulations of the Department of Health, Education, and Welfare.[4] The Department of Health, Education, and Welfare obviously will not be bound by the views of the Department of Justice. And neither are bound, in the last analysis, by the wishes of the "victims" of alleged segregation.

The public reaction to the regulations known as desegregation guidelines issued under title VI of the 1964 Civil Rights Act[5] foreshadows the additional confusion that is bound to arise from having two independent agencies moving against school boards, who, even at present, are hard pressed to keep abreast of Washington's dictates in the area of public education. In view of the progress being made, and the great number of schools already under the close scrutiny of the Commissioner of Education, and the courts, title VI is unnecessary, and well may prove counterproductive.

TITLES VII AND VIII

Titles VII and VIII are essentially housekeeping provisions and we raise no objections to them.

TITLE IV

Title IV is the height of legislative hypocrisy. It begins with a solemn pronouncement of policy which says that the United States intends 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." It then proceeds immediately to limit its reach to real estate brokers, agents and salesmen, and their employees, lending institutions and people engaged in the business of building, developing, selling, renting, or leasing dwellings and their employees. To the extent these people are involved, the title would carry out the stated policy. Otherwise the stated policy is honored in its breach.

Indeed, it was necessary for the full committee to amend the language of the policy statement reported by the subcommittee in trying to accommodate the exceptions and exemptions in the title, such as those pertaining to religious organizations, fraternal bodies, and owner-occupied houses with no more than four family units. The policy statement notwithstanding, every possible gesture was made to appease the thousands of protesting homeowners who had written letters to Members of Congress.

However, as many homeowners would soon discover, should it become law, the exemptions written into title IV are gestures and gestures only. The exemptions simply do not exempt what they appear to exempt. Let us cite a few examples:

(1) The man who owns the home in which he lives can no longer use a real estate agent to help sell his home to whom he wishes because such a transaction would not be exempt.

[4] Hearings, p. 1195.
[5] Hearings, p. 1196.

(2) The man who owns but does not live in a duplex house which he rents to two families in January is not exempt if one of them vacates in November and he tries to rent the space again in December.

(3) The man who rents his lakeside cottage in June, and then sells the cottage in September, is not exempt if he rents or sells his home before May of the next year.

(4) The man who owns and operates but does not live in a rooming house near a college is not exempt after the first two students sign leases until a full year has passed.

(5) The man who owns a five-family unit apartment house is not exempt even if he lives in one of the five, but is as much covered as the man who develops, builds, and sells a subdivision of a thousand homes.

Obviously, any of the persons in any of these five examples would be guilty of a crime under title V section 501(a) if he used force or threatened to use force in refusing admittance, on account of race, religion, or national origin, to any person seeking to inspect his property. But it is important to note that even persons exempted under title IV could be similarly prosecuted under title V, which contains no exemptions.

Title IV of H.R. 14765 was conceived as a political ploy rather than a potential public law. As such, it is neither realistic nor desirable. The remarks of the chairman suggest during hearings that it was included in the bill for the purpose of strengthening the hand of the advocates of the administration's bill.[6]

The proposed law, in singling out the real estate broker and agents and financial institutions as the vehicle for eliminating discrimination in the sale, rental, or lease of residential housing, completely ignores the advice of many who have intensely studied the housing problem. These experts point out that ghettos and slums still plague some of our great cities, even though these cities long have had fair housing laws. In short, it is a law that represents an experiment by the Federal Government to cure social ills by attempting to legislate morality.

Turning to the activities of an agent or broker which are prohibited by the proposed title, one is instantly struck by the inequities and the vague standards contained therein. This proposed law would become operative against agents, realtors, or brokers and some homeowners whenever they—

(*a*) Make housing "unavailable" to any person because of race, color, religion, or national origin;

(*b*) Print or publish any written notice or make any oral statement with respect to the sale, rental or lease of a house which "indicates" any preference or discrimination based on race, color, religion, or national origin;

(*c*) Fail or refuse to use their "best efforts" to consummate any sale, rental, or lease, because of race, color, religion, or national origin;

(*d*) Fail to submit "promptly" to a principal any offer to buy, rent or lease for reasons related to race, color, religion, or national origin of the prospective purchaser;

[6] Hearings, p. 1338, "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."

(*e*) Represent to any person because of race, color, religion, or national origin that a house is not open for inspection, sale, rental, or lease if in fact it is;

(*f*) Deny any person access to or participation in any multiple listing service; or

(*g*) Engages in any act or practice which may "limit or restrict availability" of housing to any person because of race, color, religion, or national origin.

At the time the bill was reported, newspapers quoted numerous opinions that the committee had completely exempted the owner-occupied single unit residence, even though the owner had participated in two other transactions in the preceding 12 months. These opinions are erroneous.

Section 403 covers realtors and "any other person in the business," as this latter group is defined in the preceding section 402.

The section 402 definition includes any person who "within the preceding 12 months, participated * * * in three or more transactions involving the sale, rental, or lease of any dwelling or any interest therein."

Subsection (b) of section 403 then defines a specific exemption from coverage. It says that the section shall not apply to an owner with respect to the sale or rental of "a portion" of a multifamily unit dwelling containing no more than four units for families living independently of each other, if such owner occupies "one" of the units.

This exemption applies only to owner-occupied multifamily separate unit buildings. *The exemption does not reach to the single unit owner-occupied residence.* The rule that the greater includes the lesser is inapplicable here because the literal language of the exemption precludes such an interpretation. The exemption applies only to the sale, rental, or lease of "a portion" of a dwelling. Also the language of the exemption indicates that an owner must actually occupy "one" of the units; the conclusion is inescapable that the reference to "one" unit means that the exemption only applies to dwellings with more than "one" unit.

The exemption applies to an owner-occupied multiunit building (*a*) when the building contains four separate units, (*b*) when the building contains three separate units, and (*c*) when the building contains two separate units. It does not apply (*a*) when the building contains five or more units or (*b*) when the building contains one unit. Under this latter category, the final disappointment with the exemptions comes with Mrs. Murphy, the social security widow with a few rooms to rent in her home. The title's requirement for separate units leaves her single-unit dwelling squarely under the strict prohibition of the bill. Her free choice of tenants who will provide her companionship is forfeited by the bill. It is well to note that the above proscriptions of title IV all apply to the broker in "any sale"; the only exemption is enjoyed by "an owner" of an owner-occupied multiple-family-unit dwelling and then only as to transactions "by him" regarding a portion of that property. (Sec. 403(b).) The real estate broker, on the other hand, is expressly forbidden to make "any oral * * * statement * * * 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. * * *" (Sec. 403(a)(3).)

The bill is saying as a practical matter, that although a few homeowners are exempt from its requirements and may freely choose to whom they wish to sell, they may not retain an agent to sell their home if they wish to retain their choice of buyer. The conclusion is inescapable that this is an obvious attempt to do indirectly what cannot, for political and constitutional reasons, be done directly.

What has been forgotten in all these efforts to protect minority groups from discriminatory housing practices is any effective effort to protect the homeowner, broker, and financial lending institutions from being unjustly harassed by such minority groups by the innumerable procedures that the law would make available.

Under this proposed law, a homeowner, realtor, or lending institution may be subject to the most overwhelming array of Federal proscriptions. The number of remedies available to an alleged purchaser who claims discrimination are staggering. A homeowner, realtor, or lending institution—

(*a*) May be subjected by a private citizen to a lawsuit in a State court under State and local laws, or under Federal law;

(*b*) May be subjected by a private citizen to a lawsuit in a Federal district court instituted by a complaining individual, and the Attorney General may intervene and throw the weight of the entire U.S. Government behind the complaining party's case;

(*c*) May be subjected to a lawsuit initiated by the Attorney General;

(*d*) May be subjected to an action initiated by the Secretary of Housing and Urban Development through a complaint filed with the Federal Fair Housing Board;

(*e*) May be subjected to an action before the Federal Fair Housing Board, initiated by an aggrieved individual who has filed a complaint with the Federal Fair Housing Board; or

(*f*) May also be subjected to criminal prosecution by a U.S. attorney for actions heretofore never deemed criminal but made so under title V.

Not only are there an excess of remedies available to one citizen, but the very nature of the proceedings appear to be heavily weighted against another citizen. For example, in a typical civil suit filed in the Federal district court, the complainant could be provided an attorney by the court and court costs and security may be waived while the defendant would have to pay his own expenses to defend himself in the litigation. A temporary restraining order forbidding the sale of the house may be issued in an ex parte proceeding immediately upon the filing of a complaint without any opportunity to present a defense. Thus, a house could be taken off the market at the time the complaint was filed and kept off by injunction pending litigation. It could take months or even years to get to trial, and final resolution of the case could take even longer. In the meanwhile the investment in the homeowner's asset would be frozen. If the complainant prevailed in the action he is entitled to actual damages. The defendant, on the other hand, would receive nothing if he were to prevail in the case and in the meantime may have lost the opportunity to make a profitable sale of his property.

An unduly harsh provision of title VI, which was adopted rather hastily during the final moments of the committee's deliberations on the bill, establishes the Federal Fair Housing Board. This new agency

of the Federal Government would be responsible for investigating, prosecuting, and adjudicating violations of title IV. This Board would be comparable to, it is certainly dissimilar from the National Labor Relations Board, which is its alleged model. The powers given the Federal Fair Housing Board and the Secretary of Housing and Urban Development, are in some respects, far broader than any powers granted the National Labor Relations Board. For instance, the National Labor Relations Board can act only upon the application of a party (29 U.S.C. 161), while the Secretary of Housing and Urban Development under title IV may act on his own initiative and, unlike the General Counsel of the National Labor Relations Board, is himself granted the broadest investigatory powers.

It is contrary to our established patterns of Government organization to vest such regulatory and quasi-judicial powers in a department of the executive branch which is authorized to disburse billions of dollars of Federal money to the very people it would be regulating.

It is readily apparent that this plethora of remedies will affect the sale of supposedly exempted homes, since the consummation of many sales will be impossible. This is true because the filing of a complaint under section 406, 407, or 408 will place a cloud on property's title. Accordingly, the title insurance companies would refuse to issue title insurance, and the financial institution would be unable to complete mortgage arrangements.

Note well that actions brought under section 406 are subject to a 6 months' statute of limitation, but actions brought under section 407 by the Attorney General and under section 408 brought by the Secretary of Housing and Urban Development (or the Federal Fair Housing Board) are subject to no such limitation. If for any reason, the property's title had not passed prior to the filing of a complaint, it is certain that the sale would never be consummated until the litigation or proceeding had terminated. This fact is well documented by the testimony at the hearings.[7]

What is most disturbing about title IV is an illusory quality of the exemption of the owner-occupied dwellings and other religious and fraternal exclusions. We have pointed out that, in fact, these exemptions are very narrow, but undoubtedly there would be a few transactions that would not be covered by the law. However, we have no hesitation in predicting that today's exemptions and exclusions will be tomorrow's priority proposals for bold new legislative action. This is the consistent pattern in civil rights legislation. Although a home may still be a man's castle, we submit the drawbridge would be permanently down, if H.R. 14765 should become law.

For these many reasons title IV should be removed from the bill.

CONCLUSION

Of the eight titles in the bill, we oppose but three in their present form: Titles III, IV, and VI. Of these three, the one which concerns us most is title IV, which is the least desirable and in which inheres the greatest prospect for future abuse.

RICHARD H. POFF.
WILLIAM C. CRAMER.

[7] Hearings, pp. 1596–1600.

ADDITIONAL VIEWS OF HON. ARCH A. MOORE, JR.

I support all of the provisions of the Civil Rights Act of 1966 with the exception of title IV.

I supported the Civil Rights Act of 1957, 1960, 1964, and 1965. Indeed it was in 1963 when the House Judiciary Committee was considering civil rights legislation that I pointed out the urgent need for stronger legislation to safeguard the voting rights of every American—a need that became increasingly apparent and was finally met in the 1965 Voting Rights Act.

Civil rights history of the last few years has amply demonstrated the need for new legislation to reform our jury system, to strengthen our criminal laws relating to civil rights offenses, and to improve the civil judicial machinery concerned with suits to desegregate public schools and public facilities. I have authored and supported legislation to achieve these ends during my tenure in the U.S. Congress.

These objectives and the legislation proposed by the Judiciary Committee to achieve them I support wholeheartedly. But I cannot support title IV as proposed in the bill before us.

I deplore prejudice and bigotry in any form.

I am opposed to discrimination in housing.

I am in favor of equality of opportunity in housing for all people.

However, it is obvious that title IV was hastily drafted and inadequately considered.

It is hypocritical because it was apparently conceived as a political ploy.

It is inconsistent, creating discrimination and confusion with conflicting exemptions.

It is unrealistic, ignoring the experience and consequences of State fair housing laws.

Its promised benefits are illusionary and impossible of realization.

It would be disruptive and depressive in its economic consequences.

It is of doubtful constitutionality.

The unrealistic, confusing, and disruptive nature of title IV can be illustrated by citing only a few of the obvious inconsistencies and conflicts.

Section 402(d) permits the individual owner to practice discrimination because of race, color, religion, or national origin if he does not engage in more than two sale, rental, or leasing transactions involving "any dwelling" within a 12-month period.

I find nothing in title IV that permits a realtor to carry out the discriminatory instructions of the owner of a dwelling. On the contrary the proposed language specifically bars discriminatory acts by realtor without exception. Newspaper reports to the contrary, section 402(d) exempts discriminatory acts by an owner (up to a maximum of two within a year) only if he handles the transactions himself.

What does this mean to the real estate community? Does it not mean the loss of a large portion of their business? Does it not mean

that, at least in some sections of this country, individual homeowners will remove from the ambit of law, the greater part of privately owned housing? Certainly this would appear to be the consequence.

How is the 12-month period to be calculated? When does it begin to run?—from the first transaction? If an owner can prove that his third transaction within a year was "clean" and free of all discrimination, does a new 12-month period begin to run with the fourth transaction or from the third?

Does section 402(d), only have application to single family dwellings, non-owner-occupied multifamily dwellings not greater than four units, and multifamily dwellings greater than four units whether owner occupied or not?

That appears to be the net effect of section 403(b)—but if that is so why the discrimination against the single family owner-occupied dwelling?

Section 403(b) completely exempts from the strictures against discrimination all owners of four unit or less multiple-family dwellings provided the owner occupies one unit as his residence, but the owner of a single family residence living in his own home enjoys no such complete exemption.

The express language of section 403(b) clearly shows the exception only applies to owner-occupied multifamily unit buildings. It cannot apply to owner occupied single resident dwellings because it is made applicable to the sale, rental, or lease of "a portion of a dwelling."

Does that mean the owner of several multifamily dwellings, each no more than 4 units, can discriminate repeatedly in sales and rentals, even more than two times within a 12-month period, providing he establishes his own residence in each before sale?

What about the problem of the real estate agent? Section 403(a)(1) makes it unlawful for him to discriminatorily refuse to negotiate for the sale, rental, or lease of a dwelling even when the property has not been listed or put on the market.

When a member of a minority group asks a real estate agent or a broker to negotiate for the purchase of a home listed by another broker section 403(a)(4) subjects both brokers to a penalty if "best efforts" are not used in the negotiation.

Under section 403(a)(4) brokers would be subject to a penalty for delay in showing any dwelling to prospective buyers even though the reason might be lack of cooperation or the indisposition of the discriminatorily motivated homeowner.

Does not section 403(c) invite evasion when it permits religious or denominational institutions, charitable or educational institutions or organizations, or any "bona fide private or fraternal organization" to give preference to members or "to make such selection as is calculated to promote the religious principles or the aim, purposes, or fraternal principles for which it is established or maintained." Certainly the experience under the similar exclusion in the public accommodation section of the Civil Rights Act of 1964 is precedent for such potential abuse.

What an invitation to the creation and organization of new "religious" and fraternal organizations. Just as the number of private clubs has multiplied manifold since the 1964 act, I predict that the enactment of title IV would result in hundreds and thousands of private apartment clubs, and other organizational elements designed to practice and perpetuate discrimination.

Section 404 requires financial institutions, etc., to inquire into the prospective occupancy of dwellings for which it is providing funds. The owner may practice discrimination, up to a maximum of two transactions within a year, but the institution providing the funds for the purchase, construction, improvement, or repair is subject to penalties for the owner's actual or prospective discrimination.

Section 406 provides for the filing of a civil action in a Federal district court (with Government supplied counsel) by a complainant. Section 408 provides for the Department of Housing and Urban Development (HUD) to investigate complaints and refer them to the Fair Housing Board (FHB). Can a complainant seek relief in both forums? Apparently so.

Can the complainant obtain an order for the conveyance of the property from the Fair Housing Board and then sue in the courts for damages? Apparently so. The title makes no requirement that one remedy be sought before seeking another, or that the use of one remedy precludes use of the other.

Is the Fair Housing Board created by section 408 merely a mechanism for conciliation? That was the interpretation given by newspaper reports. In fact, title IV gives both HUD and the FHB powers comparable to, and in at least one respect greater than, the National Labor Relations Board (NLRB). Section 408(d) empowers the Secretary of HUD to investigate on the basis of information indicating when he has reasonable grounds to believe that a violation may have occurred.

Does the Congress choose to create another superagency larger than the NLRB to investigate the thousands of complaints that are bound to arise as millions of property owners zealously cling to the constitutional guarantees of the right to own property and the right to dispose of it to persons of their choice?

The foregoing are only a few of the conflicts apparent in title IV and the questions raised by its provisions. But the issue is not only the matter of the practicality, the feasibility, or the workability of this open-housing law; the other issue we must face is, is it constitutional?

It would be foolish, in the face of recent Supreme Court decisions, to be categorical about the unconstitutionality of any proposed legislation. Suffice it to say—the constitutionality of title IV presents a grave question.

Inherent in our consideration of property rights is the fundamental concept that every individual, under the protection of the Constitution, has the right to own property, both real and personal, and to use it as he sees fit, so long as he does not interfere with the lawful rights of his neighbors or endanger the health, safety, or welfare of the community. So strong was the feeling of the importance of property rights at the time of the adoption of the Constitution, that the Bill of Rights was designed to protect not only personal liberties and personal rights but property rights as well.

Antidiscrimination housing legislation unavoidably raises a conflict between reserved private rights such as freedom of association and nonassociation, and nondiscrimination. Legal measures taken to assure equality of housing opportunity necessarily constitute an interference with individual property rights. The issue appears to be the balancing of these respective rights.

It is not responsive, or necessarily accurate, to say that the law favors "human rights" over "property rights." Property rights as they have evolved in our law, after all, are rights of people to act certain ways they deem beneficial, and are as "human" as any other rights.

In any event, the individual's dominion over his home is not to be interfered with lightly.

Nearly 100 years ago Congress enacted the following statute relating to equal housing opportunity:

> 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, hold, and convey real and personal property (14 Stat. 27 (1866), 42 U.S.C. 1982).

That statute, still the law of the land, constitutes an expression of the will of the Congress, that all citizens, regardless of race, shall have an equal opportunity to own property. Additionally, the Supreme Court has employed equality in property rights as a basic right guaranteed by the 14th amendment. But are these rights guaranteed against the actions of private persons? From 1883, when it decided the *Civil Rights cases*, 109 U.S. 3 (1883), through March 28, 1966, when it decided *United States* v. *Price*, 383 U.S. 787, and *United States* v. *Guest*, 383, U.S. 745, the Supreme Court has consistently held that the 14th amendment protects the individual against State action, not against wrongs done by individuals. As stated in *Shelley* v. *Kramer*, 334 U.S. 1, 13 (1948):

> * * * the action inhibited by the 1st section of the 14th amendment is only such action as may fairly be said to be that of the States. That amendment erects no shield against merely private conduct, however discriminatory or wrongful.

Most recently in *United States* v. *Guest* (decided Mar. 28, 1966) the Court said:

> It is a commonplace that rights under the equal protection clause 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 anything to the rights which one citizen has under the Constitution against another". *United States* v. *Cruikshank*, 92 U.S. 542, 554–555.

Attorney General Katzenbach stated persuasively before the Judiciary Committee that Federal prohibition of discrimination in the sale or rental of housing is an appropriate exercise of the power of Congress to enforce the 14th amendment. He contended that discrimination is a social and moral wrong with the resultant blight upon our democracy impeding the 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.

It appears that Associate Justice Harlan, in his concurring opinion in *Peterson* v. *Greenville*, 373 U.S. 244 (1963) has already most eloquently answered the Attorney General's argument:

> Underlying the cases involving an alleged denial of equal protection by ostensibly private action is a clash of compet-

ing constitutional claims of a high order; liberty and equality. Freedom of the individual to choose his associates or his neighbors, to use and dispose of his property as he sees fit, to be arbitrary, capricious, even unjust in his personal relations are things 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 (fourteenth) 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 more properly be left to the more precise instruments of local authority.

If the responsibility for providing equal housing opportunity lies with State and local authorities (and entirely apart from the question of constitutionality) it concerns me deeply that the Judiciary Committee has ignored the testimony and advice of the experts who have studied the effects of State housing legislation. These experts testified that ghettos and slums still plague some of our great cities, even though they have long had fair housing laws.

It is obvious that this legislation is not the way to achieve equal opportunity in housing.

I have pointed out the conflicts, the ambiguities, the contradictions, weaknesses, and shortcomings of title IV. I have suggested some of the undesirable consequences, and the impossibility of reasonable and successful application.

If it were humanly possible to draft a practical, workable statute that would achieve the desired end, I suggest the assembled legal training and experience of the Judiciary Committee would have accomplished it.

The problem weighed heavily upon the minds and hearts of members of the committee. But with the best and the highest motives and intentions—they have recommended a solution that would not achieve the desired result.

People in general do not buy, rent, or sell residential property, especially their own homes, with a great appreciation of governmental attempts to tell them who their neighbor must be or to whom they must sell or not sell their property. The average American tends to look upon his right to sell realty as being absolute. That attitude is steeped in the traditions of this Nation.

I strongly believe that the ultimate achievement of equality in housing would be hindered and not helped by the enactment of title IV.

The ultimate achievement of equality in all aspects of our national life depends upon individual morality and good will. This I am dedicated to in both my personal and public life.

ARCH A. MOORE, JR.

ADDITIONAL VIEWS OF HON. WILLIAM T. CAHILL

The need for four of the titles of the 1966 civil rights bill has been more than amply demonstrated. Requirements for jury reform, for modernizing the U.S. Criminal Code, with regard to civil rights crimes—a compelling need—and for improvements in the remedies for school desegregation suits were obvious long before the administration unveiled its theretofore closely guarded proposal. Potentially the least controversial of civil rights bills to date, there was, however, included in the bill the highly controversial proposal for a Federal fair housing law.

There can be, in my judgment, absolutely no argument as to the ultimate merits of achieving equality in housing. But the administration's proposal posed serious questions which demanded definitive answers. Is not the ghetto problem—and more broadly, the Negro's housing plight—basically an economic problem, so that the sweeping discrimination ban is not only premature but ineffectual at this time? Why were many civil rights groups opposed to the housing title? Has the executive branch been candid and sincere in using the means at its disposal to implement the nondiscrimination policy of the Government which is already existant in the area of housing? If a fair housing law is necessary, why was the experience of the States—and even Government agencies—ignored, many of whom had enacted and secured public confidence as well as effective results with realistically enforcible laws and regulations tempered by considered, practical exceptions?

Title IV having put the entire civil rights proposal in a very unhappy and unsatisfactory posture, the administration and the proponents of the bill did little to answer these questions or even consider or discuss alternatives or compromises. Apparently after less than token discussion, the subcommittee simply turned title IV and its myriad problems over to the full committee.

The product of the full committee's work is more than amply demonstrative of the inadequate consideration it received there. The language of the "compromise" that was voted out of committee, it has developed, simply does not live up to claims for its operation made before it was voted on and to the press thereafter. Despite positive representations by its supporters, there is a serious question as to whether the owner of an individual home is really exempted at all. There is no doubt that, even if he is, his exemption exists only if he handles the whole transaction himself. And what if he engages in more than two transactions per year involving residences he occupies—is he still exempt, or is he considered in the real estate business?

The foregoing hardly begins to exhaust the details which now must be analyzed and clarified in the debate on the bill. What this amounts to, in all honesty, is writing this title of the bill on the floor of the House of Representatives. If this were wise and feasible, there would have been no need for committee action in the first place.

The American people are entitled to be more than simply disappointed in the leadership demonstrated in the handling of the housing measure. The Nation has already learned there is no magic in legislating on such basic areas as civil rights. The administration should have learned that sudden rabbit-out-of-the-hat solutions to legislative problems offer nothing but false hope and frustration.

It is my hope that the Congress will recognize its responsibility to enact what I consider the essential titles of the bill, and do so before the end of this session of the Congress. I call upon the proponents of title IV to identify their objectives—and indeed the provisions—of the housing title so that Congress can evaluate its probable impact on the passage of the rest of the bill, and work its will—and the will of the people—upon it.

If we are to have a fair housing title in this legislation it should not be a mere symbol of a political promise. It should be an effective and enforcible law that will bring adequate and decent housing to those who urgently need it. The title in its present form appears neither effective nor enforcible and may do violence to those effective State laws already on the statute books. A bad and ineffective title IV is, in my judgment, worse than no title IV at all.

WILLIAM T. CAHILL.

ADDITIONAL VIEWS OF HON. JOHN CONYERS, JR., HON. DON EDWARDS, HON. JACOB H. GILBERT, AND HON. ROBERT W. KASTENMEIER

H.R. 14765 represents but one further legislative step forward in the continuing struggle to achieve our historic claim of equal justice for all. We wish it were a larger step, since the distance we as a nation have yet to travel is long. Particularly necessary progress would be made if it contained provisions for—

Indemnifying Negroes and civil rights workers for violence against their persons and property;

Assuring equal opportunities for all persons to serve not only as jurors but in all positions of responsibility in the judicial process;

The removal of criminal prosecutions from the State to the Federal courts where that is necessary to assure impartial justice.

Specific draft language to accomplish these aims were presented to the committee and supported by many witnesses but were unfortunately voted down. However, this bill does help the cause of equal justice and we support it.

That is not to say that it is entirely workable in its present form or that with its enactment Congress will necessarily have discharged its responsibility in the two areas of equal protection of the laws and equal access to housing. This is the fifth major civil rights bill since 1957. We believe that this continued concern in Congress and across the country with not just the civil rights of all Americans, but the right to aspire to a life outside the ghetto, a life in which the tools for individual advancement are equally available to all, calls for Congress to be sure the law advances human rights beyond the restatement of our guiding principles and are effective in operation. To the latter end, we believe that Congress and specifically this committee should devote attention to overseeing the fulfillment of rights protected by previously passed legislation.

This legislation can be specifically improved in many ways and a few deserve special mention.

Title II, the State jury selection section, would be significantly strengthened by the addition of more effective procedures to assure jury selection on a nondiscriminatory basis. Title II would be more effective if it provided that where there is statistical evidence of exclusion of Negroes from jury service, discriminatory State qualifications would be suspended and Federal officials would be appointed to guarantee the selection of State juries on a random basis. Past legislative experience indicates that the case-by-case method of enforcing civil rights legislation is ineffectual.

Title IV, the housing section, is disappointing since its coverage is limited to parties who derive profit from real estate transactions. It is objectionable on the grounds that it does not achieve the equal

access to housing by all since it effectively exempts most individual dwellings.

This title unfortunately permits an individual homeowner who qualifies as exempt under the terms of section 402(d) to discriminate in the sale of his home. However, he is not permitted by the language of title IV to hire the services of an agent, normally licensed by the State, to be the instrument of that discrimination. Title IV does specifically cover the agent, or anyone standing in his place, regardless of the exempt status of the principal.

The effectiveness of title V (interference with rights) is jeopardized seriously by language which limits the coverage to individuals who are "lawfully" engaged in an enumerated list of activities which of themselves are lawful pursuits. The language unnecessarily excludes from coverage anyone who, in the process of engaging or seeking to engage in any of these activities, violates any letter of the law, however insignificant. It apparently, would exclude from coverage anyone guilty of trespassing, jaywalking, parading without a permit, or other misdemeanors under local laws. Accordingly, we believe the word "lawfully" should be deleted. Neither the rights of private individuals or property owners nor local law enforcement activities will be diminished thereby and the full protection intended by this section will be preserved.

This bill, as reported by committee, will be helpful, but we feel that the above-mentioned changes are particularly necessary if the Civil Rights Act of 1966 is to adequately achieve its two specific goals of equal protection of the laws and equal access to housing.

But even with those changes this bill would not end the need for further civil rights legislation. There are many areas where legal guarantees of equal rights for all are still quite ineffective. Although the committee decided not to go into those other areas, it must soon do so. Congress must also be concerned with insuring the full and adequate implementation by the executive and judicial branches of all the current laws guaranteeing equal rights. Exactly 100 years after the Civil Rights Act of 1866, the first civil rights bill ever passed, Congress must be particularly concerned that the guarantees of the Constitution are no longer less than completely fulfilled either because of its own neglect in passing appropriate enforcing legislation or the failure of either the executive or the judiciary to provide full enforcement. We look forward to the Congress, the executive branch, and the judiciary each fulfilling their separate responsibilities to assure the protection of the constitutional rights of all Americans.

JOHN CONYERS, Jr.
DON EDWARDS.
JACOB H. GILBERT.
ROBERT W. KASTENMEIER.

ADDITIONAL VIEWS OF HON. JOHN CONYERS, JR.

Congressmen Edwards, Gilbert, Kastenmeier, and I have stated our joint views on the Civil Rights Act of 1966. The purpose of this separate statement is to discuss the intent and expected effects of section 408 of this bill, which I offered as an amendment and the committee accepted. The establishment of a Fair Housing Board such as provided in section 408 was discussed and supported by a great many of the witnesses who testified before Subcommittee No. 5.

State and local fair housing laws which rely exclusively on individual court suits for enforcement have often been quite inadequate. Case-by-case judicial procedures are usually slow, difficult, and ineffective in providing relief from widespread discrimination. Individual court suits would place a great burden of expense, time, and effort on not only the plaintiff in a case of housing discrimination, but on all other parties involved and on the judicial system itself. Without expeditious determinations of, and remedies for discriminatory housing practices the intent of title IV would be nullified because the case could be so long delayed that appropriate relief would not be possible. The seller, broker, and mortgage financier could be subject to unreasonable delays and difficulties in real estate transactions.

Section 408 deals with these problems by establishing a Federal Fair Housing Board modeled on the procedures of the National Labor Relations Board in settling labor-management disputes. The only major difference is that the function of investigating and presenting violations would be assigned to the Secretary of Housing and Urban Development. The assigning of both the lawyer's and judge's function to officials of the same agency has often been a cause of criticism of the NLRB. Because of his intimate involvement in all aspects of the housing and financing fields, the Secretary of Housing and Urban Development would be well-equipped to impartially investigate possible violations of title IV and to help settle disputes. Many of the complaints would be resolved in the course of the Secretary's investigation. He would inform all parties of the specific requirements of the law and make available his good offices in resolving the dispute. Under section 409 the Secretary would be working in close cooperation with the various private groups and local, State, and Federal agencies involved in programs to prevent and eliminate discriminatory housing practices.

The history of State fair housing laws providing enforcement by similar administrative agencies shows that most cases have been settled through conciliation. In those few cases where the investigation process would not resolve the dispute the Secretary could recommend that the Fair Housing Board take the necessary corrective action. The Board would be composed of five members appointed by the President with the advice and consent of the Senate. Sections 408 (e), (f), (g), and (h) establish the same proven judicial procedures of the National Labor Relations Board guaranteeing the full rights

of all parties involved and also provide for speedy and effective appeal of all Board decisions and orders to the Federal circuit courts of appeal.

The alternative of judicial relief would still be available to protect against any possible delay on the part of the Secretary or his arbitrary refusal to consider a complaint from any party involved in a housing discrimination dispute. However, the experience with similar State and local administrative agencies has shown that rarely has there been a need for any party to resort to the slow and burdensome procedures of the courts.

The history of the enforcement of the 1957, 1960, and 1964 Civil Rights Acts regarding voting discrimination has shown that court suits to enforce individual rights are usua ly slow and ineffective. The concern and awareness of the problem by this committee and the entire Congress resulted in passage of the Voting Rights Act of 1965 which provided administrative enforcement. Speedy resolution of alleged discrimination is particularly important in the housing field.

The administrative procedures established by section 408 will not only provide a more effective guarantee of equal access to housing regardless of race, color, religion, or national origin but it will impartially protect the rights of all other parties concerned.

JOHN CONYERS, Jr.

ADDITIONAL VIEWS OF HON. ROBERT McCLORY, HON. WILLIAM L. HUNGATE, HON. HENRY P. SMITH III

We support the general objectives of H.R. 14765 and its goal of eliminating discrimination in Federal and State jury selection and service, to facilitate the desegregation of public schools, to prohibit discriminatory housing practices, and to afford sanctions against those who would deny others their right to exercise certain federally granted rights.

However, we feel that title IV should contain additional provisions for encouraging greater State and local initiative in the field of fair housing.

Title IV of the bill declares it to be the policy of the United States to prevent discriminatory housing practices. To achieve that goal the new law would provide prohibitions neither as comprehensive nor as extensive as many existing State and local housing laws, yet it would establish unprecedented Federal authority over private housing which we fear would supersede local and State authority and would relieve local and State governments of their responsibility in this area.

The Attorney General observed in his testimony before the Committee on the Judiciary that—

> 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.

H.R. 14765, in effect, sweeps aside these local and State laws and invokes a panoply of Federal procedures to remedy discriminatory housing practices.

Sections 406(d) and 410 of the bill at first blush appear to make the Federal laws inapplicable when there are existing State and local fair housing laws. We submit that this provision is completely illusory for the following reasons:

(1) When an individual files a complaint with the Federal district court alleging discriminatory housing practices pursuant to section 406, the Federal court, before even considering the State or local laws, must immediately issue a temporary restraining order or other appropriate order. (See 406(c).) Accordingly, the Federal court assumes full jurisdiction of the issue without any consideration of State and local law.

(2) After such an action has been filed in the Federal district court there is no assurance that the State laws will ever be applicable because the law reads that it is within the exclusive discretion of the district court judge to determine whether the Federal action should be stayed pending referral by the court or

the complainant to a State or local authority concerned with unfair housing practices.

(3) Whenever an action is initiated by the Attorney General under section 407(a), Federal law automatically applies as there is no authority for the Federal district court to stay proceedings pending State or local action in such an instance.

(4) Whenever the Attorney General intervenes in an action under authority of section 407(b), it seems obvious that the Federal court would not refer the action to State authorities and, in effect, dismiss the Attorney General from the suit.

(5) When the proceedings are brought before the newly created Fair Housing Board, there is absolutely no provision for making use of existing State laws. In fact, State laws will be totally inapplicable in any proceeding before this Federal board, which is charged with applying the standards established by the Federal law.

In short, we fear that State and local laws to prevent discrimination in housing will be virtually nullified if H.R. 14765 should become law in its present form and title IV will have the effect of superseding State and local fair housing legislation. We feel that this would be a most unfortunate and unhealthy development. Clearly, these are matters that differ significantly from community to community throughout the country. It is impossible to draft Federal legislation which will best solve the problems of each community, city, county, or State. In addition, we feel that the main impact of title IV is—and should be—to end discrimination in housing at the local level, in the communities and rural areas throughout the country, North and South, East and West.

Furthermore, we are of the opinion that most of the States and many municipalities are willing and able to deal effectively with the matters of fair housing opportunities for all citizens within their borders. Let us afford State and local officials at least that presumption of innocence we accord in criminal cases. Let us start with the not unjustifiable hope that the overwhelming majority of our local officials share our desire for fulfillment of the American dream—of freedom, justice, respect for the individual, and the right to be free of all discriminatory practices, including housing.

Certain changes are in order—indeed, highly desirable—if we are to produce a workable legislative approach to serious problems, the existence of which are acknowledged by all. Accordingly, the Federal law should apply only in those areas where effective legislation does not exist or is not being effectively enforced. A three-judge Federal court would seem to be able to make such determinations expeditiously—and fairly.

The existence of acute problems of segregated housing in New York, Chicago, and other metropolitan and suburban areas is reported almost daily by the news media. These reports indicate persuasively that solutions of fair housing must be developed and carried out locally. The main impact of Federal legislation in this area should be to encourage and promote appropriate fair housing programs at the community level. Legislative, administrative, and various voluntary actions by State and local officials, as well as by real estate boards and others, have had almost salutary influence in reducing discrimination

in housing. This measure (H.R. 14765) should be the main vehicle for hastening the attainment of these highly desirable objectives.

In order that these reasonable views may be reflected in this legislation, we propose to offer an appropriate amendment which we believe will make this a more workable law.

ROBERT MCCLORY.
WILLIAM L. HUNGATE.
HENRY P. SMITH III.

MINORITY VIEWS

MINORITY VIEWS OF HON. EDWIN E. WILLIS ON H.R. 14765

I join in the views expressed in the minority views of the Honorable Basil Whitener as they appear in part 1 of this report.

EDWIN E. WILLIS.

MINORITY VIEWS OF HON. WILLIAM M. TUCK

The so-called civil rights bill now pending in Congress, H.R. 14765, is a serious blow to our American liberty. It is a vicious piece of legislation, and particularly dangerous because its real meaning is couched in vague language. It is a snare and a delusion, designed to create a false sense of security.

I consider it my duty to denounce this atrocious proposal. It strikes at the very foundation of freedom and liberty. It does violence to individual rights, the bedrock on which this Nation was built and which our forefathers struggled through many hardships and perils to establish and preserve.

I have always understood that the Constitution and the laws of this Nation have as their purpose the protection of the right of its citizens to equal justice. I champion this assumption as typical of America and of her form of government. This bill is clearly unconstitutional and out of harmony with our American way of life. It would create new rights for special classes of people, but at the same time take away other precious rights from all of us. This bill is a cruel hoax to the property owner, to the man who takes pride in saving his dollars and having his name listed in the records as a shareholder in this great country.

I will not attempt a detailed analysis of each section of the bill, and I include only the following comments:

TITLE I

While admitting the absolute authority of the Congress over the Federal jury system, I submit that the widespread revamping of the system as proposed in title I warrants a more careful and detailed study. I cannot bring myself to the support of title I on the basis of the superficial consideration its provisions have received in the Judiciary Committee. There is precedent for more orderly procedure when such drastic changes are proposed, and I feel that we should have ascertained the views of the Judicial Conference and the American Bar Association in this instance.

TITLE II

I vehemently oppose the unwarranted and vicious assault on our State courts and juries as proposed in title II. Its provisions assail the integrity of our State courts and jury systems in a shameless and brazen manner. In addition, the end result would be a hopeless and indescribable state of confusion and delay. Title II constitutes another of a long list of flagrant encroachments upon the rights of the States. I consider this title in violation of the Constitution.

TITLE III

This title is wholly objectionable. Its provisions are poorly defined and, as far as I know, there has been no attempt to explain the

true meaning and intent of the title. A proposal so nebulous should be soundly rejected. I strongly suspect that this is a veiled attempt to revive part III of the Civil Rights Act of 1957, in opposition to which I said, in part:

> It would provide weapons by which the entire State and Federal relationship would be effectively destroyed. Age-old guarantees of personal rights would be stripped away. Government by law in which State powers are preserved and individual rights are protected would be replaced with government by injunction—government by the uncheckable whims of Federal judges. Countless alleged denials of equal protection of the laws, however fantastic, would be translated into binding injunctions obtained without regard to State remedies and State courts.
>
> The effect of this section of the pending bill would be to place the powers of a tyrant in the hands of every Federal judge, some of whom have clearly acted in a bombastic and arrogant and injudicial manner. Under the catchall term of "equal protection of the laws" almost anyone may contend that he is being deprived of something. Upon the flimsiest allegations of an "about to" conspiracy—without even the consent of prospective plaintiffs and even against their will—the Attorney General may demand an ex parte injunction, without notice and without hearing.

TITLE IV (PERTAINING TO HOUSING)

When this startling proposal was first announced, the following 12 questions immediately came to my mind as being pertinent and requiring answers:

(1) Are not proceedings under title IV heavily weighted against real property owners, while the most frivolous or vengeful complaint gets the full backing of the Federal Government?

(2) Is it not a fact that a would-be buyer can allege discrimination any time within 6 months after his offer to buy is claimed to have been turned down?

(3) After he gets to court, aren't his attorney fees and court costs paid for him?

(4) Can he not secure a preliminary injunction simply on the basis of his petition and without even any ex parte proceedings?

(5) Would not the fact that the property is in litigation dissuade the title insurance companies from certifying a new title to any other buyer?

(6) Would a lawyer ever be safe in certifying a title is clear without first having advertised in the newspaper and gone through the community to make inquiry and determine whether or not a charge of discrimination is likely to occur?

(7) Would not the house have to remain on the market until a court decision has been reached which may consume 2 or 3 years depending on the crowded dockets of the Federal courts?

(8) Does not this bill give the U.S. Attorney General power to intervene in behalf of the complainant?

(9) Does not this bill provide that a petitioner may be awarded almost automatically actual money damages, and beyond that get an unlimited sum for humiliation, mental pain, and anguish?

(10) Would not this bill make it virtually impossible for a real property owner to withdraw a house from the market once it has been offered without facing the danger of a malicious complaint and suit?

(11) Would not the force of title IV almost ruin some property owners even if they are ultimately exonerated in court?

(12) Is it not true that all the real property owner gets under this bill is the right to defend himself if he can afford to do so, and at the same time he is deprived of the right to convert his equity in his home even though he may have moved to a distant home or city and needs the cash to buy new property?

In addition, it could also be appropriately asked if the costs under title IV of a frivolous suit would not be thrown upon all the taxpayers, including the defendant himself?

The committee proposal as embodied in the report, said to be based on the 14th amendment, is an outright violation of the due process clause of the amendment as envisioned in the Bill of Rights. Section 406 under the heading "Enforcement by Private Persons" would result in the almost complete destruction of property rights. Finally, the title provides for the establishment of yet another unnecessary Board at great expense to the taxpayers. This development, if approved, would add insult to injury in that the property owners would not only be victims of the unwarranted prosecutions instigated by the Attorney General, but also be subject to harassment by a government agency having powers comparable to the National Labor Relations Board.

TITLE V

Under the provisions of this title every conceivable act of the individual citizen will be subject to control and interference by the Federal Government. Constitutional rights long believed to have been vouchsafed to the individual would be swept aside and all rights reserved to the States be flagrantly violated. At the same time special treatment would be accorded certain groups, thus making a mockery of equal protection and due process guaranties.

TITLE VI

This title would go to the extreme limit in granting to the Attorney General power and authority over schools and public facilities. Previous so-called civil rights acts have gone far beyond right and reason in enforcing desegregation, but this title would give the Attorney General absolute authority and enable him to institute civil suits to upset existing decisions of the Federal courts with which he disagrees. Furthermore, the agency of the Federal Government having to do with education would be given additional authority and license to exercise control over State schools. We have already experienced and witnessed far too much use of power by this agency to coerce the local school boards.

In conclusion, I appeal in all earnestness to the membership of the House to consider carefully the force and impact of the provisions of this fantastic, irrational, ill-conceived, and dangerous bill. It should be soundly defeated.

WM. M. TUCK.

MINORITY VIEWS OF HON. ROBERT T. ASHMORE, HON. WILLIAM M. TUCK, AND HON. JOHN DOWDY

First, we join in the views expressed in the able minority views of my esteemed colleague, the Honorable Basil Whitener. (Pt. I.)

Since the beginning of time, "law" in one form or another has been a necessary vehicle to accommodate the orderly development of man within the confines of what may be called loosely, "society." The people of the United States have chosen as their most basic "law" one which stands above all others as the ultimate legal document by which they have agreed to be governed. This is the Constitution of the United States. All other laws are supplemental to it.

Fortunately or unfortunately, our Constitution is broad enough in scope to permit many different interpretations through judicial decisions and supplementary laws. As man is fallible and is the maker of these laws, so are the laws fallible and each should be considered upon its merits.

Currently we are considering a proposal commonly known as the Civil Rights Act, a term now hackneyed and impaired by all too constant use. To call this measure "law" would be inadvisable, since it has not yet reached that stage of development within the legislative process. In honesty and sincerity, the minority of the House Committee on the Judiciary believe it should not be allowed to reach that stage because it is an unworthy proposal. The imperfections it contains deserve full consideration, and these flaws are the subject of this report.

TITLE I—FEDERAL JURIES

We concur with other members of the minority that the accelerated manner in which title I was considered and accepted was ill-advised and improvident. It has already been stated that the normal method of submission of changes in selection of Federal juries is to seek the recommendation of the Judicial Conference of the United States, the American Bar Association, and other expert witnesses. There is nowhere in the record evidence that such recommendations were considered or even sought. For example, such a sweeping change as complete elimination of selectivity in choosing jury members for certain types of civil cases is worthy of long and expert consideration. Economic status of a juror could well make the difference between a fair and unfair trial in some civil and criminal cases, yet this criterion is completely eliminated by the proposed selection process. Prejudice against a defendant because of race, religion, or national origin certainly could be a key factor in some trials when members of a jury cannot be disqualified on the grounds that this prejudice would interfere with a fair trial; yet the proposed act prohibits such disqualification.

This title prescribes the exclusive use of voter registration lists with the exception of additions to insure compliance with nondiscrimination sections. We do not deny that use of voter registration lists is a valid method of choosing qualified jurors provided other necessary requirements are met, but certainly there is a need for additional methods of choosing jurors for particular types of both civil and criminal cases. Choosing from a cross section of the community may be advisab e in some cases and inadvisable in others. Unfortunately, the fear of possible sanctions whether warranted or not, could result in a gross miscarriage of justice through rigid adherence to such a restrictive selective system. In its entirety, title I appears to present an unwieldy and impractical system, and it should be remembered that this title, if enacted into law, would be applicable to the entire Nation and not just a selected few States.

TITLE II—STATE JURIES

The proposal to grant the Attorney General power, under title II, to interrupt a State judicial proceeding will result in hopelessly complicating State law enforcement and in criminal cases will certainly deny the right of the accused to a speedy trial. Crowded dockets and overworked members of the State judicial systems need no further harassment. Especially objectionable is the additional burden of maintaining records in a specified manner to meet Federal requirements. Conduct of State judicial proceedings are a matter of right reserved to the States by article X of the amendments to the Constitution, and sufficient judicial remedies are provided by right of appeal for an aggrieved party with adequate grounds for such appeal. Title II in its entirety is insulting to State public officials, and its proponents have ignored the disrupting effect it will have upon State courts. Apparently too, the fact has been ignored that despite the conglomeration of impeding civil rights legislation, justice has prevailed in areas accused of discrimination and the judicial machinery has not faltered. It is well to remember the concept that it is better that a thousand guilty men go free than to convict one innocent man.

In the final analysis according to title II, if the State fails to satisfy the Attorney General's personally chosen standards to disprove discrimination, it must then assume the burden of disproving such allegations. In essence, upon presentation of any information to the Attorney General that a State's jury selection is discriminatory, the State is presumed guilty of violation of title II until it has shouldered the unwarranted burden and proved itself innocent. Certainly this is a deprivation of the State's prerogatives under amendment X of the Constitution.

The most incongruous element of the title is that it contains no definite description of the "reasonable grounds" upon which the Attorney General is allowed to base his action against a State so accused. The only conclusion which can be drawn from this is that he may choose any grounds he so desires since he is not required to show cause to anyone.

TITLE III—OTHER RIGHTS

Aside from being practically unintelligible, title III is a most ludicrous attempt at draftsmanship. It would allow anyone to claim denial of some right, or that he was about to be denied some right, and thereupon he could institute immediate action for relief. The problems created by such a broad grant of rights could not be adequately discussed even in a large volume. The attempt to discuss them will not be made here. One final bit of folly is that the expense of suits instituted under this title would be borne by the United States. The cost of such a program is questionable, and certainly in view of the cost of the conflict in Vietnam, this question should be answered. In fact there has been no information given as to the cost of this entire proposal, although attempts were made to obtain this information from the committee.

TITLE IV—HOUSING

The argument forwarded in testimony by the Attorney General that the Supreme Court in 1948 held racially restrictive covenants unenforcible in State or Federal courts is not persuasive. Although State or Federal courts may not enforce covenants of this nature, this has little to do with the fact that an individual owner of property has the right preserved by articles IX or X of the amendments to the Constitution to choose to whom he will sell or lease his property. This would also apply to his agent, either builder or broker, who is selling the property to someone on the owner's instructions.

This title could become the cause of the greatest economic burden to property owners, real estate sales people, mortgage brokers, and lenders. It could cause havoc in the real estate market because of the manner in which complaints could be filed. An owner could become hopelessly embroiled in a discrimination suit and have property tied up for months or years only to find out at the end that a complaint was ill founded and unprovable. Thousands of disgruntled prospective purchasers could easily tie up sales merely because they "thought" they were discriminated against and later these purchasers would have little or no penalty to pay for such action. Meanwhile sales would be lost, and the owner is left holding the bag. They may even have to sell at tremendous loss once the legal tentacles have been unsnarled.

As if it were not enough to create additional rights in racial minorities at the expense of majorities and power in the Attorney General to bring a civil action on his own volition, without even the issuance of a complaint, the title creates a new group of bureaucrats—a Fair Housing Board—ostensibly to police the whole show. This Board will of course require a salary of $25,000 per member per year. It seems impossible to utilize the already existing personnel within the newly created Department of Housing and Urban Development. All of this will be paid for by the usually overburdened taxpayer.

TITLE V—INTERFERENCE WITH RIGHTS

This title creates rights in a special class of people and makes it a Federal crime to interfere with their exercise of these rights punishable by fine of up to $1,000, or if bodily injury occurs, a fine up to $10,000 or imprisonment for up to 10 years. If death results, the person responsible shall be subject to imprisonment for any term of years or for life. Persons who do not complain of interference with such rights on the grounds of race, color, religion, or national origin are subject to have interference with the same rights treated as crimes of a different caliber—depending upon the jurisdiction. How can this be fair? If interference with a person's jury duty or entry into a college or enjoyment of a benefit paid for by Federal funds is a Federal crime for one class, it should be a Federal crime for all classes. In actuality, the punishment of the offender should be related to the gravity of the crime, and this must be decided upon the merits of the case. Such singling out of one class of offenders for special punishment for the same offense but perpetrated for different reasons is violative of the guarantee of equal protection of the laws under the 14th amendment and due process of law under the 5th amendment of the Constitution. The sanctions imposed upon this special class of persons is so unfair as to negate the entire title V of the bill from consideration.

TITLE VI—EDUCATION

This title allows the Attorney General to file civil suit in the absence of complaint merely when in his view it appears there is discrimination in a public educational institution or other public facility. He already has the power to file suit under the Civil Rights Act of 1964, but according to testimony he is dissatisfied with the inability to sue whenever he desires. Title VI of the act has allowed vigorous economic sanctions by the Secretary of HEW against schools not complying. This has been most effective, but the Attorney General desires more power. Section 303(b) of title VI clearly prohibits an attempt to balance racial enrollments of schools. The result of giving the Attorney General unlimited power to bring action without complaint in school desegregation situations could only result in an attempt to unbalance, and thereby completely disrupt, a situation progressing at a rate already beyond initial expectations.

In concluding this report, we would appreciate consideration of one extremely important factor. The entire purpose of the proposal before us is based upon the assumption that another law is necessary to insure that absolute equality be established in relation to race, color, religion, sex, economic status, and national origin. All or some of these same objections were tantamount in passage of the civil rights laws of 1957, 1960, 1964, and 1965, the 13th 14th, and 15th, and 19th amendments to the Constitution, and still the problems have not been settled. We respectfully submit that short of control by complete dictatorship, no citizen will submit to the substitution of a Federal will for his individual freedom of choice—freedom to choose his associates, his neighbors, his tenants, or freedom to select those with whom he wishes to contract. The key or solution, is not in the creation of a novel system of selection of juries, the addition of powers to those already existing within the Department of Justice, the depriva-

tion of the prerogative to sell or lease property to whom one chooses, the key is in control of the human mind—control of desire and emotion. A democratic society forbids the use of such control. The only prominent political order currently professing the desirability of complete control of the human mind is the Communist Party. Surely we will not go to such extremes, and barring this, no law will change or hasten the acceptance of an idea foreign to the will of any man.

If this proposal should become law, its effect will be to impose an idea which at present is inconceivable to millions of our citizens. It would be far better to allow time and considered judgment to solve these problems than to create a whole new series of hostilities through enforcement of such a law.

ROBERT T. ASHMORE.
WM. M. TUCK.
JOHN DOWDY.

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