CIVIL RIGHTS

2014—

HEARINGS

BEFORE

SUBCOMMITTEE NO. 5

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH CONGRESS

FIRST SESSION

ON

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

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

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House of Representatives, 88th Congress

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CIVIL RIGHTS

WEDNESDAY, MAY 8, 1963

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

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

Present: Representatives Celler, Rodino, Rogers, Donohue, Brooks, Toll, Kastenmeier, McCulloch, Miller, Cramer, and Meader.

Also present: Representatives Libonati, Lindsay, and Mathias.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The committee will come to order.

The Chair would like to read a statement, and statements will be read by other members prior to hearing the witnesses.

Today, Subcommittee No. 5 initiates several days of hearings on a number of proposals dealing with the overall problem of civil rights.

Until the enactment of the Civil Rights Act of 1957 and the Civil Rights Act of 1960—each of which I am proud to say carried my name as a sponsor—no progress had been made in this field since the days of Reconstruction. Since the enactment of those laws and the subsequent executive activity we have made some progress, but hardly sufficient to call our work completed.

The Congress cannot rest on its laurels at this time. I believe that more than ever the legislative branch of our Government must go into action immediately. For those who would be complacent with the past record, I need only to refer to what is occurring as reported on television, radio, and in the press. In Birmingham, Ala., in Greenwood, Miss., police clubs and bludgeons, firehoses and dogs have been used on defenseless schoolchildren who were marching and singing hymns in protest of denial of civil rights. The actions of the State police and officials were barbaric, despite provocation of the taunts of the children. Our image, here and abroad, as "the land of the free and the home of the brave" has been indeed marred. Such actions are blots on the escutcheons of Alabama and Mississippi.

If we believe that this is a Government of law and not of men, then a lack in the law leaves a vacuum which can be filled by anarchy. The deprivation of civil rights to a class of our citizens has, we must admit, led to smoldering resentment by the dispossessed and this smoldering resentment has to explode. If we could put ourselves in place of the Negro and experience, day by day, the humiliations which the Negro faces, there would be no difficulty in enacting strong civil rights legislation. If we were denied, each day, the equality of opportunity

in housing, in education, in hospital facilities, in jobs, denied access to recreation halls, swimming pools, churches, how long would our patient acceptance of such indignities last? When humiliation leads to violence, we deplore the violence but fail to understand the humiliation.

The recognition of these existing problems in the field of civil rights is clearly supported in the message of the President to the Congress relative to civil rights on February 28, 1963. Moreover, the party platforms of both major political parties recognized the existing problems during the last presidential campaign. The work of the Department of Justice and of the Civil Rights Commission clearly demonstrates the need for additional legislation to further the cause of equality of opportunity for all under our Constitution.

Most significant moreover, is the fact that before us today are approximately 89 bills. These bills touch on almost every facet and phase of the problem of discrimination and the denial of opportunity for all of our citizens. Thus, they testify to the need for the additional legislation, as I stated earlier in these remarks. I am heartened by the fact that the sponsorship of these legislative proposals cross party lines. Members of the Democratic Party have sponsored 41 proposals, while the Republican Members have sponsored 49 proposals. This situation portends that the Congress stands on the threshold of a new era in securing constitutional rights of all people and that this bipartisan effort on the part of the Congress can be the means of producing a legislative program which can be enacted into law. An analysis of these proposals shows a pattern of identity of principles and objectives. Of course, there are some variations and differences in these proposals but I am confident that Congress will meet its responsibility and further our program in a nonpartisan and unprejudiced fashion. A typical example of the manner in which Congress can function is furnished in the history of the poll tax amendment, sponsored by Senator Holland, of Florida, and myself, which has been adopted by 33 States to date.

There remains, however, many problems which we must face and in my opinion the most outstanding one relates to the right to vote.

The report of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights is most revealing. The Mississippi committee is one of the 51 committees established in every State and the District of Columbia by the Commission pursuant to the Civil Rights Act of 1957. Its membership consists of interested citizens of Mississippi of standing who serve without compensation. These words coming from these citizens cannot be taken lightly:

> The committee's investigations have indicated that in all important areas of citizenship, a Negro in Mississippi receives substantially less than his due consideration as an American and as a Mississippian. This denial extends from the time he is denied the right to be born in a nonsegregated hospital, through his segregated and inferior school years and his productive years when jobs for which he can qualify are refused, to the day he dies and is laid to rest in a cemetery for Negroes only. This committee could have chosen to concentrate on any aspect of discrimination and found a plethora of examples of denial of equal protection of the law. This includes the denial of the fundamental right to vote and have that vote counted in elections. Sixty-five sworn voting complaints from 13 Mississippi counties have been received by the Commission. This is the third highest in the Nation.[1]

[1] The voting problem remains serious in the State. Activity by the Justice Department in Mississippi promises some slow relief in counties where suits have been initiated.

I have referred to the report regarding Mississippi because it is a report from Mississippians themselves, but I do not mean that that is the only State involved in the problem. There are other States involved. For example:

State	Population over 21	Registered voters	Percent Negroes registered
Alabama:			
White	1,353,058	887,613	
Negro	481,320	57,713	12.0
Georgia:			
White	1,797,062		
Negro	612,910	180,335	29.4
Louisiana:			
White	1,285,191	943,851	
Negro	943,851	151,029	30.0
Mississippi:			
White			
Negro	422,256	24,220	5.7
South Carolina:			
White	894,187	480,022	
Negro	341,084	59,559	17.5

Alabama: 33 out of 67 counties have less than 15 percent Negroes registered.

Georgia: 36 out of 159 counties have less than 15 percent Negroes registered.

Louisiana: 22 parishes out of 66 have less than 15 percent Negroes registered.

Mississippi: 77 out of 82 counties have less than 15 percent Negroes registered.

South Carolina: 26 out of 46 counties have less than 15 percent Negroes registered.

This question of a fair and equal right of all citizens to vote is not sectional. It is, in fact, a national problem. For example, in my own State of New York I am well aware of the New York statute which requires its voters to be able to read and write the English language. In that State there are many American citizens from the Commonwealth of Puerto Rico who are literate in the Spanish language but who are unable to vote. In addition, as indicative of the national scope of the problem of literacy qualifications, there are at the present time 19 States which require literacy qualifications for voting. They are: Alabama, Arizona, California, Connecticut, Delaware, Georgia, Louisiana, Maine, Massachusetts, Mississippi, New Hampshire, New York, North Carolina, Oklahoma, Oregon, South Carolina, Virginia, Washington, and Wyoming.

We all recognize that legislation alone would not solve the problem to secure these rights. That legislation, together with executive action, to which must be added the cooperation of all peoples, together with changing social attitudes can bring about righting of a grevious wrong and help bring to the world an unblemished image of a totally free America. It can mean economic growth, reduced cost of public welfare, crime, juvenile delinquency and disorder. I plead with both

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Yet, the State government continued to erect all possible barriers to equal access to the franchise by our Negro citizens. In 1962, the Mississippi Legislature enacted a new law requiring the publication of the names and addresses of all new voting registrants for 2 weeks in a newspaper of general circulation. This law is ostensibly designed to facilitate challenges of registrants on moral grounds. In fact, it can be used to facilitate reprisals against Negroes who seek to register.

the proponents and opponents of civil rights legislation to approach these hearings without rancor or anger; to use wisdom and understanding; with light and not heat. If such a climate can prevail throughout these hearings we, with the eyes of the country and the world upon us, can create a climate which will enhance the possible solution to a difficult problem.

I have scheduled hearings on this legislation, beginning today and continuing tomorrow and then on the 15th and 16th; 23d and 24th; 28th and 29th of May. If there is need for additional hearings, a reasonable opportunity will be afforded. I am sure that I speak for my colleagues on this subcommittee that we will conduct these hearings as we have conducted them in the past, which, experience shows, have been with a desire and purpose to afford ample opportunity to those who can lend instructive evidence and counsel toward a proper solution. But a word of caution, I intend to do all and sundry to expedite these hearings and will not permit any unnecessary delay or procrastination for dilatory purposes.

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

Mr. McCULLOCH. Mr. Chairman and my colleagues of this committee, I have introduced a civil rights bill, H.R. 3139, which is comprehensive in scope and moderate in application. Congressmen Lindsay, Miller, Moore, Cahill, MacGregor, Mathias, Bromwell, Shriver, and Martin of California, joined with me in introducing identical bills. In addition, 28 other colleagues joined with us in introducing this legislation.

Mr. Chairman, I was pleased to hear you speak of the great progress that has been made in the field of civil rights in the past decade. This progress is the greatest progress that has been made in any like time in the history of our country. This progress, as I view it, has been both material and psychological. Materially, it takes the form of increased job opportunities for minority groups, forward strides in open housing, increased integration in public schools and public facilities, and expanded voter enfranchisement.

Of even greater importance, however, has been the psychological change. By this I mean the change in the state of mind from that of master-servant to that of brother-to-brother. This change has been taking place in both the white and the Negro population.

This gradual change does not mean, however, that we reached perfection. One need only read the daily papers, listen to the radio, or watch television to be convinced otherwise.

What is happening in Little Rock and New Rochelle, in Oxford and Chicago, in Birmingham and Rapid City, is convincing proof that tension exists and resistance remains. But turmoil is a sign of birth, as well as decay, and I am convinced that if the people of the country will continue to pursue a moderate, but ever forward-moving, program for the insurance of individual equality, the day will soon come when we will wonder why all the tumult and the shouting has to happen.

In this bill, the Civil Rights Commission is made permanent and is given important additional authority to investigate vote frauds, including the denial of the right to have one's vote counted. This additional authority is desperately needed in view of recent reliable esti-

mates that as many as 1 million votes are miscounted or not counted during presidential elections.

I quote from an editorial from the Saturday Evening Post of October 27, 1956, at page 10:

> The average American citizen who thinks that ballot box stuffing, graveyard registrations, and doctored ballots are relics of the Tweed-Pendergast era is in for an awful shock when he reads what the experts have to say. According to the Honest Ballot Association, an organization dedicated to the ideal of clean elections, at least a million votes were stolen during the presidential election of 1952. I repeat, during the presidential election of 1952. Worse, the experts agree that elections are becoming even more crooked.

I call to the attention of the committee the news stories, the radio stories, and the television stories that came from only a few of the cities in this country in 1960, such as Philadelphia, Detroit, Gary, Chicago, and the like.

Mr. Chairman, if the image of this great country, where there is supposed to be freedom of choice, was damaged in recent years, it was damaged in the eyes of many people throughout the world by those stories that went out from and by respectable news sources of this country, following that election.

Secondly, there is established a seven-man Commission for Equality of Opportunity in Employment. This Commission shall have the power to investigate discrimination in employment in any business concern which holds a Federal Government contract or any labor union which works on such contracts.

I emphasize, this authority is limited to Federal Government contracts. In addition, employment agencies which are wholly or partially financed by Federal funds shall be subject to the Commission's jurisdiction, while equality of job opportunity in Federal employment is placed under the Commission's inspection.

If the Commission finds a clear pattern of discrimination, it is given the authority to cut off Government contracts, halt the flow of funds to employment agencies, and order labor organizations to cease discriminating at the risk of running afoul of nondiscrimination amendments to the National Labor Relations Act.

In granting such authority to the Commission, however, we have sought to impose strict safeguards for the rights of all individuals. The right to judicial review is concisely spelled out, while the party affected is given the opportunity to end discriminatory practices prior to the issuance of a formal order by the Commission.

This civil rights bill also authorizes the Attorney General to institute a civil action on behalf of a citizen who claims that he is being denied the opportunity to enroll in a nonsegregated public school. In so granting this right, however, a Federal court is restrained from enjoining a State or local official in such civil action, if there has been instituted a plan to desegregate with all deliberate speed, and unless a complainant has exhausted all State legal remedies.

In the same vein, this civil rights bill authorizes Federal appropriations to aid State or local school boards in desegregating, if a request is made by them for such assistance. The financial aid so authorized, however, is limited to administrative and special, nonteaching professional services, developmental programs, and technical assistance. The payment of teachers' salaries, or the financing of construction costs are in no way involved.

Finally, this civil rights bill provides that anyone otherwise qualified to vote in a Federal election is presumed to have sufficient literacy and intelligence to vote if he has completed six grades of an accredited elementary school.

Mr. Chairman, I am happy to say that the great State of Ohio has had no restrictive educational qualifications for voting for many, many decades.

The foregoing provision, of course, does not eliminate the right of a State to use literacy or other intelligence tests as a means of qualifying voters. Even if an individual has a sixth-grade education, the State may show that he is, in fact, illiterate. But the bill does provide a presumption of literacy which will materially assist a court in determining whether literacy tests—and tests of a similar nature—are being used in a manner which unfairly discriminates against certain classes of citizens.

Here, then, is a comprehensive bill which seeks to advance the cause of civil rights in the United States. At the same time, however, it is a bill keyed to moderation. And the reason for moderation is obvious, particularly so as one has been reading the newspapers, listening to the radio, and watching television for the last few weeks. My colleagues, who joined with me in introducing identical bills, and I, are desirous of proposing legislation which stands a good chance of enactment. Reality is what we live by and solid accomplishment is what we seek.

Of equal importance is the fact that we are a nation of many people and many views. In such a nation, the prime purpose of a legislator, from wherever he may come, is to accommodate the interests, desires, wants, and needs of all our citizens. To alienate some in order to satisfy others is not only a disservice to those we alienate, but a violation of the principles of our Republic. For only in compromise, moderation, and understanding are we able to fashion our society into a cohesive and durable structure.

I sincerely hope that all Members of Congress, the executive department, and the public will reach out to support it in the spirit in which it is introduced. The sincerity of its purpose, the moderation of its scope, and the reality of intended accomplishment should, we hope, attract wide support.

The CHAIRMAN. Thank you, Mr. McCulloch.

STATEMENT OF HON. PETER W. RODINO, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. RODINO. Mr. Chairman, I support the scope of this committee's hearings and the purposes of your bill and the general legislation introduced for the purpose of correcting inequities that exist now in the rights of our citizens.

I believe there is an essential reason for the existence of the United States, and that is to protect and secure the rights of its citizens. I submit that our present laws are inadequate to effect this purpose. For that reason, I have introduced H.R. 4575, which is specifically aimed at known violations of civil rights.

I believe that legislation of this kind is an obligation which we cannot in good conscience avoid.

Mr. Chairman, I would like permission to extend my remarks to save the committee's time.

The CHAIRMAN. You have that.

STATEMENT OF REPRESENTATIVE PETER W. RODINO, JR., OF NEW JERSEY BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY, IN SUPPORT OF H.R. 4575, THE CIVIL RIGHTS ACT OF 1963

Mr. RODINO. Mr. Chairman, on March 6, 1963, I introduced H.R. 4575, which is entitled the "Civil Rights Act of 1963".

Title I of this bill extends the Civil Rights Commission for 2 more years, until September 30, 1965.

The Civil Rights Comission does not regulate or adjudicate or enforce civil rights. But I think that it would be a very grave error for us to imagine that the Commission is of little importance.

The reason why we are confronted with a civil rights question at all is that there is a deliberate, concerted, and widespread effort to deny U.S. citizens their civil rights because of race, color, or religion. No particular States or sections of our country should be singled out for blame. If Negroes are denied the right to vote in some places, they are discriminated against in employment or in housing in other places. Discrimination in employment or in housing constitutes a violation of civil rights just as much as denial of the right to vote if the employment is for work on Government contracts covered by the President's order on equal employment opportunity or if the housing has been insured by FHA or financed by the VA and is therefore covered by the President's order on equal opportunity in housing.

The widespread effort to abridge civil rights makes it necessary to enact special legislation in order to guarantee the rights recognied by the 14th and 15th amendments. Not only that, but deliberate opposition to the rights of racial and religious minorities makes it very difficult to legislate effectively. It will never suffice for us simply to enact general declarations of rights. Legislation and Executive orders in this field must be pointed or aimed against specific kinds of action which effect denials of rights.

The point I wish to make is that Congress and the President need more than moral and legal principles in order to deal effectively with the civil rights question. We need facts. We need the facts about the particular methods of opposition to civil rights. Since we are dealing with opposition, these facts cannot be obtained merely by cursory observation. These facts, without which we, as legislators, are helpless, can be obtained only by aggressive investigation conducted with authority to hold hearings and to subpena witnesses and documents.

And this is precisely the purpose of the Civil Rights Commission. What the Commission itself has accomplished through hearings, conferences, and analyses of problems since its creation by the Civil Rights Act of 1957 is clear and certain proof of its value. The information and analyses which it has given us already in the few years of its existence are an indispensable basis for further legislative or executive action.

It would also be a grave error for us to imagine that the Civil Rights Commission has now done its job and can be abolished. The opposi-

tion to full political and social rights has not been abolished. That it is continuing, though evermore abated, we hope, means that the facts which the Commission has given us are not final. It is fairly certain that new situations will constantly arise which will render some of our facts out of date. It necessarily follows that systematic investigation of denials of voting rights and of every kind of denial of equal protection of the laws must likewise continue.

In view of this neccessity for continuing investigation, extension of the Civil Rights Commission for another 2 years is a minimum requirement.

Title II of the bill is designed to give stronger protection to the right to vote, and is therefore additional to the Civil Rights Acts of 1957 and 1960.

In section 201 of this title, Congress declares that the right to vote is the political right which is essential to the operation of democracy. Democracy means popular self-government. The closest approach we can make to popular self-government is government by representatives chosen by the people and accountable to them through the electoral process. Hence, if we permit the right of U.S. citizens to vote in Federal elections to be denied, we are, in effect, permitting an abridgment of representative democracy.

In this same section, Congress states its finding that "literacy tests and other performance examinations" have been used in an arbitrary way in order to deprive persons of the right to vote. I should like to point out that Congress could not make such a finding without the evidence obtained by the Civil Rights Commission and reported in its 1961 report on voting.

Congress also finds, in accordance with the President's recommendation in his civil rights message this year, that a sixth-grade education justifies a presumption of literacy and of sufficient intelligence to vote.

The injustice of denying Spanish-speaking people the right to vote, people who are qualified as regards intelligence and who can keep themselves informed on public issues through Spanish-language news sources, is also recognized by Congress in section 201.

The final paragraph of the section points out that Congress has the obligation "to protect the integrity of the Federal electorial process" and has the constitutional authority to do so. It has the authority to do so under article I, section 4, which gives Congress the right to "make or alter" rules regarding "the times, places and manner" of holding Federal elections. It has authority to do so also under section 5 of the 14th amendment and section 2 of the 15th amendment which give Congress the right to enforce the equal protection of the laws and the right to vote, respectively, by appropriate legislation.

Section 202 of this title amends part IV of the Civil Rights Act of 1957. This part of the Civil Rights Act of 1957 forbids anyone to use intimidation, threats, or coercion in order to prevent another person from voting. Section 202 of this bill forbids, in addition, anyone to attempt to deprive any citizen of his right to vote by unequal application of requirements for voter registration.

The Civil Rights Commission gives us a detailed account of such practices in chapter 8 of its 1961 report on voting, where the Commission discusses qualification of voters and arbitrary interference with the right to vote. Under the category of "Legal Qualifications," the

Commission reports the use of literacy tests, questions about the Constitution, and appraisal of moral character to deny the right to vote. Under the category of "Interference," the Commission itemizes "the arbitrary or discriminatory application of various registration procedures."

It is quite clear that this statute would not infringe on the rights of the States to establish voter qualifications. It merely applies the right to equal protection of the laws guaranteed by the 14th amendment to State laws regulating Federal elections.

The bill specifies that such unequal and discriminatory practices are prohibited in every case in which the applicant has not been legally declared incompetent and has completed the sixth grade. Here is where the presumption of literacy is made into enforcible law.

Moreover, the amendment to the Civil Rights Act of 1957 which I have just discussed is an excellent example of how the findings of the Civil Rights Commission provides an indispensable basis for legislation effectively aimed at specific violations of civil rights.

Title III invests the Attorney General with authority to initiate legal action to obtain court orders or injunctions against persons who deny or threaten to deny any U.S. citizen of his right to the equal protection of Federal and State laws.

This is an authorization which many responsible civil rights advocates have been calling for. As you know, the Attorney General has authority, by the Civil Rights Act of 1957, to initiate legal action on behalf of voting rights. He already has the power to enforce the provisions of the Interstate Commerce Act and the ICC regulations against discrimination in interstate travel. But, in the field of school integration, the courts have recognized no such authority, even though the 14th amendment requires school integration and even though the duty of the Justice Department is to enforce U.S. laws. One of the reasons why progress in school integration has been so slow is that it has been left up to private persons to undertake redress in the courts. There could be no more effective way in which to achieve equal educational opportunity for children of every race and religion than to give this additional authority to the Attorney General.

The bill gives original jurisdiction in these cases regarding equal protection of the laws to the U.S. district courts. This is quite proper, since we are here concerned with violations of the Federal Constitution.

Mr. Chairman, the essential reason for the existence of the United States is to secure the rights of its citizens. I submit that our present laws are inadequate to effect this purpose, and the legislation which I have discussed is specifically aimed at known violations of civil rights. I believe that legislation of this kind is an obligation which we cannot in good conscience avoid.

The CHAIRMAN. Are there any other Members who care to make a statement?

Mr. ROGERS. Mr. Chairman, when Mr. McCulloch mentioned the million votes being stolen—

Mr. TOLL. In 1952.

Mr. ROGERS. He mentioned the stealing happened when one Republican President got elected and when a Democrat was elected, so this occurred in both instances, as I understand from his statement.

Mr. MCCULLOCH. Mr. Chairman, I thank the gentleman from Colorado for that statement. Of course, he has analyzed the statement that

I have made, and if I may use the phrase of a great Democratic former President, those who steal votes, I say "a plague on both your houses." In 1952 the stealing of votes—I did not wish to get into this—in 1952 the stealing of votes was not limited to the party which elected the President.

Mr. ROGERS. That is why I compliment you, because you were emphasizing the equality among the parties in their ability to steal.

The CHAIRMAN. Before calling on the witnesses, I think it would be well for ready reference to insert in the record at this point, because references will be made to these statements very frequently in the course of our hearings, the 14th and 15th amendments to the Constitution, Civil Rights Act of 1957, the Civil Rights Act of 1960, and the Presidential message of February 28, 1963.

(The documents referred to follow:)

THE UNITED STATES CONSTITUTION

AMENDMENT XIV

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

AMENDMENT XV

SECTION 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude—

SECTION 2. The Congress shall have power to enforce this article by appropriate legislation.

PUBLIC LAW 85-315

85TH CONGRESS, H.R. 6127

September 9, 1957

AN ACT To provide means of further securing and protecting the civil rights of persons within the jurisdiction of the United States

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

PART I—ESTABLISHMENT OF THE COMMISSION ON CIVIL RIGHTS

SEC. 101. (a) There is created in the executive branch of the Government a Commission on Civil Rights (hereinafter called the "Commission").

(b) The Commission shall be composed of six members who shall be appointed by the President by and with the advice and consent of the Senate. Not more than three of the members shall at any one time be of the same political party.

(c) The President shall designate one of the members of the Commission as Chairman and one as Vice Chairman. The Vice Chairman shall act as Chairman in the absence or disability of the Chairman, or in the event of a vacancy in that office.

(d) Any vacancy in the Commission shall not affect its powers and shall be filled in the same manner, and subject to the same limitation with respect to party affiliations as the original appointment was made.

(e) Four members of the Commission shall constitute a quorum.

RULES OF PROCEDURE OF THE COMMISSION

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

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

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

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

(e) If the Commission determines that evidence or testimony at any hearing may tend to defame, degrade, or incriminate any person, it shall (1) receive such evidence or testimony in executive session; (2) afford such person an opportunity voluntarily to appear as a witness; and (3) receive and dispose of requests from such person to subpena additional witnesses.

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

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

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

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

(j) A witness attending any session of the Commission shall receive $4 for each day's attendance and for the time necessarily occupied in going to and returning from the same, and 8 cents per mile for going from and returning to his place of residence. Witnesses who attend at points so far removed from their respective residences as to prohibit return thereto from day to day shall be entitled to an additional allowance of $12 per day for expenses of subsistence,

including the time necessarily occupied in going to and returning from the place of attendance. Mileage payments shall be tendered to the witness upon service of a subpena issued on behalf of the Commission or any subcommittee thereof.

(k) The Commission shall not issue any subpena for the attendance and testimony of witnesses or for the production of written or other matter which would require the presence of the party subpenaed at a hearing to be held outside of the State, wherein the witness is found or resides or transacts business.

COMPENSATION OF MEMBERS OF THE COMMISSION

SEC. 103. (a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive the sum of $50 per day for each day spent in the work of the Commission, shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be reimbursed for actual and necessary travel expenses, and shall receive a per diem allowance of $12 in lieu of actual expenses for subsistence when away from his usual place of residence, inclusive of fees or tips to porters and stewards.

DUTIES OF THE COMMISSION

SEC. 104. (a) The Commission shall—

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

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

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

(1) The Commission shall submit interim reports to the President and to the Congress at such times as either the Commission or the President shall deem desirable, and shall submit to the President and to the Congress a final and comprehensive report of its activities, findings, and recommendations not later than two years from the date of the enactment of this Act.

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

POWERS OF THE COMMISSION

SEC. 105. (a) There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 15 of the Act of August 2, 1946 (60 Stat. 810; 5 U.S.C. 55a), but at rates for individuals not in excess of $50 per diem.

(b) The Commission shall not accept or utilize services of voluntary or uncompensated personnel, and the term "whoever" as used in paragraph (g) of section 102 hereof shall be construed to mean a person whose services are compensated by the United States.

(c) The Commission may constitute such advisory committees within States composed of citizens of that State and may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99).

(e) All Federal agencies shall cooperate fully with the Commission to the end that it may effectively carry out its functions and duties.

(f) The Commission, or on the authorization of the Commission any subcommittee of two or more members, at least one of whom shall be of each major political party, may, for the purpose of carrying out the provisions of this Act, hold such hearings and act at such times and places as the Commission or such authorized subcommittee may deem advisable. Subpenas for the attendance and testimony of witnesses or the production of written or other matter may be issued in accordance with the rules of the Commission as contained in section 102 (j) and (k) of this Act, over the signature of the Chairman of the Commission or of such subcommittee, and may be served by any person designated by such Chairman.

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

APPROPRIATIONS

SEC. 106. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, so much as may be necessary to carry out the provisions of this Act.

PART II—TO PROVIDE FOR AN ADDITIONAL ASSISTANT ATTORNEY GENERAL

SEC. 111. There shall be in the Department of Justice one additional Assistant Attorney General, who shall be appointed by the President, by and with the advice and consent of the Senate, who shall assist the Attorney General in the performance of his duties, and who shall receive compensation at the rate prescribed by law for other Assistant Attorneys General.

PART III—TO STRENGTHEN THE CIVIL RIGHTS STATUTES, AND FOR OTHER PURPOSES

SEC. 121. Section 1343 of title 28, United States Code, is amended as follows:

(a) Amend the catch line of said section to read,

"§ 1343. Civil rights and elective franchise"

(b) Delete the period at the end of paragraph (3) and insert in lieu thereof a semicolon.

(c) Add a paragraph as follows:

"(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote."

SEC. 122. Section 1989 of the Revised Statutes (42 U.S.C. 1993) is hereby repealed.

PART IV—TO PROVIDE MEANS OF FURTHER SECURING AND PROTECTING THE RIGHT TO VOTE

SEC. 131. Section 2004 of the Revised Statutes (42 U.S.C. 1971), is amended as follows:

(a) Amend the catch line of said section to read, "Voting rights".

(b) Designate its present text with the subsection symbol "(a)".

(c) Add, immediately following the present text, four new subsections to read as follows:

"(b) No person, whether acting under color of law or otherwise, shall intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce any other person for the purpose of interfering with the right of such other person to vote or to vote as he may choose, or of causing such other person to vote for, or not to vote for, any candidate for the office of President, Vice President, presidential elector, Member of the Senate, or Member of the House of Representatives, Delegates or Commissioners from the Territories or possessions, at any general,

special, or primary election held solely or in part for the purpose of selecting or electing any such candidate.

"(c) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b), 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 a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person.

"(d) The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this section and shall exercise the same without regard to whether the party aggrieved shall have exhausted any administrative or other remedies that may be provided by law.

"(e) Any person cited for an alleged contempt under this Act shall be allowed to make his full defense by counsel learned in the law; and the court before which he is cited or tried, or some judge thereof, shall immediately, upon his request, assign to him such counsel, not exceeding two, as he may desire, who shall have free access to him at all reasonable hours. He shall be allowed, in his defense to make any proof that he can produce by lawful witnesses, and shall have the like process of the court to compel his witnesses to appear at his trial or hearing, as is usually granted to compel witnesses to appear on behalf of the prosecution. If such person shall be found by the court to be financially unable to provide for such counsel, it shall be the duty of the court to provide such counsel."

PART V—TO PROVIDE TRIAL BY JURY FOR PROCEEDINGS TO PUNISH CRIMINAL CONTEMPT OF COURT GROWING OUT OF CIVIL RIGHTS CASES AND TO AMEND THE JUDICIAL CODE RELATING TO FEDERAL JURY QUALIFICATIONS

SEC. 151. In all cases of criminal contempt arising under the provisions of this Act, the accused, upon conviction, shall be punished by fine or imprisonment or both: *Provided however*, That in case the accused is a natural person the fine to be paid shall not exceed the sum of $1,000, nor shall imprisonment exceed the term of six months: *Provided further*, That in any such proceeding for criminal contempt, at the discretion of the judge, the accused may be tried with or without a jury: *Provided further, however*, That in the event such proceeding for criminal contempt be tried before a judge without a jury and the sentence of the court upon conviction is a fine in excess of the sum of $300 or imprisonment in excess of forty-five days, the accused in said proceeding, upon demand therefor, shall be entitled to a trial de novo before a jury, which shall conform as near as may be to the practice in criminal cases.

This section shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice nor to the misbehavior, misconduct, or disobedience, of any officer of the court in respect to the writs, orders, or process of the court.

Nor shall anything herein or in any other provision of law be construed to deprive courts of their power, by civil contempt proceedings, without a jury, to secure compliance with or to prevent obstruction of, as distinguished from punishment for violations of, any lawful writ, process, order, rule, decree, or command of the court in accordance with the prevailing usages of law and equity, including the power of detention.

SEC. 152. Section 1861, title 28, of the United States Code is hereby amended to read as follows:

"§ 1861. Qualifications of Federal jurors

"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."

SEC. 161. This Act may be cited as the "Civil Rights Act of 1957".

Approved September 9, 1957.

PUBLIC LAW 86-449

86TH CONGRESS, H. R. 8601

AN ACT To enforce constitutional rights, and for other purposes

MAY 6, 1960

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1960".

TITLE I

OBSTRUCTION OF COURT ORDERS

SEC. 101. Chapter 73 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 1509. Obstruction of court orders

"Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

"No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime."

SEC. 102. The analysis of chapter 73 of such title is amended by adding at the end thereof the following:

"1509. Obstruction of court orders."

TITLE II

FLIGHT TO AVOID PROSECUTION FOR DAMAGING OR DESTROYING ANY BUILDING OR OTHER REAL OR PERSONAL PROPERTY; AND, ILLEGAL TRANSPORTATION, USE OR POSSESSION OF EXPLOSIVES; AND, THREATS OR FALSE INFORMATION CONCERNING ATTEMPTS TO DAMAGE OR DESTROY REAL OR PERSONAL PROPERTY BY FIRE OR EXPLOSIVES

SEC. 201. Chapter 49 of title 18, United States Code, is amended by adding at the end thereof a new section as follows:

"§ 1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property

"(a) Whoever moves or travels in interstate or foreign commerce with intent either (1) to avoid persecution, or custody, or confinement after conviction, under the laws of the place from which he flees, for willfully attempting to or damaging or destroying by fire or explosive any building, structure, facility, vehicle, dwelling house, synagogue, church, religious center or educational institution, public or private, or (2) to avoid giving testimony in any criminal proceeding relating to any such offense shall be fined not more than $5,000 or imprisoned not more than five years, or both.

"(b) Violations of this section may be prosecuted in the Federal judicial district in which the original crime was alleged to have been committed or in which the person was held in custody or confinement: *Provided, however,* That this section shall not be construed as indicating an intent on the part of Congress to prevent any State, Territory, Commonwealth, or possession of the United States of any jurisdiction over any offense over which they would have jurisdiction in the absence of such section."

SEC. 202. The analysis of chapter 49 of such title is amended by adding thereto the following:

"1074. Flight to avoid prosecution for damaging or destroying any building or other real or personal property."

SEC. 203. Chapter 39 of title 18 of the United States Code is amended by adding at the end thereof the following new section:

"§ 837. Explosives; illegal use of possession; and, threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives.

"(a) As used in this section—

"'commerce' means commerce between any State, Territory, Commonwealth, District, or possession of the United States, and any place outside

thereof; or between points within the same State, Territory, or possession, or the District of Columbia, but through any place outside thereof; or within any Territory, or possession of the United States, or the District of Columbia;

"'explosive' means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuzes (other than electric circuit breakers), detonators, and other detonating agents, smokeless powders, and any chemical compounds or mechanical mixture that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound or mixture or any part thereof may cause an explosion.

"(b) Whoever transports or aids and abets another in transporting in interstate or foreign commerce any explosive, with the knowledge or intent that it will be used to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year, or a fine of not more than $1,000, or both; and if personal injury results shall be subject to imprisonment for not more than ten years or a fine of not more than $10,000, or both; and if death results shall be subject to imprisonment for any term of years or for life, but the court may impose the death penalty if the jury so recommends.

"(c) The possession of an explosive in such a manner as to evince an intent to use, or the use of, such explosive, to damage or destroy any building or other real or personal property used for educational, religious, charitable, residential, business, or civic objectives or to intimidate any person pursuing such objectives, creates rebuttable presumptions that the explosive was transported in interstate or foreign commerce or caused to be transported in interstate or foreign commerce by the person so possessing or using it, or by a person aiding or abetting the person so possessing or using it: *Provided, however*, That no person may be convicted under this section unless there is evidence independent of the presumptions that this section has been violated.

"(d) Whoever, through the use of the mail, telephone, telegraph, or other instrument of commerce, willfully imparts or conveys, or causes to be imparted or conveyed, any threat, or false information knowing the same to be false, concerning an attempt or alleged attempt being made, or to be made, to damage or destroy any building or other real or personal property for the purpose of interfering with its use for educational, religious, charitable, residential, business, or civic objectives, or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000, or both.

"(e) This section shall not be construed as indicating an intent on the part of Congress to occupy the field in which this section operates to the exclusion of a law of any State, Territory, Commonwealth, or possession of the United States, and no law of any State, Territory, Commonwealth, or possession of the United States which would be valid in the absence of the section shall be declared invalid, and no local authorities shall be deprived of any jurisdiction over any offense over which they would have jurisdiction in the absence of this section."

SEC. 204. The analysis of chapter 39 of title 18 is amended by adding thereto the following:

"837. Explosives; illegal use or possession; and threats or false information concerning attempts to damage or destroy real or personal property by fire or explosives."

TITLE III

FEDERAL ELECTION RECORDS

SEC. 301. Every officer of election shall retain and preserve, for a period of twenty-two months from the date of any general, special, or primary election of which candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico are voted for, all records and papers which come into his possession relating to any application, registration, payment of poll tax, or other act requisite to voting in such election, except that, when required by law, such records and papers may be

delivered to another officer of election and except that, if a State or the Commonwealth of Puerto Rico designates a custodian to retain and preserve these records and papers at a specified place, then such records and papers may be deposited with such custodian, and the duty to retain and preserve any record or paper so deposited shall devolve upon such custodian. Any officer of election or custodian who willfully fails to comply with this section shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 302. Any person, whether or not an officer of election or custodian, who willfully steals, destroys, conceals, mutilates, or alters any record or paper required by section 301 to be retained and preserved shall be fined not more than $1,000 or imprisoned not more than one year, or both.

SEC. 303. Any record or paper required by section 301 to be retained and preserved shall, upon demand in writing by the Attorney General or his representatives directed to the person having custody, possession, or control of such record or paper, be made available for inspection, reproduction, and copying at the principal office of such custodian by the Attorney General or his representative. This demand shall contain a statement of the basis and the purpose therefor.

SEC. 304. 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 any record or paper produced pursuant to this title, or any reproduction or copy, except to Congress and any committee thereof, governmental agencies, and in the presentation of any case or proceeding before any court or grand jury.

SEC. 305. The United States district court for the district in which a demand is made pursuant to section 303, or 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.

SEC. 306. As used in this title, the term "officer of election" means any person who, under color of any Federal, State, Commonwealth, or local law, statute, ordinance, regulation, authority, custom, or usage, performs or is authorized to perform any function, duty, or task in connection with any application, registration, payment of poll tax, or other act requisite to voting in any general, special, or primary election at which votes are cast for candidates for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Resident Commissioner from the Commonwealth of Puerto Rico.

TITLE IV

EXTENSION OF POWERS OF THE CIVIL RIGHTS COMMISSION

SEC. 401. Section 105 of the Civil Rights Act of 1957 (42 U.S.C. Supp. V 1975d) (71 Stat. 635) is amended by adding the following new subsection at the end thereof:

"(h) Without limiting the generality of the foregoing, each member of the Commission shall have the power and authority to administer oaths or take statements of witnesses under affirmation."

TITLE V

EDUCATION OF CHILDREN OF MEMBERS OF ARMED FORCES

SEC. 501. (a) Subsection (a) of section 6 of the Act of September 30, 1950 (Public Law 874, Eighty-first Congress), as amended, relating to arrangements for the provision of free public education for children residing on Federal property where local educational agencies are unable to provide such education, is amended by inserting after the first sentence the following new sentence: "Such arrangements to provide free public education may also be made for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children."

(b) (1) The first sentence of subsection (d) of such section 6 is amended by adding before the period at the end thereof: "or, in the case of children to whom the second sentence of subsection (a) applies, with the head of any Federal

department or agency having jurisdiction over the parents of some or all of such children."

(2) The second sentence of such subsection (d) is amended by striking out "Arrangements" and inserting in lieu thereof "Except where the Commissioner makes arrangements pursuant to the second sentence of subsection (a), arrangements."

SEC. 502. Section 10 of the Act of September 23, 1950 (Public Law 815, Eighty-first Congress), as amended, relating to arrangements for facilities for the provision of free public education for children residing on Federal property where local educational agencies are unable to provide such education, is amended by inserting after the first sentence the following new sentence: "Such arrangements may also be made to provide, on a temporary basis, minimum school facilities for children of members of the Armed Forces on active duty, if the schools in which free public education is usually provided for such children are made unavailable to them as a result of official action by State or local governmental authority and it is the judgment of the Commissioner, after he has consulted with the appropriate State educational agency, that no local educational agency is able to provide suitable free public education for such children."

TITLE VI

SEC. 601. That section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637), is amended as follows:

(a) Add the following as subsection (e) and designate the present subsection (e) as subsection "(f)":

"In any proceeding instituted pursuant to subsection (c) in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a), the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

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

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

"The court may appoint one or more persons who are qualified voters in the judicial district, to be known as voting referees, who shall subscribe to the oath of office required by Revised Statutes, section 1757; (5 U.S.C. 16) to serve for such period as the court shall determine, to receive such applications and to take evidence and report to the court findings as to whether or not at any election or elections (1) any such applicant is qualified under State law to vote, and (2) he has since the finding by the court heretofore specified been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. In a proceeding before a voting referee, the applicant shall be heard ex parte at such times and places as the court shall direct. His statement under oath shall be prima facie evidence as to his age,

residence, and his prior efforts to register or otherwise qualify to vote. Where proof of literacy or an understanding of other subjects is required by valid provisions of State law, the answer of the applicant, if written, shall be included in such report to the court; if oral, it shall be taken down stenographically and a transcription included in such report to the court.

"Upon receipt of such report, the court shall cause the Attorney General to transmit a copy thereof to the State attorney general and to each party to such proceeding together with an order to show cause within ten days, or such shorter time as the court may fix, why an order of the court should not be entered in accordance with such report. Upon the expiration of such period, such order shall be entered unless prior to that time there has been filed with the court and served upon all parties a statement of exceptions to such report. Exceptions as to matters of fact shall be considered only if supported by a duly verified copy of a public record or by affidavit of persons having personal knowledge of such facts or by statements or matters contained in such report; those relating to matters of law shall be supported by an appropriate memorandum of law. The issues of fact and law raised by such exceptions shall be determined by the court or, if the due and speedy administration of justice requires, they may be referred to the voting referee to determine in accordance with procedures prescribed by the court. A hearing as to an issue of fact shall be held only in the event that the proof in support of the exception disclose the existence of a genuine issue of material fact. The applicant's literacy and understanding of other subjects shall be determined solely on the basis of answers included in the report of the voting referee.

"The court, or at its direction the voting referee, shall issue to each applicant so declared qualified a certificate identifying the holder thereof as a person so qualified.

"Any voting referee appointed by the court pursuant to this subsection shall to the extent not inconsistent herewith have all the powers conferred upon a master by rule 53(c) of the Federal Rules of Civil Procedure. The compensation to be allowed to any persons appointed by the court pursuant to this subsection shall be fixed by the court and shall be payable by the United States.

"Applications pursuant to this subsection shall be determined expeditiously. In the case of any application filed twenty or more days prior to an election which is undetermined by the time of such election, the court shall issue an order authorizing the applicant to vote provisionally: *Provided, however*, That such applicant shall be qualified to vote under State law. In the case of an application filed within twenty days prior to an election, the court, in its discretion, may make such an order. In either case the order shall make appropriate provision for the impounding of the applicant's ballot pending determination of the application. The court may take any other action, and may authorize such referee or such other person as it may designate to take any other action, appropriate or necessary to carry out the provisions of this subsection and to enforce its decrees. This subsection shall in no way be construed as a limitation upon the existing powers of the court.

"When used in the subsection, the word 'vote' includes all action necessary to make a vote effective including, but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words 'affected area' shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a); and the words 'qualified under State law' shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist."

(b) Add the following sentence at the end of subsection (c):

"Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a), the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding, such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State."

TITLE VII

SEPARABILITY

SEC. 701. If any provision of this Act is held invalid, the remainder of this Act shall not be affected thereby.

Approved May 6, 1960.

[H. Doc. 75, 88th Cong., 1st sess.]

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES RELATIVE TO CIVIL RIGHTS

To the Congress of the United States:

"Our Constitution is colorblind," wrote Mr. Justice Harlan before the turn of the century, "and neither knows nor tolerates classes among citizens." But the practices of the country do not always conform to the principles of the Constitution. And this message is intended to examine how far we have come in achieving first-class citizenship for all citizens regardless of color, how far we have yet to go, and what further tasks remain to be carried out—by the executive and legislative branches of the Federal Government, as well as by State and local governments and private citizens and organizations.

One hundred years ago the Emancipation Proclamation was signed by a President who believed in the equal worth and opportunity of every human being. That proclamation was only a first step—a step which its author unhappily did not live to follow up, a step which some of its critics dismissed as an action which "frees the slave but ignores the Negro." Through these long 100 years, while slavery has vanished, progress for the Negro has been too often blocked and delayed. Equality before the law has not always meant equal treatment and opportunity. And the harmful, wasteful, and wrongful results of racial discrimination and segregation still appear in virtually every aspect of national life, in virtually every part of the Nation.

The Negro baby born in America today—regardless of the section or State in which he is born—has about one-half as much chance of completing high school as a white baby born in the same place on the same day, one-third as much chance of completing college, one-third as much chance of becoming a professional man, twice as much chance of becoming unemployed, about one-seventh as much chance of earning $10,000 per year, a life expectancy which is 7 years less, and the prospects of earning only half as much.

No American who believes in the basic truth that "all men are created equal, that they are endowed by their Creator with certain unalienable rights," can fully excuse, explain, or defend the picture these statistics portray. Race discrimination hampers our economic growth by preventing the maximum development and utilization of our manpower. It hampers our world leadership by contradicting at home the message we preach abroad. It mars the atmosphere of a united and classless society in which this Nation rose to greatness. It increases the costs of public welfare, crime, delinquency, and disorder. Above all, it is wrong.

Therefore, let it be clear, in our own hearts and minds, that it is not merely because of the cold war, and not merely because of the economic waste of discrimination, that we are committed to achieving true equality of opportunity. The basic reason is because it is right.

The cruel disease of discrimination knows no sectional or State boundaries. The continuing attack on this problem must be equally broad. It must be both private and public, it must be conducted at National, State, and local levels; and it must include both legislative and executive action.

In the last 2 years, more progress has been made in securing the civil rights of all Americans than in any comparable period in our history. Progress has been made—through executive action, litigation, persuasion, and private initiative—in achieving and protecting equality of opportunity in education, voting, transportation, employment, housing, government, and the enjoyment of public accommodations.

But pride in our progress must not give way to relaxation of our effort. Nor does progress in the executive branch enable the legislative branch to escape its own obligations. On the contrary, it is in the light of this nationwide progress, and in the belief that Congress will wish once again to meet its responsibilities in this matter, that I stress in the following agenda of existing and prospective action important legislation as well as administrative measures.

I. THE RIGHT TO VOTE

The right to vote in a free American election is the most powerful and precious right in the world—and it must not be denied on the grounds of race or color. It is a potent key to achieving other rights of citizenship. For American history—both recent and past—clearly reveals that the power of the ballot has enabled those who achieve it to win other achievements as well, to gain a full voice in the affairs of their State and Nation, and to see their interests represented in the governmental bodies which affect their future. In a free society, those with the power to govern are necessarily responsive to those with the right to vote.

In enacting the 1957 and 1960 Civil Rights Acts, Congress provided the Department of Justice with basic tools for protecting the right to vote—and this administration has not hesitated to use those tools. Legal action is brought only after voluntary efforts fail; and, in scores of instances, local officials, at the request of the Department of Justice, have voluntarily made voting records available or abandoned discriminatory registration, discriminatory voting practices, or segregated balloting. Where voluntary local compliance has not been forthcoming, the Department of Justice has approximately quadrupled the previous level of its legal effort—investigating coercion, inspecting records, initiating lawsuits, enjoining intimidation, and taking whatever followup action is necessary to forbid further interference or discrimination. As a result, thousands of Negro citizens are registering and voting for the first time—many of them in counties where no Negro had ever voted before. The Department of Justice will continue to take whatever action is required to secure the right to vote for all Americans.

Experience has shown, however, that these highly useful acts of the 85th and 86th Congresses suffer from two major defects. One is the usual long and difficult delay which occurs between the filing of a lawsuit and its ultimate conclusion. In one recent case, for example, 19 months elapsed between the filing of the suit and the judgment of the court. In another, an action brought in July 1961 has not yet come to trial. The legal maxim, "Justice delayed is justice denied," is dramatically applicable in these cases.

Too often those who attempt to assert their constitutional rights are intimidated. Prospective registrants are fired. Registration workers are arrested. In some instances, churches in which registration meetings are held have been burned. In one case where Negro tenant farmers chose to exercise their right to vote, it was necessary for the Justice Department to seek injunctions to halt their eviction and for the Department of Agriculture to help feed them from surplus stocks. Under these circumstances, continued delay in the granting of the franchise—particularly in counties where there is mass racial disfranchisement—permits the intent of the Congress to be openly flouted.

Federal executive action in such cases—no matter how speedy and how drastic—can never fully correct such abuses of power. It is necessary instead to free the forces of our democratic system within these areas by promptly insuring the franchise to all citizens, making it possible for their elected officials to be truly responsive to all their constituents.

The second and somewhat overlapping gap in these statutes is their failure to deal specifically with the most common forms of abuse of discretion on the part of local election officials who do not treat all applicants uniformly.

Objections were raised last year to the proposed literacy test bill, which attempted to speed up the enforcement of the right to vote by removing one important area of discretion from registration officials who used that discretion to exclude Negroes. Preventing that bill from coming to a vote did not make any less real the prevalence in many counties of the use of literacy and other voter qualification tests to discriminate against prospective Negro voters, contrary to the requirements of the 14th and 15th amendments, and adding to the delays and difficulties encountered in securing the franchise for those denied it.

An indication of the magnitude of the overall problem, as well as the need for speedy action, is a recent five-State survey disclosing over 200 counties in which fewer than 15 percent of the Negroes of voting age are registered to vote. This cannot continue. I am, therefore, recommending legislation to deal with this problem of judicial delay and administrative abuse in four ways:

First, to provide for interim relief while voting suits are proceeding through the courts in areas of demonstrated need, temporary Federal voting referees should be appointed to determine the qualifications of applicants for registration and voting during the pendency of a lawsuit in any county in which fewer than

15 percent of the eligible number of persons of any race claim to be discriminated against are registered to vote. Existing Federal law provides for the appointment of voting referees to receive and act upon applications for voting registration upon a court finding that a pattern or practice of discrimination exists. But to prevent a successful case from becoming an empty victory, insofar as the particular election is concerned, the proposed legislation would provide that, within these prescribed limits, temporary voting referees would be appointed to serve from the inception to the conclusion of the Federal voting suit, applying, however, only State law and State regulations. As officers of the court, their decisions would be subject to court scrutiny and review.

Second, voting suits brought under the Federal civil rights statutes should be accorded expedited treatment in the Federal courts, just as in many State courts election suits are given preference on the dockets on the sensible premise that, unless the right to vote can be exercised at a specific election, it is to the extent of that election, lost forever.

Third, the law should specifically prohibit the application of different tests, standards, practices, or procedures for different applicants seeking to register and vote in Federal elections. Under present law, the courts can ultimately deal with the various forms of racial discrimination practiced by local registrars. But the task of litigation, and the time consumed in preparation and proof, should be lightened in every possible fashion. No one can rightfully contend that any voting registrar should be permitted to deny the vote to any qualified citizen, anywhere in this country, through discriminatory administration of qualifying tests, or upon the basis of minor errors in filling out a complicated form which seeks only information. Yet the Civil Rights Commission, and the cases brought by the Department of Justice, have compiled one discouraging example after another of obstacles placed in the path of Negroes seeking to register to vote at the same time that other applicants experience no difficulty whatsoever. Qualified Negroes, including those with college degrees, have been denied registration for their inability to give a "reasonable" interpretation of the Constitution. They have been required to complete their applications with unreasonable precision, or to secure registered voters to vouch for their identity, or to defer to white persons who want to register ahead of them, or they are otherwise subjected to exasperating delays. Yet uniformity of treatment is required by the dictates of both the Constitution and fairplay; and this proposed statute, therefore, seeks to spell out that principle to ease the difficulties and delays of litigation. Limiting the proposal to voting qualifications in elections for Federal offices alone will clearly eliminate any constitutional conflict.

Fourth, completion of the sixth grade should, with respect to Federal elections, constitute a presumption that the applicant is literate. Literacy tests pose especially difficult problems in determining voter qualification. The essentially subjective judgment involved in each individual case, and the difficulty of challenging that judgment, have made literacy tests one of the cruelest and most abused of all voter qualification tests. The incidence of such abuse can be eliminated, or at least drastically curtailed by the proposed legislation providing that proof of completion of the sixth grade constitutes a presumption that the applicant is literate.

Finally, the 87th Congress—after 20 years of effort—passed and referred to the States for ratification a constitutional amendment to prohibit the levying of poll taxes as a condition to voting. Already 13 States have ratified the proposed amendment and in 3 more one body of the legislature has acted. I urge every State legislature to take prompt action on this matter and to outlaw the poll tax—which has too long been an outmoded and arbitrary bar to voting participation by minority groups and others—as the 24th amendment to the Constitution. This measure received bipartisan sponsorship and endorsement in the Congress, and I shall continue to work with Governors and legislative leaders of both parties in securing adoption of the anti-poll-tax amendment.

II. EDUCATION

Nearly 9 years have elapsed since the Supreme Court ruled that State laws requiring or permitting segregated schools violate the Constitution. That decision represented both good law and good judgment—it was both legally and morally right. Since that time it has become increasingly clear that neither violence nor legalistic evasions will be tolerated as a means of thwarting court-ordered desegregation, that closed schools are not an answer, that responsible

communities are able to handle the desegregation process in a calm and sensible manner. This is as it should be, for, as I stated to the Nation at the time of the Mississippi violence last September:

"* * * Our Nation is founded on the principle that observance of the law is the eternal safeguard of liberty, and defiance of the law is the surest road to tyranny. The law which we obey includes the final rulings of the courts, as well as the enactments of our legislative bodies. Even among law-abiding men, few laws are universally loved; but they are uniformly respected and not resisted.

Americans are free to disagree with the law but not to disobey it. For in a government of laws and not of men, no man, however prominent or powerful, and no mob, however unruly or boisterous, is entitled to defy a court of law. If this country should ever reach the point where any man or group of men, by force or threat of force, could long defy the commands of our court and our Constitution, then no law would stand free from doubts, no judge would be sure of his writ, and no citizen would be safe from his neighbors."

The shameful violence which accompanied but did not prevent the end of segregation at the University of Mississippi was an exception. State-supported universities in Georgia and South Carolina met this test in recent years with calm and maturity, as did the State-supported universities of Virginia, North Carolina, Florida, Texas, Louisiana, Tennessee, Arkansas, and Kentucky in earlier years. In addition, progress toward the desegregation of education at all levels has made other notable and peaceful strides, including the following forward moves in the last 2 years alone:

Desegregation plans have been put into effect peacefully in the public schools of Atlanta, Dallas, New Orleans, Memphis, and elsewhere, with over 60 school districts desegregated last year—frequently with the help of Federal persuasion and consultation, and in every case without incident or disorder.

Teacher-training institutes financed under the National Defense Education Act are no longer held in colleges which refuse to accept students without regard to race, and this has resulted in a number of institutions opening their doors to Negro applicants voluntarily.

The same is now true of institutes conducted by the National Science Foundation.

Beginning in September of this year, under the aid to impacted area school program, the Department of Health, Education, and Welfare will initiate a program of providing on-base facilities so that children living on military installations will no longer be required to attend segregated schools at Federal expense. These children should not be victimized by segregation merely because their father chose to serve in the Armed Forces and were assigned to an area where schools are operated on a segregated basis.

In addition, the Department of Justice and the Department of Health, Education, and Welfare have succeeded in obtaining voluntary desegregation in many other districts receiving "impacted area" school assistance; and, representing the Federal interest, have filed lawsuits to end segregation in a number of other districts.

The Department of Justice has also intervened to seek the opening of public schools in the case of Prince Edward County, Va., the only county in the Nation where there are no public schools, and where a bitter effort to thwart court decrees requiring desegregation has caused nearly 1,500 out of 1,800 school-age Negro children to go without any education for more than 3 years.

In these and other areas within its jurisdiction, the executive branch will continue its efforts to fulfill the constitutional objective of an equal, nonsegregated, educational opportunity for all children.

Despite these efforts, however, progress toward primary and secondary school desegregation has still been too slow, often painfully so. Those children who are being denied their constitutional rights are suffering a loss which can never be regained, and which will leave scars which can never be fully healed. I have in the past expressed my belief that the full authority of the Federal Government should be placed behind the achievement of school desegregation, in accordance with the command of the Constitution. One obvious area of Federal action is to help facilitate the transition to a desegregation in those areas which are conforming or wish to conform their practices to the law.

Many of these communities lack the resources necessary to eliminate segregation in their public schools while at the same time assuring that educational standards will be maintained and improved. The problem has been compounded

by the fact that the climate of mistrust in many communities has left many school officials with no qualified source to turn to for information and advice.

There is a need for technical assistance by the Office of Education to assist local communities in preparing and carrying out desegregation plans, including the supplying of information on means which have been employed to desegregate other schools successfully. There is also need for financial assistance to enable those communities which desire and need such assistance to employ specialized personnel to cope with problems occasioned by desegregation and to train school personnel to facilitate the transition to desegregation. While some facilities for providing this kind of assistance are presently available in the Office of Education, they are not adequate to the task.

I recommend, therefore, a program of Federal technical and financial assistance to aid school districts in the process of desegregation in compliance with the Constitution.

Finally, it is obvious that the unconstitutional and outmoded concept of "separate but equal" does not belong in the Federal statute books. This is particularly true with respect to higher education, where peaceful desegregation has been underway in practically every State for some time. I repeat, therefore, this administration's recommendation of last year that this phrase be eliminated from the Morrill Land Grant College Act.

III. EXTENSION AND EXPANSION OF THE COMMISSION ON CIVIL RIGHTS

The Commission on Civil Rights, established by the Civil Rights Act of 1957, has been in operation for more than 5 years and is scheduled to expire on November 30, 1963. During this time it has fulfilled its statutory mandate by investigating deprivations of the right to vote and denials of equal protection of the laws in education, employment, housing, and the administration of justice. The Commission's reports and recommendations have provided the basis for remedial action both by Congress and the executive branch.

There are, of course, many areas of denials of rights yet to be fully investigated. But the Commission is now in a position to provide even more useful service to the Nation. As more communities evidence a willingness to face frankly their problems of racial discrimination, there is an increasing need for expert guidance and assistance in devising workable programs for civil rights progress. Agencies of State and local governments, industry, labor, and community organizations, when faced with problems of segregation and racial tensions, all can benefit from information about how these problems have been solved in the past. The opportunity to seek an experienced and sympathetic forum on a voluntary basis can often open channels of communications between contending parties and help bring about the conditions necessary for orderly progress. And the use of public hearings—to contribute to public knowledge of the requirements of the Constitution and national policy—can create in these communities the atmosphere of understanding which is indispensable to peaceful and permanent solutions to racial problems.

The Federal Civil Rights Commission has the experience and capability to make a significant contribution toward achieving these objectives. It has advised the executive branch not only about desirable policy changes but about the administrative techniques needed to make these changes effective. If, however, the Commission is to perform these additional services effectively, changes in its authorizing statute are necessary and it should be placed on a more stable and more permanent basis. A proposal that the Commission be made a permanent body would be a pessimistic prediction that our problems will never be solved. On the other hand, to let the experience and knowledge gathered by the Commission go to waste, by allowing it to expire, or by extending its life only for another 2 years with no change in responsibility, would ignore the very real contribution this agency can make toward meeting our racial problems. I recommend, therefore, that the Congress authorize the Civil Rights Commission to serve as a national civil rights clearinghouse providing information, advice, and technical assistance to any requesting agency, private or public; that in order to fulfill these new responsibilities, the Commission be authorized to concentrate its activities upon those problems within the scope of its statute which most need attention; and that the life of the Commission be extended for a term of at least 4 more years.

IV. EMPLOYMENT

Racial discrimination in employment is especially injurious both to its victims and to the national economy. It results in a great waste of human resources

and creates serious community problems. It is, moreover, inconsistent with the democratic principle that no man should be denied employment commensurate with his abilities because of his race or creed or ancestry.

The President's Committee on Equal Employment Opportunity, reconstituted by Executive order in early 1961, has, under the leadership of the Vice President, taken significant steps to eliminate racial discrimination by those who do business with the Government. Hundreds of companies, covering 17 million jobs, have agreed to stringent nondiscriminatory provisions now standard in all Government contracts. One hundred and four industrial concerns—including most of the Nation's major employers—have in addition signed agreements calling for an affirmative attack on discrimination in employment; and 117 labor unions, representing about 85 percent of the membership of the AFL–CIO, have signed similar agreements with the Committee. Comprehensive compliance machinery has been instituted to enforce these agreements. The Committee has received over 1,300 complaints in 2 years—more than in the entire 7½ years of the Committee's prior existence—and has achieved corrective action on 72 percent of the cases handled, a heartening and unprecedented record. Significant results have been achieved in placing Negroes with contractors who previously employed whites only, and in the elevation of Negroes to a far higher proportion of professional, technical, and supervisory jobs. Let me repeat my assurances that these provisions in Government contracts and the voluntary nondiscrimination agreements will be carefully monitored and strictly enforced.

In addition, the Federal Government, as an employer, has continued to pursue a policy of nondiscrimination in its employment and promotion programs. Negro high school and college graduates are now being intensively sought out and recruited. A policy of not distinguishing on grounds of race is not limited to the appointment of distinguished Negroes—although they have in fact have appointed to a record number of high policymaking, judicial, and administrative posts. There has also been a significant increase in the number of Negroes employed in the middle and upper grades of the career Federal service. In jobs paying $4,500 to $10,000 annually, for example, there was an increase of 20 percent in the number of Negroes during the year ending June 30, 1962—over three times the rate of increase for all employees in those grades during the year. Career civil servants will continue to be employed and promoted on the basis of merit, and not color, in every agency of the Federal Government, including all regional and local offices.

This Government has also adopted a new Executive policy with respect to the organization of its employees. As part of this policy, only those Federal employee labor organizations that do not discriminate on grounds of race or color will be recognized.

Outside of Government employment, the National Labor Relations Board is now considering cases involving charges of racial discrimination against a number of union locals. I have directed the Department of Justice to participate in these cases and to urge the National Labor Relations Board to take appropriate action against racial discrimination in unions. It is my hope that administrative action and litigation will make unnecessary the enactment of legislation with respect to union discrimination.

V. PUBLIC ACCOMMODATIONS

No act is more contrary to the spirit of our democracy and Constitution—or more rightfully resented by a Negro citizen who seeks only equal treatment—than the barring of that citizen from restaurants, hotels, theaters, recreational areas, and other public accommodations and facilities.

Wherever possible, this administration has dealt sternly with such acts. In 1961, the Justice Department and the Interstate Commerce Commission successfully took action to bring an end to discrimination in rail and bus facilities. In 1962, the 15 airports still maintaining segregated facilities were persuaded to change their practices, 13 voluntarily and 2 others after the Department of Justice brought legal action. As a result of these steps, systematic segregation in interstate transportation has virtually ceased to exist. No doubt isolated instances of discrimination in transportation terminals, restaurants, restrooms, and other facilities will continue to crop up, but any such discrimination will be dealt with promptly.

In addition, restaurants and public facilities in buildings leased by the Federal Government have been opened up to all Federal employees in areas where previously they had been segregated. The General Services Administration no

longer contracts for the lease of space in office buildings unless such facilities are available to all Federal employees without regard to race. This move has taken place without fanfare and practically without incident; and full equality of facilities will continue to be made available to all Federal employees in every State.

National parks, forests, and other recreation areas—and the District of Columbia Stadium—are open to all without regard to race. Meetings sponsored by the Federal Government or addressed by Federal appointees are held in hotels and halls which do not practice discrimination or segregation. The Department of Justice has asked the Supreme Court to reverse the convictions of Negroes arrested for seeking to use public accommodations; and took action both through the courts and the use of Federal marshals to protect those who were testing the desegregation of transportation facilities.

In these and other ways, the Federal Government will continue to encourage and support action by State and local communities, and by private entrepreneurs, to assure all members of the public equal access to all public accommodations. A country with a "colorblind" constitution, and with no castes or classes among its citizens, cannot afford to do less.

VI. OTHER USES OF FEDERAL FUNDS

The basic standard of nondiscrimination—which I earlier stated has now been applied by the executive branch to every area of its activity—affects other programs not listed above:

Although President Truman ordered the armed services of this country desegregated in 1948, it was necessary in 1962 to bar segregation formally and specifically in the Army and Air Force Reserves and in the training of all civil defense workers.

A new Executive order on housing, as unanimously recommended by the Civil Rights Commission in 1959, prohibits discrimination in the sale, lease, or use of housing owned or constructed in the future by the Federal Government or guaranteed under the FHA, VA, and Farmers Home Administration program. With regard to existing property owned or financed through the Federal Government, the departments and agencies are directed to take every appropriate action to promote the termination of discriminatory practices that may exist. A President's Committee on Equal Housing Opportunity was created by the order to implement its provisions.

A Committee on Equal Opportunity in the Armed Forces has been established to investigate and make recommendations regarding the treatment of minority groups, with special emphasis on off-base problems.

The U.S. Coast Guard Academy now has Negro students for the first time in its 87 years of existence.

The Department of Justice has increased its prosecution of police brutality cases—many of them in Northern States—and is assisting State and local police departments in meeting this problem.

State employees merit systems operating programs financed with Federal funds are now prohibited from discriminating on the basis of race or color.

The Justice Department is challenging the constitutionality of the "separate but equal" provisions which permit hospitals constructed with Federal funds to discriminate racially in the location of patients and the acceptance of doctors.

In short, the executive branch of the Federal Government, under this administration and in all of its activities, now stands squarely behind the principle of equal opportunity, without segregation or discrimination, in the employment of Federal funds, facilities, and personnel. All officials at every level are charged with the responsibility of implementing this principle; and a formal interdepartmental action group, under White House chairmanship, oversees this effort and follows through on each directive. For the first time, the full force of Federal executive authority is being exerted in the battle against race discrimination.

CONCLUSION

The various steps which have been undertaken or which are proposed in this message do not constitute a final answer to the problems of race discrimination in this country. They do constitute a list of priorities—steps which can be taken by the executive branch and measures which can be enacted by the 88th Congress. Other measures directed toward these same goals will be favorably commented on and supported, as they have in the past; and they will be signed, if enacted into law.

In addition, it is my hope that this message will lend encouragement to those State and local governments, and to private organizations, corporations, and individuals, who share my concern over the gap between our precepts and our practices. This is an effort in which every individual who asks what he can do for his country should be able and willing to take part. It is important, for example, for private citizens and local governments to support the State Department's effort to end the discriminatory treatment suffered by too many foreign diplomats, students, and visitors to this country. But it is not enough to treat those from other lands with equality and dignity—the same treatment must be afforded to every American citizen.

The program outlined in this message should not provide the occasion for sectional bitterness. No State or section of this Nation can pretend a self-righteous role, for every area has its own civil rights problems.

Nor should the basic elements of this program be imperiled by partisanship. The proposals put forth are consistent with the platforms of both parties and with the positions of their leaders. Inevitably there will be disagreement about means and strategy. But I would hope that on issues of constitutional rights and freedom, as in matters affecting our national security, there is a fundamental unity among us that will survive partisan debate over particular issues.

The centennial of the issuance of the Emancipation Proclamation is an occasion for celebration, for a sober assessment of our failures, and for rededication to the goals of freedom. Surely there could be no more meaningful observance of the centennal than the enactment of effective civil rights legislation and the continuation of effective Executive action.

JOHN F. KENNEDY.

THE WHITE HOUSE, *February 28, 1963.*

The CHAIRMAN. We shall now hear from any members of our own Judiciary Committee who care to express themselves, and then we will hear from any Senators who care to express themselves.

Are there any other members of our committee who want to be heard? Mr. Lindsay?

STATEMENT OF HON. JOHN V. LINDSAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. LINDSAY. Thank you, Mr. Chairman.

Mr. Chairman and my colleagues on the Committee on the Judiciary, I appreciate the opportunity to testify today in behalf of my bill, H.R. 3140, which is identical to H.R. 3139 introduced by the ranking minority member of our committee, Mr. McCulloch. Comparable legislation has been introduced by almost 40 of our colleagues.

Others, in the weeks to come, will appear before this committee to fully document the necessity for this legislation. Chapter and verse will be cited demonstrating the need to remove the remaining bars to full citizenship for millions of Americans. These hearings, I expect, will point out the great distance between the American promise, which received its most eloquent expression in the Declaration of Independence, and the practice.

One need only turn to the expressions of frustration now being vented in Alabama to understand the depths of despair over the American failure to deliver on that promise. I hope that these hearings, Mr. Chairman, will be the first step toward the enactment of meaningful civil rights legislation in the months ahead.

Meanwhile, there must be firm executive action. In a telegram to the President of the United States last Saturday morning I stated as follows:

I respectfully urge you to take immediate action to stop the continued use of police brutality in Alabama against the legitimate goals of U.S. citizens. Negroes in our country have already waited too long for full citizenship. It is

too late to counsel patience when police dogs are turned loose and human freedom and human dignity are being trampled in the streets.

There is Executive power to act because these riots have occurred in connection with voting rights. I submit also that there is a first amendment power—freedom of speech, freedom of assembly, freedom to petition the Government.

In accordance with the suggestion that has been made by another person, I think it is worth suggesting, too, that it would be well for the President to ask the Red Cross to move into the area in order to protect the children and defenseless women who have been jailed without bail. It seems to me that this would be a logical course to take. The Red Cross has been invoked in earthquakes and fire in our country and in other countries. This, to me, is more serious than either earthquake or fire.

Mr. Chairman, it is my purpose today to discuss in general fashion the legislation that we have submitted to Congress for its consideration and hopefully for its approval. Let me state, at the outset, that H.R. 3140 is totally consistent with the 1960 platform of the Republican Party and it has been offered in the hope that we may redeem our pledge to the American people. Our bill is comprehensive in scope yet modern in application. It is comprehensive, for its recognizes that education, full and fair employment, and the prompt and equal administration of justice are as important as voting rights which we have dealt with in the past. It is moderate, because it is keyed to enactment.

I do not claim that this is a perfect measure; that it offers solutions to all the problems. I do claim, however, that through our joint efforts we can enact meaningful civil rights legislation before the final gavel signals the end of the 88th Congress. I am pledged to achieve this goal.

Mr. Chairman, let me now discuss the provisions of this bill.

(1) The Civil Rights Commission is made permanent.

When I introduced this measure in January, I had no idea that this would become so controversial a provision. Both of our great political parties made specific pledges in their 1960 platforms to make the Commission a permanent body. There seems to be, as far as I can tell, fairly general satisfaction with the work of the Commission to date. Hence, my surprise when the President in his civil rights message to Congress on February 28 called for only a 4-year extension and stated that a—

proposal that the Commission be made a permanent body would be a pessimistic prediction that our problems will never be solved.

We have labored for over 180 years as a nation without solving these problems. It seems unlikely that we will solve them in the next 4. I feel very strongly that it is high time that we ceased using the Commission as a pawn. When a 2-year extension of the Civil Rights Commission becomes the price for no civil rights legislation, we are breaking our pledge to the American people. It is my hope that this device has been used for the last time. As long as the future status of the Commission remains in doubt, it will continue to have difficulty in recruiting and maintaining the services of top-caliber people. It is a miracle that the Commission has made such a large and important contribution toward bettering our understanding of civil rights in America under such unfavorable circumstances.

To illustrate my point, I need only cite the unusual circumstances surrounding the issuance of the April 16 report of the Commission on Civil Rights which called on the President to consider withholding all Federal funds from the State of Mississippi.

Why did the Commission issue such a report and then not follow it up? The answer seems fairly clear—the Commission's hands had been tied once too often. Always faced with the possibility of an imminent demise, it has found it difficult to steer an independent course.

The CHAIRMAN. It may have been, Mr. Lindsay, that the public opinion in the country was not necessarily in accord with what the Commission had recommended in that regard despite the fact that the President himself put a damper on the idea of withholding funds. So I don't think it was due to the fact that there was a limitation on the duration of the Commission that forced that kind of a conclusion. There was grave room for doubt as to the efficacy and constitutionality of that proposal, as you undoubtedly know.

Mr. LINDSAY. I am sure that the chairman realizes that some very substantial legal memorandums have been submitted on this point, affirming the constitutionality of any such move. I believe the Civil Rights Commission, itself, would have issued a memorandum in support of its own conclusion, outlining clearly why it was constitutional, if it had not felt that it had been discouraged. I think my point may become a little clearer if I may be permitted to go on and illustrate another point.

In December of last year the Commission informed the Attorney General that it intended to hold public hearings in Mississippi covering a wide variety of subjects, including discrimination in voting rights, economic reprisals against Negroes, discrimination in the educational system in Mississippi, the impact of Federal programs in the State, and other matters. The Attorney General thereupon urged the Commission to refrain from holding its hearings in Mississippi because the dual presence of the Commission and the Department of Justice might prejudice the outcome of the Federal Government's litigation against Governor Barnett and other State officials. In effect, the Department of Justice was giving the Commission instructions as to how to do its job. Unhappily, but understandably, the Commission reluctantly acquiesced to the will of the Justice Department.

As long as the Commission acts within the bounds of its congressionally approved mandate, neither Congress nor the President nor the Attorney General acting for the President has any business placing restrictions on where the Commission should hold its hearings and when it should hold them. This situation clearly demonstrates why the Commission should be made permanent.

(2) Our bill gives the Civil Rights Commission additional authority to investigate instances of vote fraud, including the denial of the right to have one's vote counted.

When our committee reported out a bill in the 87th Congress to extend the life of the Civil Rights Commission, this provision, known as the Cramer amendment, received the approval of the committee at that time.

Vote fraud is a widespread phenomenon. Thousands of Americans go to the polls every year never knowing whether their votes will be counted honestly. It is not a local or regional problem; it affects

all Americans. Studies indicate that more than 3 million votes are "stolen or lost" in every national election through such devices as "tombstone voting," rigging the machines, jamming machines, buying votes, and the like.

I think the question can be simply stated: Is the right to have one's vote counted a civil right? The answer is clearly "Yes." Therefore it is our feeling that the Commission on Civil Rights should be empowered to investigate vote fraud. We will undoubtedly be told that the Commission on Civil Rights should not be involved in this area; that it is more properly the province of the Department of Justice. In a letter to Congressman Cramer, the then Deputy Attorney General Byron R. White stated—

> that the problem of election frauds is essentially one of law enforcement and the Commission is not a law enforcement agency. Its primary purpose is to collect and accumulate data so that a more intelligent study of the civil rights problem may be made.

Of course, the Civil Rights Commission is not an enforcement agency. We are not asking the Commission to become one. We are calling upon them to gather information because we believe that the right to vote is meaningless unless one's vote is properly counted. They are interrelated and they are both civil rights. Information is needed in order to properly enforce the laws that are now on the statute books.

(3) Our bill instructs the Bureau of Census to conduct a nationwide compilation of registration and voting statistics for the purpose of counting persons of voting age in every State by race, color, and national origin, who are registered to vote, and who have actually voted since January 1, 1960.

Mr. Chairman, this is voting recommendation No. 5 of the Civil Rights Commission's 1961 report. The members of the Commission unanimously support it.

Now, let me digress briefly. The President's civil rights recommendation, which you have introduced, includes a provision that in any civil action in which it is claimed that there exists a pattern or practice of discrimination in voting rights the Attorney General may seek a court order declaring that persons claimed to be so denied the right to vote are qualified to vote in Federal and State elections under certain circumstances if (1) fewer than 15 percent of the total number of voting age persons of the same race—as those alleged in the complaint to have been discriminated against—are registered or otherwise qualified to vote in the voting district in question; (2) such person is qualified under State law to vote; and (3) such person has been deprived unedr color of law of the opportunity to register or otherwise qualify to vote.

I think this is an important recommendation and one which I believe has considerable merit. I do, however, see one problem. How are we going to determine the "15 percent total number of voting age persons of the same race"? This is going to be a difficult problem, and one which I submit can only be solved if our suggestion authorizing the Bureau of the Census to compile registration and voting statistics is given prior implementation. It seems to me, and I believe that this is in accord with the Commission's recommendation in the 1961 report, that this information must be available before the President's

proposal could be properly enforced. We must have the statistics before the Attorney General will have the necessary data to act.

I therefore hope that these provisions can be considered in conjunction with one another. I think that the committee will see that they are interrelated.

Mr. Chairman, since the proposal in my bill is unfamiliar to most, I would like to provide some background on it.

Section 1 of the 14th amendment to the Constitution states as follows:

> Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a state, or the members of the Legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

The 14th amendment is not self-executing. Section 5 provides that—

> The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

We do not suggest at this time that legislation will be immediately offered to cut down representation in the House for any State or community. We do suggest, however, that it is our duty and obligation to have the facts and that section 5 of the 14th amendment instructs the Congress to find out the facts, so that we can determine what kind of action should be taken thereafter.

It is clear that if Congress had acted on this subject many years ago, under section 2 of the 14th amendment, the protracted court litigation on the subject, which will continue for years to come, would not have been necessary.

(4) Our bill creates a Commission on Equality of Opportunity in Employment. The Commission is to be composed of seven full-time members, appointed by the President, with no more than four members being of the same political party.

This is the most intricate provision of our bill. But I will try to be brief in my explanation. Others will testify at greater length on this point.

This Commission would replace the President's Committee on Equal Employment Opportunity, which was established under Presidential Executive order and which is composed of Cabinet officers who cannot devote full time to the subject and does not have subpena power or other authority to enforce fair practice orders against labor unions or employment agencies.

The Commission would be empowered to conduct investigations and hold hearings concerning charges of discrimination in employment by any business organization or labor union engaged in carrying out Government contracts or subcontracts. Employment agencies financed by Federal funds are also placed under the Commission's jurisdiction.

Necessary safeguards protect all parties concerned, including, of course, the right to judicial review and the full opportunity for vol-

untary compliance with the Commission's findings prior to the issuance of a formal order.

We all recognize that the goal of equal employment opportunity is still a long way from achievement.

The unemployment rate for nonwhites is at least twice as great as for whites. State employment services which receive Federal funds in some areas still operate on a racially discriminatory basis. The Civil Rights Commission has documented this point with precision time and time again.

These problems are not limited to one region of the country. Nor are they limited to one segment of our economy. Management as well as organized labor must bear heavy responsibility for the continued existence of patterns of employment discrimination as well as agencies of the various States and Federal Government.

Mr. Chairman, the creation of a Commission on Equality of Opportunity in Employment would be a significant step forward in our efforts to achieve equal job opportunity for all Americans.

(5) Our bill authorizes the Attorney General to institute a civil action in behalf of a person, or the child or ward of a person, who is seeking to enroll in a public school.

This is the controversial part III provision, confined to the school area, so limited we believe, after these many years of effort, that it can be enacted. We know that this is one of the most significant areas where progress in civil rights could be made in the United States today.

A good deal of progress in school desegregation was made right after the Supreme Court decision of 1954. By the close of the school year 1956–57, a total of 699 southern and border school districts had implemented desegregation plans. Significantly, only 9 of the 699 acted under the compulsion of court order. As opposition to the school segregation cases has hardened, there has been an increasing necessity for the Attorney General to intervene as a friend of the court, and an increasing awareness that this is an inadequate tool for dealing with this problem.

Today, there are 6,229 school districts in the 17 Southern and border States. Of these, 3,058 have both Negro and white students. Nine hundred and seventy-two (31.8 percent) of the biracial districts have policies or practices permitting the admission of Negroes to formerly all-white schools. However, according to a report of the Civil Rights Commission issued in December 1962, only 7.8 percent of over 3 million Negro students in these school districts attended integrated schools.

I would also submit that, although it takes different forms in the north, segregation in public schools is a serious problem there, too. We do not overlook this fact.

Mr. Chairman, we need this provision because it is unhealthy in this country to require the local residents of a community to carry the burden and the hazards of commencing litigation in the school area, with the Federal Government only free to come in as amicus curiae.

This power is broad and we dislike to see it exercised except when necessary. Therefore the bill is very carefully drawn to provide that the Federal courts are empowered to issue an order in a civil action of this kind only after a local complainant has exhausted his State's legal remedies, if such remedies are "plain, speedy, and efficient," and

only if the local school district has failed to institute a plan to desegregate its facilities "with all deliberate speed."

The CHAIRMAN. May I ask at that point, I was curious why you limited the so-called part III to one level or one facet of American life—education. Why didn't you include, for example, labor and voting, and education and transportation, and so forth?

Mr. LINDSAY. The answer to that, I think, is plain, Mr. Chairman. As you know, for a number of years, I have introduced and fought in this committee and on the floor for the broad part III provision which would empower the Attorney General to initiate civil injunctive actions in any area involving denials of equal protection of the laws; that is to say, in any area supported by public funds, whether it be a municipal park or playground, or whether it be a school. We have not been able to get that provision through this committee for the 5 years I have been a member. The Kennedy administration has refused to incorporate any part of it in its civil rights message and proposed bill submitted to Congress. We think the important thing to do is to so frame part III this year so that it has a chance of enactment. I am not overly optimistic about the chances of getting it through the House Judiciary Committee even in the limited form. But I think this is the only chance we have. Speaking for the minority side of the aisle, part III limited to school cases and the school area and desegregation of schools is a pledge and commitment contained in the 1960 Republican platform. We intend to deliver at least that much.

If the chairman thinks it is possible to go further and to include other areas of denial of equal opportunities, I am sure that he will have many friends and supporters. I wonder if he will have enough, however.

(6) Our bill provides that the Federal Government is authorized to offer technical assistance to States and localities, at their request, to aid them in desegregating their public schools.

(7) Our bill provides that citizens otherwise qualified to vote in a Federal election are presumed to have sufficient literacy, comprehension, and intelligence to vote if they have completed six grades of an accredited public school.

The bill thus creates a presumption in favor of the citizen, a presumption which could be rebutted and taken to the court, if necessary.

Mr. Chairman, I wish to express to you my appreciation for calling these hearings. I have not forgotten that this hearing room was the birthplace of the Civil Rights Acts of 1957 and 1960 which broke a congressional silence of more than 80 years on this subject.

In conclusion, Mr. Chairman, I want to emphasize that these problems concern New York city as much as they do Birmingham, Ala. The north must clean its own house and raise its own standards of equality. Otherwise our words will have a hollow ring.

This is a fateful time in the history of this Nation. No country, at so critical a moment in its history, can afford to have so large a portion of its citizenry relegated to second-class status. Sad to say, shabby treatment of the American Negro has become known throughout the world. What happens in Birmingham or Washington, D.C., is observed with shock and dismay in Asia, Africa, and all over the world.

We are faced with a nationwide problem which we must meet head on and attempt to solve. It is our hope that this legislation makes a useful contribution toward our efforts to solve this problem.

Mr. Chairman, this Congress must rededicate itself to the work begun in the Civil Rights Acts of 1957 and 1960. If we fail to act, our country and our hopes for a brighter future will be damaged irreparably.

Thank you.

The CHAIRMAN. Thank you, Mr. Lindsay.

Are there any questions?

Mr. KASTENMEIER. I want to compliment the gentleman on an excellent statement. I certainly share the indignation expressed by him, especially at the outset of the statement. I appreciate that there is a controversy as to whether or not the Civil Rights Commission should be made permanent or only extended for 2 or 4 years. But I do note that the chairman's bill, that is, H.R. 5456, does include expanded authority for the Commission. I am wondering whether you would support such expanded authority.

Mr. LINDSAY. Yes. I am quite familiar with the provisions of that and I would support it wholeheartedly. H.R. 3140, which I have introduced, goes quite far. I do think that the authority of the Commission should be expanded to include the area of vote frauds, as I mentioned.

I think, too, that the Commission ought to be moving right now into Alabama and examining every detail of the behavior of constituted authority. If we did not have a Civil Rights Commission, in fact, with this mandate, I would think it imperative that this committee have hearings in Mississippi and Alabama and New Jersey and Westchester, N.Y., on this subject.

The Civil Rights Commission has a very important function, which is to hold these hearings in all parts of the United States, and to be there on the scene. Were it not for the Commission's existence, I would say this committee ought to be traveling.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

The CHAIRMAN. We have with us this morning the distinguished junior Senator from New York, and one not unfamiliar with these parts, Senator Keating. But, Senator, I understand that Mr. Cahill wanted to make a statement for about 2 minutes. Would you care to yield to him for 2 minutes?

Senator KEATING. Yes.

The CHAIRMAN. Mr. Cahill?

STATEMENT OF HON. WILLIAM T. CAHILL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. CAHILL. Mr. Chairman, I would like to make this brief statement in support of the bill I have introduced, and say to the chairman and the subcommittee that in my opinion it is indeed unfortunate that any additional legislation is required to carry out the mandate of the U.S. Constitution in the field of civil rights.

The necessity for additional legislation, however, becomes more apparent with each passing week. Turbulence, disorder, violence, rioting, and killings are reported on the front pages of the daily press with increasing intensity as each week goes by.

The Congress and the present administration have been for 2 years espousing, through the media of Fourth of July speeches, political hustings, television interviews, and other oratorical endeavors, the need to protect the inalienable rights of the individuals who enjoy U.S. citizenship. Yet, while these speeches are being made the law already established as the "law of the land" by the Supreme Court of the United States is being violated or ignored in several States of the Union. In some communities Negroes have status which is not better than that of a conquered people.

While many reasons are advanced for these conditions, while many excuses are uttered in defense of the inaction and inactivity, the real truth is that these intolerable conditions do exist, in spite of our laws and our Constitution, and do cry out for the immediate enactment of legislation that will give to each and every American citizen the right to vote, the right to work, the right to a first-class education and the right to enjoy his or her freedom as citizens of this great country.

That is why, Mr. Chairman, I have joined with many other of my colleagues in introducing a comprehensive civil rights bill. This bill covers many facets of the civil rights problems, as it must if true progress is to be made. It makes the Civil Rights Commission permanent and grants it additional authority to investigate fraudulent voting practices of all types; it grants the Attorney General authority to institute civil actions to desegregate public schools and to provide financial assistance to those schools to accelerate desegregation; it creates a Commission to assure equal employment opportunity in every business organization holding a Federal contract, every labor organization whose members are employed on such contracts, and every employment agency supported in whole or in part with Federal funds; and, finally, it creates a presumption of literacy that every individual is qualified to vote in a Federal election if he has completed six grades of an accredited school.

Others, I know, will discuss various facets of this bill and civil rights in general. There are two closely related aspects, however, which I believe are most essential and which need broader elaboration. These are the right to a sound education and the right to vote.

Knowing that other aspects of the civil rights subject will be discussed by other witnesses I shall therefore confine my observations to these two subjects and will discuss briefly with the committee the need for additional legislation in order to insure the qualified Negro of this country his right to vote and his right to a first-class education.

Mr. Chairman, for the purpose of saving the committee time, I now ask that my statement in lieu of being read be inserted at this point in the record. Along these lines I have obtained, and have included in my statement, the most recent surveys and statistics concerning separate and equal school facilities and voting abuses in the United States.

(The statement referred to follows:)

STATEMENT OF HON. WILLIAM T. CAHILL, OF NEW JERSEY, IN BEHALF OF CIVIL RIGHTS LEGISLATION

I am convinced, Mr. Chairman, that a sound education, which can only be obtained from qualified schools with accredited and experienced teachers, is absolutely essential if the individual is to possess the tools necessary to gain useful employment after completion of his education.

I am also convinced that an individual must have, through the exercise of his right of franchise, the right to participate in the selection of his elected leaders. Without this right he is being denied the sine qua non of American citizenship.

Let me first direct my observations to the field of education in this country. Through the voluntary action of many local communities, and the forced action of the courts, many school districts have begun to integrate, at least on a token basis. But we well know what a long way there is to go. To merely examine the 1962 figures of the Civil Rights Commission reveals the state of progress that will have to be made. Of the 6,229 school districts, located in 17 Southern and border States and the District of Columbia, 3,058 districts contain both white and Negro pupils. Yet, of these 3,058 districts, only 972 have policies and practices permitting the admission of Negroes to formerly all-white schools. Moreover, of these 972 desegregated school districts, 815 are located in border areas and contain 243,000 (95.2 percent) of approximately 255,000 Negro students who attend with white students in the South and border areas. Negro students attending schools with whites constitute about 7.8 percent of the total Negro school population in the South and three Southern States have instituted no integration. Similarly, the Commission prepared two reports in 1962 on selected southern, northern, and western school districts which dramatically indicate the ground left to be covered. The border State of Kentucky, for example, has about half of its Negro students attending all-Negro schools, while in North Carolina 1 percent of the Negro pupils in 11 communities have been enrolled with white pupils and in 162 school districts a dual system of segregated schools continue to operate. In the State of Virginia, moreover, a total of 533 Negroes were attending biracial schools out of an overall Negro school population of 217,000. The northern cities with heavy Negro populations have been found to maintain functional segregation also. It may not be as pervasive in its overall effect, but its existence in such communities as New Rochelle, Philadelphia, Chicago, and St. Louis does exist.

The conclusions to be drawn from the above facts and figures is that a greater effort must be made to speed up school integration. The Negro communities in many States, in association with civil rights groups, have made noble advances in furthering the process. But their manpower and resources are limited. When it is realized that there are only 80 Negro lawyers in the South today, who will take civil rights cases, and only a handful of white lawyers willing to accept such suits, then there seems little question that the Attorney General should be given the added authority to bring civil actions in this field of civil rights. We have already given him the authority in voter qualification cases and there seems little reason to deny him such authority in the equally important area of education. Constitutionally it is justified, and socially it is necessary.

To those, moreover, who may maintain that inequality does not exist in the maintenance of separate but equal school facilities, I need only cite two recent surveys to demonstrate that the Negro is being denied his full rights of citizenship by being shunted to such facilities.

The Cook County, Ill., Department of Public Aid made a detailed, scientific survey of public welfare recipients in 1962. A total sample of 680 persons was selected of whom 97.9 percent were Negroes. Three hundred and forty of the aid recipients completed their education in Illinois where functional segregation continues to exist, but not to the same degree as in the South. The average education level of these individuals was 9.4 years while their average achievement level (measured by the New Stanford Reading Test) was 6.8 years. In addition, Illinois had the lowest percentage of functional illiterates—those failing to complete 6 years of formal school—with 1.2 percent based on grade placement and 33.4 percent based on achievement. Of the 134 who had completed their education in Mississippi, the average educational level was 7.6 years, while the achievement level was 4.4 years. Even more indicative, however, was the fact that functional illiteracy existed in 14.2 percent of the cases on the educational level and 76.9 percent on the achievement level. The educational levels and achievement levels of the recipients from six other Deep South States and the border States of Tennessee and Missouri fell between Illinois and Mississippi.

The conclusion to be drawn from this study, as I view it, is not the laudatory achievement of the Illinois educational system, but the obviously inferior education which the Negro students received in the segregated schools of Mississippi and other Southern States which continue to practice segregation.

A similar survey was prepared by the Civil Rights Commission for the city of New Rochelle, N.Y. One elementary school with a 94-percent nonwhite enrollment had an average vocabulary score of 4.6 in fifth grade and 5.9 in sixth grade, and an average comprehensive score of 4.3 in fifth grade and 6.1 in sixth. Another elementary school in the city with only 1.6 percent nonwhite enrollment had 7.4 and 8.7 vocabulary scores in the fifth and sixth grade respectively, while the respective comprehension scores were 6.8 and 7.6. IQ scores, reading readiness test results, and achievement tests revealed the same pattern.

The conclusions to be drawn from this overall picture is that the opportunity to be a first-class citizen does not exist until one is granted the privilege of attaining a first-class education.

Now, Mr. Chairman, let me discuss, for just a few moments, the other side of the coin; namely, the right to cast a ballot to elect officials who, to a large extent, have the right of determining the quality of the education of our citizens and all other rights to which we as citizens are entitled. Without this right of participation, in the selection of those who would govern us, we have little if anything to say in the government of our community or State or our Nation. Therefore the right to vote is the first essential and must be considered as the first order of business in any civil rights legislation.

There is no question that advances are being made in the field of voting rights. Whereas, in 1932, there were less than 100,000 registered Negroes in the 12 Southern States, according to the Civil Rights Commission, there were 645,000 in 1947 and 1,362,000 in 1960 out of approximately 5 million eligible. These are forward strides which have resulted from the voluntary efforts of local communities and the legal efforts of the Department of Justice under Presidents Eisenhower and Kennedy. There is no question, however, that sizable progress remains to be accomplished. In recent analysis of the 10 Southern States where the most pervasive disenfranchisement exists, 129 counties were spotlighted which contained less than 10-percent Negro registration of those ostensibly eligible. In many counties, moreover, not a single Negro was registered.

It was with these figures in mind, then, that I introduced H.R. 3141, which contains a legal presumption that a person having a sixth-grade education in an accredited school shall be presumed qualified to vote. Admittedly, this does not rule out the possibility that a State may continue to utilize such a test, although I am pleased to indicate that my State of New Jersey does not resort to such a device. But, with the survey from Cook County in mind which I referred to above, I believe it desirable to permit States to continue using literacy tests, if they so choose, to make certain that individuals could intelligently exercise the voter franchise. If States continue to rely on literacy tests, however, the provision in the bill requires them to use them without discrimination and places the burden upon the States to so justify their use.

In addition, I might add that I see great value in adopting two other provisions that have been proposed in bills introduced by the chairman. One would prohibit the deprivation of the right to vote to any person by means of the application of standards or procedures more stringent than were applied to others similarly situated. The enactment of this provision should eliminate the employment of arbitrary and discriminatory registration procedures. The other would authorize the expeditious handling of voter suits by Federal courts in order to speed up the disposition of legal suits which challenge voter disenfranchisement. The Constitution, through article 1, sections 2 and 4, and the 14th and 15th amendments, would seem to give ample authority for Congress to act on these proposals and I see no good reason for the action not to be taken in this session.

Enough has been said, I believe, to demonstrate that all deliberate speed has not been exercised in granting Negro citizens the right to vote or to attend integrated schools. We may not expect wonders overnight, but surely, in the dynamic era in which we are now living, we can expect more rapid results than have so far been forthcoming.

While the bill that I have introduced is not a "cure-all," it does provide additional rights and remedies for those citizens being deprived of a sound education and of their right to vote. I would, therefore, urge upon you, Mr. Chairman, that this subcommittee report the bill favorably to the full committee at the earliest possible moment so that this important legislation can be brought to the floor of the House without delay and so that we can have an effective piece of civil rights legislation during the 1st session of the 88th Congress.

I appreciate very much the opportunity of testifying before you, Mr. Chairman, and the other distinguished members of this subcommittee.

Additional Statement by Hon. William T. Cahill, of New Jersey, in Behalf of Civil Rights Legislation

Mr. Chairman, I believe that my views concerning civil rights legislation are well known to the members of this subcommittee, to the members of the full committee, to the people of New Jersey, and I would hope to the people of the entire country.

Since my service began in the House of Representatives, I have always supported legislation which I have believed to be necessary to provide all Americans regardless of race, color, or creed with equal rights and equal opportunities.

As I pointed out to the committee in my statement in support of H.R. 3141, a bill which I introduced in the House of Representatives, it is unfortunate that any legislation is required to carry out the mandate of the U.S. Constitution in the field of civil rights. The necessity for additional legislation, however, becomes more apparent with each passing week. Turbulence, disorder, violence, rioting, and killings are reported on the front pages of the daily press with increasing intensity as each week goes by.

In my statement under date of May 8, 1963, to the committee in support of H.R. 3141, which I introduced, I also pointed out some interesting statistics relative to the deprivation of voting rights and the inequality of education throughout large sections of these United States. Subsequent to the introduction of H.R. 3141, I joined Congressmen Lindsay, Mathias, and MacGregor, fellow Republican members of the House Judiciary Committee, in sponsoring additional legislation in the field of civil rights. The bill which I introduced is known as H.R. 6721.

It was my conviction then and it is my conviction now that this bill and the companion bills introduced by some 40 Republican Members of the House provide the correct route to ultimate civil rights and equality for all Americans. I might point out that these Republican bills were introduced on June 3, 1963, and that it was not until 3 weeks after the introduction of these bills that the administration bill was introduced in the House of Representatives on June 20, 1963.

I want to make it clear, however, Mr. Chairman, that I have no pride in authorship and am ready to support any effective civil rights bill that is presented by this committee to the House of Representatives. I would point out, however, that the administration bill, in most instances, is identical to the bill which I introduced in June of 1963. The important difference between these two bills, I believe is the approach to civil rights rather than the objective sought to be attained. Both bills seek the same end result.

The bill I introduced uses the 14th amendment as the route to civil rights while the administration bill relies chiefly upon the commerce clause of the Constitution. I personally favor the 14th amendment approach, believing that this approach will be more readily acceptable and therefore more easily approved by both Houses of the Congress. While this is the principal difference between the two bills, I would point out to this subcommittee that another basic difference has to do with the Civil Rights Commission. Under the Republican bill, the Civil Rights Commission would be made permanent. Under the administration bill, the Civil Rights Commission would only be extended until 1967.

I am convinced that the Civil Rights Commission has rendered outstanding service to this Nation and by the need that presently exists has merited the full confidence of this Congress. It should therefore be made permanent. It would be my hope that the committee would accept the recommendation of the Republican members and make the Civil Rights Commission permanent.

Much has been said about civil rights and much more could be said. I know, however, because I have been present and listened to the testimony of the Attorney General and several others who have appeared before this committee that all facets of the civil rights question have been thoroughly discussed by these witnesses.

I would also say, Mr. Chairman, that I have complete confidence in the members of this subcommittee. I know all of you personally. I have a great respect for your legal ability. More importantly, I am convinced of your sincerity of purpose and your dedicated desire to work out an effective civil rights bill. For this reason, I shall not burden the committee with additional remarks but shall merely reaffirm my complete support for effective civil rights legislation and shall pledge to the subcommittee my 100-percent cooperation before the full committee in seeking to have the full committee approve effective legislation. I shall further represent to this subcommittee that I shall not only vote for but that I shall

effectively support on the House floor strong effective and necessary civil rights legislation.

I am proud to be a member of this committee and I have every expectation and confidence that this committee will approve for presentation to the House of Representatives in the immediate future an effective, realistic, and workable civ rights bill.

The CHAIRMAN. Now we are privileged to hear from Senator Keating. Senator, we welcome you, shall I say, home again and welcome you, shall I also say, to sacred precincts which were the scene of your previous triumphs.

STATEMENT OF HON. KENNETH B. KEATING, A U.S. SENATOR FROM THE STATE OF NEW YORK

Senator KEATING. Mr. Chairman, before I respond to that, may I express my gratification in being here. I understand you have just passed another milestone and I want to congratulate you on your long and distinguished service in this body, and to express the hope that you will have many happy returns of the day.

You are a young acting man for the years that you have been burdened with. We, who have served with you, have always found you very fair. As you know, you and I have had great battles together and against each other. On all occasions I have had deep respect and great affection for you.

The CHAIRMAN. Thank you very much, Senator.

Senator KEATING. I want to commend you, Mr. Chairman, and the entire committee, on scheduling these hearings. It was a great privilege to me to be a member of this committee during my entire service in the House. Anyone who has followed the course of civil rights legislation in the past knows that we must look to this committee to set the pace for action on this subject. That is the reason I have come here today. It may seem a little bit presumptuous for a Member of the other body to be here, but it is my judgment, based on experience, that this will be the decisive forum in determining what Congress will do to meet its obligations in this field.

The Senate Subcommittee on Constitutional Rights has scheduled hearings later this month on bills to extend the life of the Commission on Civil Rights. It is planned to hold additional hearings in June on other pending bills. But, no matter what the Senate subcommittee does, past experience offers no basis for optimism that any civil rights bill will be able to survive a full Judiciary Committee filibuster and the other obstructionist parliamentary devices which we have learned to anticipate.

For that reason, all of us interested in civil rights legislation look to this committee for leadership. Your recommendations will set the stage for whatever results are to be achieved. I am confident that the committee will deal diligently and earnestly with the important issues at stake here.

The urgent need for civil rights legislation is clearly illustrated by a recent exchange of correspondence which I had with the head of the Civil Rights Division of the Department of Justice, Assistant Attorney General Burke Marshall. Since this exchange of letters has not previously been made public, I have appended copies to my statement

and request that they be printed in the record of the committee's hearings following my testimony.

In brief, my original letter to Mr. Marshall dated April 15, 1963, expressed my view that every necessary step should be taken by the Federal Government to protect the rights and safety of citizens involved in the events still in progress in Alabama and Mississippi and requested a report on the situation from the Department.

In a reply dated the very next day, April 16, Mr. Marshall outlined the steps which the Department had initiated and stated that every reported case was being investigated as rapidly as humanly possible. At the same time, and this is most significant for the purpose of this hearing, Mr. Marshall pointed out that—

These cases are difficult, however, for the reason that we are required to prove that the defendant's purpose was to interfere with registration and voting.

In view of this statement, I wrote to Mr. Marshall again on April 22, 1963, more than 3 weeks ago, asking his comments on whether the situation would be improved by legislation authorizing the Attorney General—

to institute civil injunctive suits in all civil rights cases, and not just voting cases, and whether the Department would favor such legislation.

The CHAIRMAN. Would that mean, Senator, when you say "all civil rights cases," that would comprise all facets of American life, like transportation, education, labor, and so forth?

Senator KEATING. It would be the old part III that you and I fought, bled, and died for and succeeded in writing into the House bill in 1957; that is correct.

To date, no reply has been received to my April 22 letter. I do not say this critically, because I am aware of the many problems which the Department of Justice has and know of the efforts which Mr. Marshall personally is making to meet with the principals in Birmingham. He is an able and dedicated lawyer, and I am certain that he is doing the best he can, with the means available to him, to carry out his responsibilities.

There is, however, a glaring gap in the legal arsenal of the Federal Government if the Department cannot institute suits to protect Negro citizens peaceably demonstrating for equal rights from being set upon by dogs, doused with water hoses, and subjected to mass arrests.

There has been a great deal of interest this year in so-called public defender legislation. I favor such legislation—but what about a public defender for law abiding citizens attempting to enjoy their rights under the Constitution? Men, women, and children struggling for equal protection of the law certainly deserve and need the help of their Government, at least as much as suspected criminals attempting to beat a rap. Let those who think we have moved too far in the field of civil rights consider for a moment the contrast between what the Federal Government does to prosecute unfair trade practices and unfair labor practices with what it does to protect against deprivations of civil rights of the most outrageous and shocking character.

This committee recommended legislation in 1956 and 1957, during my tenure here, which would give the Attorney General the authority needed to deal with all violations of civil rights and not just violations of voting rights. We succeeded in keeping this language in the bill

on the House floor. Unfortunately, that provision was rejected in the Senate, and a watered-down bill was all that could be enacted. As a result, 5 or 6 more crucial years have been lost in equipping the Federal Government with the jurisdiction it must have to enforce the 14th amendment to the Constitution.

I know that decent Americans in every part of our Nation are shocked by the photographs and reports of violence and intimidation in Birmingham and other places. I know that decent Americans in every part of our land were outraged by the tragic death of William L. Moore during his pilgrimage for civil rights.

There have been and will be many martyrs in the fights for civil rights. William Moore's one-man crusade is an eloquent answer to those who have insisted that civil rights is solely a Negro cause. Civil rights obviously is not a Negro or a white man's cause, but an American cause, in which every citizen concerned about enforcing the Constitution should be joined.

The people of Alabama obviously were as shocked by the Moore case as were Americans in other parts of the Nation. It must be said, at the same time, that the pattern of unpunished lawlessness, intimidation, and reprisals prevalent in some areas of our country is bound to breed exactly this kind of violence. Massive resistance is not merely a theory, but a practice which encourages contempt for and defiance of the law. As long as the rights of Americans under the Constitution can be flouted and disregarded with official connivance, we must all share in the responsibility for such terrible incidents.

It is not my purpose today to discuss the technical details of all the bills which are the subject of this hearing. I would like to conclude, however, with these observations:

First, we must not ignore the recommendations of the Commission of Civil Rights. This Commission was established by Congress to advise the President and Congress on measures needed to protect Americans against all forms of unlawful and unconstitutional discrimination. It has done its job well despite the many obstacles in its path, and, acting with a remarkable degree of unanimity, it has exposed a wide gulf between our daily practices and the magnificent promises of the Constitution. We would not be keeping faith with the American people or the distinguished men who have contributed their time and wisdom to these problems if we failed to give the Commission's recommendations the fullest consideration.

Second, we must not limit our action on civil rights to simply another bill on voting. The exercise of the franchise has been called the key to civil rights progress, but, in truth, every measure proposed to help remove the barriers to equal opportunity and equal protection is needed to make this a significant year of progress for civil rights.

Third, and most importantly, we must not let the subject of civil rights become a political football. We all know that no civil rights bill stands a chance without bipartisan support. We all know that there are champions of civil rights in both parties. It will be up to those of us who believe in this cause to convince the leadership of both parties that this is a matter deserving of the highest priority in the deliberations of this Congress. I hope we can dedicate ourselves to work together as skillfully, as diligently, and as tirelessly for the Constitution as others have worked for so many years in the past to defeat our efforts.

I ask that my exchange of correspondence with the Department of Justice, Mr. Chairman, be appended at the end of my remarks. I do not want to close without commending my distinguished colleague from Ohio, Congressman McCulloch, in a manner of speaking my distinguished successor in the chair he is now occupying, for the contribution he has made by the introduction of an omnibus bill with the cosponsorship of a large number of the members of our party.

I am sure that both the chairman and Congressman McCulloch recognize the necessity of working together in the solution of this problem. I close, as I began, with the observation that we look to this committee primarily for leadership in this area.

The CHAIRMAN. Thank you, Senator, for that very splendid and cogent statement. It is the type of statement we uniformly expect of you. The correspondence you referred to will be inserted in the record at this point.

(The documents referred to follow:)

APPENDIX

(EXCHANGE OF CORRESPONDENCE WITH DEPARTMENT OF JUSTICE)

APRIL 15, 1963.

MY DEAR MR. MARSHALL: A number of my constituents have written to me in protest against the tactics being used to intimidate prospective Negro voters in Alabama and Mississippi.

I am deeply concerned about this situation and believe that every necessary step should be taken by the Federal Government to protect the rights and safety of these citizens. I would be grateful for a report from the Department on this matter.

Your cooperation, as always, is deeply appreciated.

Very sincerely yours,

KENNETH B. KEATING.

APRIL 16, 1963.

DEAR SENATOR KEATING: In reply to your letter of April 15, I am happy to furnish you the following information.

During the past 3 years the Department has established the principle that, regardless of the form which a threat or intimidation takes, the Department is authorized to act to remedy the effect of the intimidation on Negro citizens. Thus economic sanctions such as evictions and the closing of the channels of trade have been held to be violations of section 1971(b). In addition, we have engaged in considerable negotiation and litigation to establish the principle that the use of the State criminal processes can likewise be a violation of section 1971(b), and the State can be restrained from proceeding with a trial or continued confinement until the matter has been thrashed out fully and finally in the Federal court. This principle was most recently utilized in Greenwood, Miss., where we were able to obtain the release of eight persons who had been found guilty of disorderly conduct and had been sentenced to 4 months in jail and $200 fines each. As a result of action instituted by the United States, the city of Greenwood and Leflore County agreed to release these students pending a full hearing and final decision on the merits of the case in the U.S. district court. In addition, we received assurance that there would be no further interference by the police with voter registration.

In several other instances in Mississippi and Georgia, we have been able to obtain dismissals of State charges and the return of bond money after having demonstrated that the arrests and convictions were for the purpose of interfering with the rights of Negroes in the area of registering to vote.

In the *Greenwood* case, we have asked the court to hold that the right to register without interference includes the right, peaceably, to assemble and protest grievances which arise out of efforts of Negroes to register. I expect that we will have a hearing on this question in Mississippi early next fall.

At the present time there is under consideration by the Court of Appeals for the Fifth Circuit the question of whether or not a school board can refuse to rehire a schoolteacher apart from any question of contract arrangements or of

tenure if the refusal to rehire was for the purpose of interfering with the right to register to vote. In that case the district court found against us and we took the appeal. If we are successful, we maintain that an integral part of the relief includes reemployment and backpay.

In every single instance that has been reported to me, we have investigated the matter as rapidly as humanly possible. These cases are difficult, however, for the reason that we are required to prove that the defendant's purpose was to interfere with registration and voting. This is not an easy burden.

So far our investigation does not show that the recent events in Birmingham are related to registration and voting.

If I can be of any further service to you, please let me know.

Sincerely yours,

BURKE MARSHALL,
Assistant Attorney General, Civil Rights Division.

APRIL 22, 1963.

DEAR MR. MARSHALL: Thank you for your prompt reply to my letter with regard to action by the Federal Government to protect Negro citizens from intimidation.

Your letter indicates that cases of this nature are difficult "for the reason that we are required to prove that the defendant's purpose was to interfere with registration and voting." In view of this comment, I would appreciate your advice as to whether any of the bills introduced to implement the proposals in the President's special message on civil rights would affect the burden which is now imposed on the Government. If not, I would like to know, first, whether the situation would be improved by legislation authorizing the Attorney General, under appropriate conditions, to institute civil injunctive suits in all civil rights cases, and not just voting cases; and, second, whether the Department would favor such legislation.

With personal regards,

Very sincerely yours,

KENNETH B. KEATING.

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

Our next witness is our distinguished colleague from Long Island, N.Y., Mr. Derounian.

STATEMENT OF HON. STEVEN B. DEROUNIAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. DEROUNIAN. Thank you, Mr. Chairman and members of the committee. I have no prepared statement. I do not wish to be repetitious but I have a few thoughts to leave with you before I return to the Ways and Means Committee.

I want to congratulate you for bringing the subject matter up for hearings. I think it is not too early that you have done it, because, since the 1957 civil rights bill, all we have done on the subject is to extend the Civil Rights Commission and abolish the poll tax in five States with respect to Federal elections.

I cannot impress upon you too strongly that this legislation is needed now. I would observe that, irrespective of the rest of the legislative program of the President, a civil rights bill should be passed now. Irrespective of what the other body does with the civil rights bill we may pass, has no relevance as to the problem now. I think we need stability, with congressional approval, and I would daresay that, if this type of bill is passed, there will be an improvement of the situation in parts of the United States where they are now unstable and dangerous.

By passage of civil rights legislation it does not necessarily mean the problem is solved. President Lincoln took very serious steps to preserve this Union, to preserve the God-given rights of man. We must have meaningful legislation which would be applicable and then strictly enforced by the Federal Government. Since I am a cosponsor of the bill introduced by several gentlemen on your committee, Messrs. McCulloch, Lindsay, and others, I, naturally, am a bit wedded to that type of approach, but any comprehensive bill, Mr. Chairman, will receive substantial support of the House I am convinced. I reiterate that this legislation should be passed out of your committee this year and should be acted upon by the House of Representatives this year.

The CHAIRMAN. Are there any questions? If not, thank you very much, Mr. Derounian.

Mr. DEROUNIAN. Thank you very much, Mr. Chairman.

The CHAIRMAN. There have been a number of members who have been in the room but could not wait and we will have to hear them this afternoon.

Unless there are some other matters that come before the meeting this morning, we will adjourn until 2 p.m.

(Whereupon, at 11:15 a.m., the committee adjourned to reconvene at 2 p.m. the same day.)

AFTER RECESS

(The subcommittee reconvened at 2 p.m., Mr. Celler, chairman of the subcommittee presiding.)

Mr. CELLER. The committee will come to order.

Mr. Robert Taft, Jr., of Ohio, we will be very glad to hear you.

Mr. TAFT. Mr. Chairman, and members of the committee, may I first express my appreciation for the courtesy of the committee in hearing me today.

I have introduced two bills in the area of civil rights, the first being a duplicate of the bill introduced by Mr. McCulloch, Mr. Lindsay, and others, dealing with the subject generally and I do not intend to testify today on this bill in any regard other than to say I have studied it and I strongly endorse the language and the provisions and purposes of the bill.

I certainly hope it receives favorable consideration from the committee.

Moving to the other bill which I have introduced, which is H.R. 3829, I would explain this is a duplicate of a bill introduced by Senator Cooper and Senator Dodd in the Senate in this session.

The sole area with which this bill deals is the area of literacy tests. Senator Cooper, Senator Dodd, and myself believe that the approach taken by this bill on the question of literacy tests is a sound approach and indeed perhaps even sounder approach than the sixth-grade presumption test in various civil rights bills considered previously in that it raises no constitutional question under article I, section 2 of the Constitution, which reserves to the States the right to determine the qualifications for voting for Members of the House of Representatives.

We believe that it provides an enforcible method by which the Attorney General can see that literacy tests are applied in a way that is in accordance with the spirit and language of the Federal Constitution.

First, may I say that I think the whole area of literacy tests is one which deserves our immediate attention and I believe really deserves priority in the area of the civil rights legislation.

I believe this because, of course, as we all know, the problems relating to discrimination and race problems are many and they are serious, but happily we have made some progress with some of them. With others we have not made much progress as yet.

I think much of the progress that has been made has been made because we have been able to enlist the aid of all citizens in working toward the solutions, Negro, white, and all citizens.

I frankly believe that eliminating discrimination in voting, particularly discrimination by literacy tests, will speed up this process by helping various communities, helping the Negro citizens, helping all citizens to attack these problems in their own way and work out their own solutions of these problems through the democratic process.

Getting down specifically to the provisions of H.R. 3829, I would call to the attenton of the committee it does just three things. First of all, it prohibits the setting up of different standards and practices and procedures in prescribing of literacy tests.

This, of course, has been declared by the Supreme Court to be the law of the land and the purpose of this section is merely to codify the Supreme Court rulings on the statute.

Next, it contains a provision which eliminates immaterial errors as a cause for the disqualification of a literacy test. There has been a history of such disqualifications. I believe, if the committee would like to refer to it, that the Civil Rights Commission report of 1961, volume 1, on page 54, goes into some detail in describing such nonmaterial errors.

And, lastly, and this is the real crux of the bill, it provides specifically that if a literacy test is imposed by a State as a qualification for voting in a Federal election—and this bill applies only to Federal elections—it provides that the literacy test must be written or if it is not written that a transcription must be taken.

It further provides that a certified copy of this transcription must be made available to the voter within a period of 30 days on request and that such transcription or written test must set out in full the questions and answers of the applicant for registration.

As to the need for this test, I am sure that the committee, from its other hearings, is familiar with some of the figures which are shown in the qualifications for voting statistics of Negro and white populations in various States.

Just to cite a few, which again are to be found in the Civil Rights Commission report, volume 1, on pages 252 through 312, I would just cite a few by way of example:

In Alabama, the percentage of nonwhite population registered is 13.7 as against 63.6 for the white population; in Arkansas, 37.7 as agains 60.9; in Delaware, 55.3 as against 90.8 of the white population; in Florida, 39 percent of the Negro population as against 69.5 percent of the white population; and so forth through the various States in which there is any appreciable Negro population.

These facts, I think, suffice to show we have a real problem here, one with which this Congress properly should concern itself.

I would like to say that the Cooper-Dodd approach has been welcomed in some quarters and specifically I would like to call to the

attention of the committee an editorial in the Washington Evening Star of February 5 in which it states as follows:

> The only argument which could be made for the administration project is one of expediency. It would make it easier to enforce the rights to vote of qualified persons, who might otherwise be discriminated against, but the expedient way is seldom the best and we think that there is more to be said for the remedy suggested by Senator Dodd, Democrat, of Connecticut, and Senator Cooper, Republican, of Kentucky.
>
> They introduced a bill which would prohibit literacy tests in any election for Federal office unless (*a*), the same practices are followed in administering and grading the tests of all individuals and, (*b*) the test is given in writing or the questions and answers are transcribed verbatim and, (*c*) upon request a certified true copy of the questions and answers given is furnished to the individual within 30 days. Their bill also provides that immaterial errors shall not be used to deny the right to vote.
>
> It seems to us there is much to recommend this bill. It does not attempt to prevent the States from using literacy tests provided only that they are fairly and impartially administered and it has a reasonable chance of being enacted by Congress.

One other factor I would point out which might be raised as to argument against the approach of the literacy test argument is the argument of cost. In this regard, I would only say it is, of course, up to the State itself whether or not it wishes to impose a literacy test.

Ohio has no such test and I see no particular reason why such a test is desirable or necessary in any event, but even granting that it is desirable or decided to be desirable by a particular State, the cost involved in this bill, of course, would only relate to new voters.

It would not relate to voters already registered inasmuch as they have already qualified and would not have to meet the test.

These are a few of the views on which this bill has been drawn, submitted, and proposed to this committee and we would certainly welcome any consideration which the committee may wish to give to it.

I thank you, Mr. Chairman.

Mr. CELLER. Any questions?

Mr. MCCULLOCH. Mr. Chairman, I am pleased that my colleague from Ohio, Bob Taft, Jr., has been a witness before our committee. His statement was clear, concise, and compelling.

Mr. CELLER. Thank you, Mr. Taft.

Mr. TAFT. Thank you, Mr. Chairman.

Mr. CELLER. There are a number of Members who were supposed to testify but for some reason they have not appeared and it is not my purpose to recall them.

They will have to put their statements in the record. Among them are the following Members of Congress:

Congresman Diggs, Congressman Edwards, Congressman Halpern, Congressman Dingell—but I understand he has submitted his.

We will accept statements from them for the record.

We will now adjourn until tomorrow morning at 10 o'clock when we will hear the balance of those Members of the House who have sponsored bills.

(Whereupon, at 2:20 p.m. the subcommittee recessed to reconvene at 10 a.m. Thursday, May 9, 1963.)

CIVIL RIGHTS

THURSDAY, MAY 9, 1963

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

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

Present: Representatives Celler, Rodino, Rogers, Kastenmeier, McCulloch, and Lindsay.

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The committee will come to order.

First on our agenda of business this morning is to hear from the very able member of our own committee, Hon. Charles McC. Mathias, Jr.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MARYLAND

Mr. MATHIAS. Mr. Chairman, members of the committee, I thank you very much for this opportunity to appear and testify briefly in this hearing on civil rights. I am the cosponsor of the Republican bill, having introduced a companion bill to H.R. 3139 which was introduced by the gentleman from Ohio, the ranking minority member of this committee, Mr. McCulloch.

In the interest of time I would request permission that I might omit from these remarks my analysis of this bill and simply submit that as part of my statement.

Now I am here to urge the passage of H.R. 3139, because I believe that this will be good legislation, needed legislation, but I am here also to utter a word of warning. This quiet committee room, with which we are all so familiar, may be the most dangerous place in Washington today, perhaps the most dangerous place in the Nation. We are here dealing with a volatile and an explosive subject. I have before me a clipping from the Washington Post of Wednesday, May 8, yesterday, the day that these hearings began. The headline, Mr. Chairman, is "State Police Enter Birmingham." The accompanying story describes the very sad picture of what is happening in Birmingham these days and I would like permission to include this newspaper article as a part of my statement.

The CHAIRMAN. Without objection, it is so ordered.

(The attachments referred to follows:)

[From the Washington Post, May 8, 1963]

TWO HUNDRED AND FIFTY MORE SENT IN BY GOVERNOR

TWELVE PERSONS HURT AS 3,000 NEGROES RENEW MARCHES

(By Wallace Terry, staff reporter)

BIRMINGHAM, ALA., May 7.—An estimated 3,000 Negroes swept through downtown Birmingham in two waves today in the most violent incidents in the desegregation demonstrations. By the day's end, Alabama Gov. George C. Wallace had ordered 250 highway patrolmen into the city to keep order.

At least 12 persons were injured, none seriously, although a leader of the demonstrators and a policeman were hospitalized.

Late today, the Reverend Dr. Martin Luther King, leader of the demonstrations, and the Reverend Fred Shuttlesworth, the No. 2 man, vowed no letup in the marches. They said that the small number of arrests today showed "clearly that we have succeeded in filling the jails in Birmingham."

Meanwhile, Birmingham citizens and officials of the Federal Government worked desparately to find a compromise that would bring the disturbances to an end.

President Kennedy said he hoped the local citizens could solve their problems peacefully. He was kept informed of mediation efforts being conducted here by Assistant Attorney General Burke Marshall and Assistant Deputy Attorney General Joseph F. Dolan.

Marshall refused to comment as he left a meeting of top-level Birmingham businessmen, but James Mills, editor of the Birmingham Post-Herald, said, "We hope to have something constructive within 24 to 48 hours."

Mills said a subcommittee of leading businessmen had been named to "make contacts with responsible local Negroes to try and work out job opportunities and a solution to all the problems."

NEGROES' OBJECTIVES

Dr. King said early today that the Negroes wanted better job opportunities, desegregation of all downtown public facilities, formation of a biracial committee to solve racial problems, and the dismissal of charges against the approximately 2,500 arrested demonstrators.

Governor Wallace sent the highway patrol into Alabama's largest city at the request of the sheriff of Jefferson County and the mayor of Bessemer, a Birmingham suburb, according to United Press International.

In a speech to the State legislature, the Governor warned that he would prosecute the demonstrators for murder if the desegregation drive resulted in any deaths.

"I am beginning to tire of agitators, integrationists, and others who seek to destroy law and order in Alabama," Wallace said.

FEARED MORE TROUBLE

Sheriff Melvin Bailey told the Associated Press he went to Wallace because "the situation could easily get out of hand." Real trouble could come if demonstrations such as today's occurred when rough white elements are downtown, Bailey said.

There were few arrests during the demonstrations, although police used firehoses and nightsticks to break up the waves of Negro marchers. An unofficial count put the number arrested at about 50, as city officials obviously changed tactics from Monday when almost 1,000 were arrested.

Among those under arrest were two reporters for Life magazine. Police said they crossed into a restricted area around the 16th Street Baptist Church, central meeting place for today's protest.

NEW NEGRO STRATEGY

Negro strategists had adopted a complex plan today in the hope of decoying the police so that demonstrators might be able to march to city hall. In past days, police had arrested the marchers a block from their meeting point.

At 11 a.m., students who had expressed willingness to go to jail were sent from the church in small numbers as a diversionary force. They scattered throughout the city, heading for a rendezvous at the railroad station.

There they picked up picket signs and headed for a half-dozen stores. But squad cars promptly moved into that area and police officers and matrons seized the signs and herded the marchers into alleys.

Shortly after noon the full force of the demonstrators filed out of the church, only to be contained by police within a block area. They returned to the church.

Moments later, whipped into a frenzy by the younger members of Dr. King's staff, the marchers burst pellmell out of the church and across the park. The throng, mostly hookey-playing youngsters, was swelled by some 1,000 bystanders, many of them adults.

The crowd broke through the police lines and headed for the downtown shopping district, some of them screaming: "We want to go to jail," and "we want freedom."

Six of the leaders of the demonstrators carrying walkie-talkies directed the marchers back to the church after police were overwhelmed by their numbers.

Two hours later, a second wave broke from the church. This time the target was a large department store and some demonstrators reached it for a brief sit-in at a lunch counter.

POLICE USE HOSES

As the demonstrators returned to the Negro section, police ordered firehoses turned on. The water drove the crowd across a park as many youngsters danced, shouted, and screamed in the spray.

When this happened, a few bystanders and some who appeared to be returning with the demonstrators hurled bricks, rocks, and bottles at police and firemen.

A white-turret riot vehicle moved into the area and finally about 100 policemen with billy clubs drawn rushed across the park and forced most of the Negroes to move back.

MINISTER IS FELLED

During this effort, Mr. Shuttlesworth was caught in the back by a direct blast from one of the dozen firehoses and knocked off his feet. His doctor ordered X-rays.

The last holdout was a young woman who stretched out prone under the streams of water near the church until two other demonstrators removed her.

Two policemen were injured when a spraying device to which a hose was fixed swung out of control. One was hospitalized with a fractured rib. A deputy fire chief was also taken from the scene after a rock struck him in the shoulder.

Mr. MATHIAS. Not long ago, two of our distinguished colleagues, Mr. Powell and Mr. Diggs, spoke of the contention which existed throughout the Nation, and particularly in Washington, and predicted that riots were possible even here in the Nation's Capital, and I think that we can all agree that nothing is more explosive than the frustrated hopes of disappointed men and women.

This has immense consequences in this country. I do not have to expound on the possibility of international consequences. The reflex of our progress or lack of progress in the field of civil rights is felt all over the world. So what we do in this room today and during this committee hearing is of the most vital national importance.

Now, I know that the chairman of this committee and the members of this committee are serious and are sincere in approaching this civil rights hearing. I know that all of the members of the full committee are going to work with good conscience for a civil rights bill, but I would say that we have to do more than that. I think we are going to have to be the advocates of a civil rights solution and I say that if, as a result of this hearing, hopes are to be raised only to be dashed, then this hearing had better be canceled now.

Now, in advocating the enactment of H.R. 3139, I think we can take some satisfaction from the fact that we have proposed a comprehensive

bill. That may be argued as grounds for opposing it, but, on study, I think it will be found that there is a need for comprehension. Every title and every topic covered by H.R. 3139 is currently an area of discussion or confusion or conflict in America.

As I have said, I am submitting my analysis of the bill, but just as one example I would like to call the attention of the committee to the statement made on the floor of the House of Representatives on May 7 by the gentleman from Pennsylvania, Mr. Saylor, in which he brought to light the civil rights provisions of the contract between the United States of America and the Washington Public Power Supply System and the Portland General Electric Co., where there had been a deviation between the policy and the practice with respect to providing equal opportunity for employment in the performance of Government contracts and I would like to make that statement, which appears on page 7435 in the Record for May 7, 1963, a part of my statement.

(The statement referred to follows:)

CIVIL RIGHTS PROVISIONS OF THE CONTRACT BETWEEN THE UNITED STATES OF AMERICA AND WASHINGTON PUBLIC POWER SUPPLY SYSTEM AND PORTLAND GENERAL ELECTRIC CO.

The SPEAKER pro tempore (Mr. Gonzalez). Under previous order of the House, the gentleman from Pennsylvania [Mr. Saylor] is recognized for 60 minutes.

(Mr. Saylor asked and was given permission to revise and extend his remarks.)

Mr. SAYLOR. Mr. Speaker, ever since the Kennedy administration came into power the press has been full of accounts of the administration's program for civil rights. We have been told that the full power of the Federal Government was to be used to assure early achievement of the civil rights program.

One of the first acts of President Kennedy with regard to civil rights was the issuance on March 6, 1961, of Executive Order 10925, establishing the President's Committee on Equal Employment Opportunity for the purpose of assuring equal employment opportunity in Federal Government on Federal contracts for all qualified persons, without regard to race, creed, color, or national origin. Executive Order 10925 was filed with the Office of the Federal Register on March 7, 1961, at 10:06 a.m. Section 301 of Executive Order 10925 provides as follows:

"SEC. 301. Except in contracts exempted in accordance with section 303 of this order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"'In connection with the performance of work under this contract, the contractor agrees as follows:

"'1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"'2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"'3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"'4. The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

"'5. The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"'6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled in whole or in part and the contractor my be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order No. 10925, of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

"'7. The contractor will include the provisions of the foregoing paragraphs "1" through "6" in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided, however*, That in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request he United States to enter into such litigation to protect the interests of the United States.' "

I want to specifically direct your attention to the requirement in the first paragraph of section 301 which states that:

"Except in contracts exempted in accordance with section 303 of this order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions."

These provisions are the balance of section 301 which I have just read.

Again, I want to emphasize that this Executive Order 10925, which has had the full force of law since its publication in the Federal Register on March 7, 1961, at 10:06 a.m., is to apply to all Federal contracts entered into after that time unless exempted in accordance with section 303 of the order.

Section 303 reads as follows:

"SEC. 303. The committee may, when it deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including the provisions of section 301 of this order in any specific contract, subcontract, or purchase order. The committee may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (a) where work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (b) for standard commercial supplies or raw materials; or (c) involving less than specified amounts of money or specified numbers of workers.

"In the 2d session of the 87th Congress, authority was granted to the Atomic Energy Commission to enter into a contract with the Washington Public Power Supply System for the construction of a nonfederally financed powerplant on Federal lands near the new production reactor at Hanford, Wash. Such powerplant was to be operated by steam produced by the new production reactor. In the same act, authority was given to the Bonneville Power Authority to enter into exchange agreements that would provide for disposition of the electric power generated at such new production reactor powerplant. Copies of such contracts were referred to in the House debate on the fiscal year 1963 authorization for Atomic Energy Commission, and thus became a part of the legislative history of the act."

In order to lay the groundwork for my charge that for political expediency the Kennedy administration has deliberately violated a provision of Federal law which it had sworn to uphold, I specifically call attention to that fact that section 303 only provides for the exemption—under four specified conditions—from the requirements of section 301 of Executive Order 10925. Nowhere in the order is there any provision for modification of any of the sections of such order. Nor is any authority granted the President's Committee to authorize any Federal agency to make any such modification.

Draft No. 5 of the proposed new production reactor power contract between Bonneville and the Washington Public Power Supply System was printed in part 3 of the House hearings on the public works appropriation bill for fiscal

year 1963, page 616. Draft No. 8 of such proposed contract dated June 19, 1962, was printed on page 41 of a committee print of the Joint Committee on Atomic Energy dated July 1962.

In these proposed contracts which were the basis for congressional debate on the required authorization, the requirements of section 301 of Executive Order 10925 were included in full.

Here is the reason for the Kennedy administration's failure to live up to its own Executive Order 10925. When the Washington Public Power Supply System approached the bankers with regard to disposing of the $130 million-plus of bonds to provide the necessary financing, they were told that with the provisions of the Executive Order 10925 included in all contracts, there were serious questions whether the bonds could be sold, and if they could be sold it would be only at extremely high discount rates. I am reliably told that the matter was then taken up with Vice President Johnson, who is the Chairman of the President's Committee on Equal Employment Opportunity. As I understand it, the Vice President would not agree to an exemption from Executive Order 10925.

Little did anyone dream that the Kennedy administration would sacrifice full and equal application of the equal employment opportunity portion of its civil rights program on the altar of political expediency, to prevent any adverse effect on its program for bureaucratic expansion in America.

With the wide publicity given the Kennedy administration program for promoting and assuring civil rights, it is astounding to find the Kennedy administration has no hesitancy in ignoring the purported legal requirement of an Executive order that it had previously issued about 2 years earlier. When faced with the possible loss of non-Federal financing for the powerplant at the Hanford new production reactor, or the possible excessive cost of such financing, the Kennedy administration provided for the violation of the provisions contained in its own Executive Order 10925. It is my understanding that after Vice President Johnson refused to agree to an exemption from Executive Order 10925, further discussions were had which included various Federal officials and possibly the President himself. I was not given the whole story from this point on, but the end result is available for all to see in the 70 or 80 Federal contracts which were signed on April 11 and 12, 1963. Here is the payoff, the sacrifice of civil rights on the altar of political expediency. The penalty teeth in the Executive Order 10925—which were relied upon to achieve compliance with that order—have been pulled in all these 70 or 80 contracts, by the insertion of an additional subsection to the requirements of section 301 which reads as follows:

"8. Notwithstanding the provisions of paragraph 6 hereof, in the event of the supply system's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations, or orders, this agreement will not be canceled in whole or in part so long as such cancellation would impair the security of the revenue bonds issued by the supply system. The contracting parties agree that compliance with this section is of the essence, and in the event of a violation all other remedies, including injunctive relief and specific performance, shall remain available to the United States."

I understand that some 12 or more drafts were made before the final draft was agreed upon. At just what point the provision for violating the law was added to the contract, I do not know. There must have been a lot of soul searching and midnight oil burned before they decided to sacrifice the equal employment opportunity portion of the Kennedy civil rights program on the altar of a greedy centralized government.

Let us examine how this provision of the Kennedy administration for deliberate violation of a civil rights law it had promulgated compares to the treatment accorded private industry, under such law.

Company "X" who has a contract with some Federal agency can have its contract canceled and be prevented from obtaining any future Federal contracts, if it does not comply with Executive Order 10925. The insertion of the provisions of section 301 of Executive Order 10925 into company "X's" contract could result in failure to obtain the required financing to build a new plant or expand an old plant, or, at best, could result in obtaining such financing at exorbitant cost. It is hypocrisy in the extreme for the Kennedy administration to require full and complete compliance with the equal employment opportunity law by a private contractor with a Federal contract, while it provides for noncompliance in Federal contracts executed with public utilities. Why should company "X" or companies "A" to "Z" be discriminated against? Why cannot this Kennedy administration's deliberate violation of the law through failure to insist on full compliance with its own Executive order, be extended to any

company which would be faced with inability to finance or with excessive cost of financing any required new plant or new additions to an existing plant to fulfill its Federal contract?

The answer is that they were faced with the possibility of being unable to obtain financing for this bureaucratic power project which had been hailed as a great Kennedy achievement when the contract providing for its construction was authorized by Congress during the last session.

Of course, the new production reactor contract between the Atomic Energy Commission and the Washington Public Power Supply System still has a cancellation clause, but the joker in that cancellation clause is the fact that taxpayers of the Nation could be required to pick up the tab for any cost incurred prior to completion of the powerplant.

Under this provision, the bankers or the Washington Public Power Supply System would not lose a cent by such cancellation. It would be the taxpayers who could lose up to $120 million or more.

Faced with a contract cancellation provision relative to fair employment practices, for which the taxpayers of the Nation would not be liable or which would prevent or make extremely costly the financing of the Kennedy administration's pet atomic energy powerplant project, what does the administration do? It promptly sacrifices its holy attitude on civil rights and discrimination, through the insertion of a saving clause to invalidate the penalty provisions of its own Executive order.

I question the propriety and the legality for extending this preferential treatment so that the New Frontier program for the extension of big government in the United States will not be delayed. It is a little difficult for me to believe that the Kennedy administration, when faced with a serious blow to a portion of its program to extend centralized power in America, is willing to violate a provision of a civil rights law which is promulgated and which it inferentially has sworn to uphold.

It is my opinion that these contracts are illegal. Certainly, they are not in accord with the legislative intent expressed by the Congress. The question now is whether Congress, and particularly the House, is going to ignore the flagrant violation of an Executive order that after its publication in the Federal Register has the full force of Federal law. A full investigation of this matter should be made at once, with instructions to the Federal agencies involved to hold up implementation of the contracts, even though signed, until the matter can be adjudicated by Congress or, if need be, by the courts.

I have been advised that the Washington Public Power Supply System intends to ask for bids on $122 million of revenue bonds on Wednesday, May 8, 1963. I am sure that every effort will be made to obtain injunctive relief against the issuance of such bonds on the grounds that the contracts under which they are to be issued contain provisions contrary to law. Following or failing such injunctive relief, I am sure every effort will be made to obtain a judicial determination of the legality of the Federal contracts involved.

If I were a banker, I would hesitate to make a bid for the proposed bond issue on May 8, 1963.

One might ask whether a charge of malfeasance in office could be lodged against those Federal officers who have been a party to the insertion in the contracts in question of a subsection whose purpose appears to be a deliberate attempt to circumvent existing law. It is doubtful, of course, as to whether the New Frontier would take action to convict itself.

If the administration can change the law to suit itself in this instance, how far will it go or has it gone in other instances to change the law to suit itself? I think a congressional inquiry should be made to determine if numerous other Federal contracts have been changed with respect to the Equal Employment Opportunity Act.

Mr. MATHIAS. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to the gentleman.

Mr. MATHIAS. The gentleman from Pennsylvania has a note of surprise in his voice, a note of amazement. I am just wondering why the gentleman should feel amazed at the events he is recounting. I admit they are shocking; I do not concede that they are surprising. After all, we have had the experience in this House within the past 2 weeks of seeing two examples of hypocrisy in dealing with civil rights. It was about 2 weeks ago that the House was considering a bill for aid for medical education. An amendment providing for observance of civil rights was offered at that time. Not only was the amendment turned down upon the urging of the majority leaders of this House but debate on a civil rights

amendment was actually foreclosed by a vote in this House upon motion of the majority leadership. On that occasion debate was limited to 5 minutes.

Less than a week later we had a similar amendment before the House in connection with the impacted area program of aid to schools. When a similar civil rights amendment was offered, debate was again limited; in this case, if my memory serves me right, to 10 minutes.

I think the gentleman from Pennsylvania today is making a very valid point, and I thank him for bringing these matters to the attention of the Congress and the country. I think he has contributed to the whole story of the treatment of civil rights by the administration and this Congress by telling the country and the Congress what has happened in connection with these contracts.

I personally want to express my appreciation to him for completing this story that is so important to all of the people of America.

Mr. SAYLOR. I thank the gentleman from Maryland for his contribution, because I can say I am still surprised, I am astounded to find such things are going on.

SYNOPSIS—H.R. 3144—HONORABLE CHARLES McC. MATHIAS

Title I of the bill would make the Commission on Civil Rights a permanent body and extend its jurisdiction to investigations of fraud in Federal elections. Title I also would require the Bureau of the Census to compile immediately registration and voting statistics which shall include a count of persons by race, color and national origin in each State who are registered to vote and the extent to which they have voted since January 1, 1960.

Title II of the bill would set up a Commission on Equality of Opportunity in Employment. The Commission would be empowered to order termination of any Government contract for violation of the nondiscrimination clause required to be included in it. No further contracts would be let after such termination until the contractor had satisfied the Commission that he will carry out all nondiscrimination provisions.

The Commission would also be authorized to order Federal funds withheld from any employment agency supported in whole or in part by such funds which discriminates against an individual because of his race, color, religion, national origin or ancestry.

The bill would also authorize the Commission to issue cease-and-desist orders, enforceable in the U.S. district courts, to any local labor organization representing employees of a Government contractor which discriminates against an individual because of his race, religion, color, national origin or ancestry. Needless to say, the Commission would also enforce the policies of nondiscrimination in Federal employment.

Title III of the bill would provide financial assistance to States which operate under a school desegregation plan approved by the Secretary of Health, Education and Welfare.

Mr. MATHIAS. Now, on its face, and I must say I have not had any opportunity to research carefully the facts stated by the gentleman from Pennsylvania, but on its face the statement he has made would indicate the urgent necessity for having a statutory Commission on Equality of Opportunity in Employment, instead of the current inadequate Presidential Commission.

Mr. Chairman, there are two arguments that I hope will not weigh too heavily as our committee studies the question of civil-rights legislation. One is the argument that we must be bound by what we may expect to be done in the other body. What the other body does is its responsibility and I think that this should be a basic premise as this committee considers its responsibility in the area of civil rights.

The other argument, which I hope will not weigh too heavily with this committee, is the argument of expediency. The argument of expediency has already been worked and overworked on Capitol Hill this year. On April 24, a civil-rights amendment to the bill to aid medical education was defeated, debate was foreclosed, on the ground

that the program would not be passed if it had that kind of an amendment. Frankly, Mr. Chairman, I think it was a false argument because I think the program would have been passed.

On April 30, the same procedure was followed with respect to the aid to impacted areas bill. Again I believe that bill could have been passed with a civil-rights amendment.

Now, I do not suggest there are no limits which should govern this committee with respect to proposing civil-rights legislation. I think there are limits which our guarantees of civil liberties demand. I think there are limits which our Constitution places on the power of Government to control individual freedoms and these are civil liberties, as contrasted with civil rights, and these civil liberties are, in a real sense, the root of civil rights.

Mr. Chairman, it is my hope and my conviction, and I say with confidence, that this great and historic committee will write a bill which is a documentation of the aspiration of the American people for equality and justice. It is my confidence that this committee will draft a measure for the consideration of the House of Representatives which will command the respect of the Nation and of the world and I don't think that this committee can forget that it is the world which is watching as well as the Nation.

If we live up to our own traditions, the traditions of this great Judiciary Committee, I have hopes that we shall be able to lead our colleagues to agree with us and to enact a fair and a wise law which will truly restore tranquillity and peace to the land.

Mr. Chairman, I thank you and the members of the committee.

The CHAIRMAN. Thank you, Mr. Mathias.

Since you made reference to Birmingham, I would like to make a brief statement. I would like to state that what is needed in Birmingham is a fair sprinkling of understanding on both sides, not streams from firehoses.

What is needed is the fire of understanding and conciliation, not the branding by the policeman's club. What is needed is the bite of conscience, not the bark and bite of dogs.

But the sentencing of Dr. King, leader of the peaceful resistance to the segregation movement, to 180 days, 6 months, plus a $300 fine, to my mind, is Draconian, and it seems hardly in the spirit of understanding and tolerance. It is rather in the spirit of revenge and may again spark the conflagration and disorder of which we read these last days.

And I say, reluctantly, that if the situation again gets out of bounds, Federal intervention, to prevent the spread of disorder, will be absolutely necessary and there is ample basis for Federal intervention in the 13th, 14th, and 15th amendments to the Constituion. These amendments are not merely declarations of principles but are self-executing.

Mr. ROGERS. Mr. Chairman, may I ask this? You testified in favor of H.R. 3139, which was introduced by our colleague, Mr. McCulloch. Is there anything in that bill or any other that would apply to a situation that now exists in Birmingham?

Mr. MATHIAS. I do not believe that the bill itself would specifically apply to this situation. I would say to the gentleman from Colorado, however, that certainly the situation in Birmingham has its root in

frustration and injustice which would be corrected by the provisions of the bill.

Mr. ROGERS. I take from your answer you have no objection to an amendment, if we could draw one, which would fit the situation to prevent the thing that is now happening in Birmingham; is that right?

Mr. MATHIAS. Well, I would have to know the nature of the gentleman's suggestion as to an amendment.

Mr. ROGERS. Well, the nature of it is that people down there claim that they want to parade peacefully to assert their rights under the Constitution and they say that they are not permitted to do so because they don't have a parade permit. When they try to do it, as pointed out by the chairman, they get the hose treatment and they get the dogs treatment. Now, is here any method by which we can amend this bill or any other bill that we have which would say that when people peacefully parade, that they may be permitted to do so and do so without interference? Could that be worked into it?

Mr. MATHIAS. Certainly, I think we could well consider an amendment which protects the constitutional right of assembly.

Mr. MCCULLOCH. Mr. Chairman, will my very able colleague yield at that point?

Mr. ROGERS. Yes.

Mr. MCCULLOCH. If there is a violation to the 1st amendment of the Constitution or the 14th or 15th amendments to the Constitution, we have the legal equipment with which to redress that violation now, have we not?

Mr. MATHIAS. I believe the gentleman from Ohio is correct.

The CHAIRMAN. That is right. May I state this? Most of the difficulty, it strikes me, stems from the lack of political power. In Birmingham, I understand, only 8 percent of the total of the Negro population, which in turn is 40 percent of the entire population, are registered to vote. I believe if they were given the right to vote, the conditions would change materially. But aside from that we have a number of bills that are before us, among them H.R. 1768, which happens to be my bill, and which provides:

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

That is a very broad provision, I think, particularly when you give the power to the Attorney General to proceed by way of procuring an injunction to prevent that which would be a deprivation of civil rights or the threatening of a deprivation of civil rights of an individual such as voting.

Mr. MATHIAS. I think the chairman is basically correct. I think we have to go further than the right to vote.

The CHAIRMAN. I just give you that one illustration, but this is even beyond that. Every attempt to deny equal protection of the laws—that would mean in transportation and education and voting, places of public accommodation, amusement, housing, labor, or what have you.

Mr. MATHIAS. Well, the chairman's position on these matters is well known and certainly is subject to my admiration, as well as that of many people throughout the country. I do think that we should be addressing ourselves to the broad spectrum here and not to too narrow a limit. I think that part III, which has been so troublesome to this committee in the past, should be given very careful consideration. Here, I think part III is perhaps necessary to get to the root of these real troubles.

The CHAIRMAN. I read so-called part III.

Mr. MATHIAS. Right. And I think this is the area the committee has got to be considering.

Mr. Chairman, in commenting on your statement on Birmingham, I would only add further that I believe that this committee, by addressing itself to its task, with the conviction and with the sincerity that I know all of the members have, can help to ease some of the tensions that exist and prevent other situations such as Birmingham. I know if these efforts can be brought to fruition, that the hopes will not be in vain and I believe a real step forward can be made at this time in the area of civil rights.

The CHAIRMAN. Any questions?

Mr. MCCULLOCH. Mr. Chairman, I would like to observe that our colleague on this committee has made one of the very best presentations that I have heard in some 14 years on this committee. I wish to thank him for his presentation.

Mr. MATHIAS. Thank you, gentlemen.

The CHAIRMAN. Thank you very much.

STATEMENT OF HON. JACOB K. JAVITS, A U.S. SENATOR FROM THE STATE OF NEW YORK

The CHAIRMAN. Our next witness is the distinguished senior Senator from my State of New York, who is also in the forefront for the civil rights of all people in the country and I welcome him this morning, the Honorable Jacob Javits.

Senator JAVITS. Thank you, Mr. Chairman, and members of the committee.

First, may I thank you for arranging my appearance?

The CHAIRMAN. Senator, do you have a statement?

Senator JAVITS. I will have one shortly, but I have the rough draft of it here, and if anyone wants it, we will have it in a short time.

Mr. Chairman, first I thank the committee for accommodating me with my scheduling problems so graciously and, second, most importantly, I congratulate the chairman and the senior Republican member, and in their names the whole committee for the almost unbelievable timeliness with which these hearings are being held. I have been in this field for a long time, as have my colleagues, and I know of no time when I was more deeply concerned by the conditions we see in the country and I know of no time when it would be as useful as it is now

to give thought to these grievances in so distinguished a forum as this committee.

Before I start on the statement, which will be brief, I would like to say to the chair that I hope very much that the House will not be dismayed by the Senate situation, that the House will not simply try to develop legislation here, if it develops any—and I fervently hope it will—to accommodate itself to the situation which might be met over there. I think we are dealing with a matter of really new impressions, considering the intensity of the events which have occurred, and I would hope that the House would just turn out what it thinks justice and the Nation's interests require. The time has come in the other body to mount a major struggle upon this subject in every phase, even including revision of rule 22, the famous rule which permits of a filibuster.

The chair may recall that, at the beginning of this session, we did not get rulings which would have made possible amendment to that rule in a way such as we thought we had before, let us say, because I don't want to get into partisan characterization. That would be pointless, and we are in just as good a position to amend rule 22 now as at the beginning of the session. So everything is on the table and if I leave nothing else with the committee I wish to leave with them my deep feeling that, at this point in our national life, the committee should just be itself and not worry about what will happen to the legislation when it gets to the other body. I do think we will face a new situation there and that the struggle there, especially if we get a House bill, will be more intense than ever before. Let us remember that the great successes in civil rights in the other body have been based on a House bill.

It will be remembered that in the 1957 situation it was the fact that the House bill could be taken from the table that enabled us, in my view, to do anything. So I wish to emphasize not only the timeliness of the hearings here, but my great hopes for civil rights legislation residing in what will be done here.

The CHAIRMAN. I understand you have no qualms as to the independence of this committee and we are going to give you a very good, forthright civil rights bill regardless of what the other body might do. But I like the tribute you pay to this body and maybe after this, this will be called the body and the other a body.

Senator JAVITS. Based on the qualifications for doing the job, I would like to see them just coequal, that is all.

Mr. Chairman, the fundamental thesis I would like to espouse before the committee is, first, the one I just stated, that we are facing a new situation in the civil rights field, as the President, I think, put it very properly, an ugly situation. But what is even more worrisome to men like ourselves in Government is that it is a situation which has even more awful potentials for the future, because, once you embark upon a road of frustration and bitterness and an unwillingness to rely upon the process of law—and we certainly know how deep is the justification for this—you are on a road which knows few turnings and it is very difficult to predict as to what will be the final outcome.

The plain fact, Mr. Chairman, is that Birmingham follows Little Rock, Albany, Oxford, Greenwood, and other clashes in what is getting close to the culmination of a long series of warnings to our Nation

of a national emergency in civil rights. For the Negro community, 10 percent of the Nation, 18 million souls, is reacting to a slowly spreading belief that real progress will come in civil rights only when Negroes move directly against segregation on racial grounds. From what we can plainly see, the Negro community is impatient with the pace of the satisfaction accorded to its demands for compliance with the Constitution. It is frustrated at the constant watering down of measures to meet those demands. It is tired of seeing the Constitution and the laws outraged and defied, even by officials of municipal and State government, and it is embittered by the so-called progress which they deem hardly measurable within their lifetime.

Now, there are some things, Mr. Chairman, that the President can do, and I think, on the whole, he has tried to do them. But I do think that the great difficulty, the great failure here, has been in the legislative field. That does not completely exculpate the President, though, as I say, I think he has spoken out, as he did yesterday again, and the Federal machinery has, on the whole, been strongly utilized. Although there have been some problems, I think the real failure has been that we have not had the powerful urging that legislation is needed. I certainly need not protest my credentials as to the bipartisanship of my efforts toward legislation. I have been devoted to that principle all of my legislative life and I am today, and I have always taken the same position with the administration in office, whatever party it may have been.

I think there is a place for very strong Presidential leadership in the legislative field as well as in the field of purely executive action, and I hope and pray that as the lead is given and the national need mounts, as it is, that we should have legislative leadership as well, because I think it is vital. I do not think that in our country, without the basis of law, you can really get effective executive action, and perhaps the best illustration of that is Birmingham itself, because I must most respectfully dissent from the administration's view that there are no legal remedies, which is what the President said yesterday.

Now, I use my words very carefully, Mr. Chairman. I say the "administration's view." I am sure the President has consulted and advised with the officials of our Government. This is no creature of his own imagination in making this considered statement. I believe that law can reach a situation like Birmingham. When I came in, the Chair was speaking about a broad-scale, so-called part III provision. To me, that is the key to civil rights legislation, difficult as it may be to get it. And the reason is, Mr. Chairman, that if you have a statute which seeks to safeguard the rights of U.S. citizens—again I use my words carefully, not citizens of the State of Alabama, but U.S. citizens—under the 14th amendment, the cases are very clear that the protection of rights under the 14th amendment includes protection of the rights under the 1st amendment of assembly and petition.

I think this is a very fundamental question, because obviously the administration believes that it cannot reach this situation.

The CHAIRMAN. Senator, is it not true that the 14th amendment is more than merely a declaration of principle; it is self-executing, inasmuch as it gives the Congress the right and power to implement its principles?

Senator JAVITS. Exactly correct, and may I, while I am at it, refer to you this case, which is quite recent. I am sure the committee is well

aware of it. It is the case of *Edwards* v. *South Carolina*, decided on February 25, 1963. The court there held that it would free from custody citizens convicted under State law for breach of the peace, for demonstrating peacefully. The court was very specific on this and recognized that although the State law may be perfectly all right as far as the State is concerned, it may not be all right as far as the Federal Constitution is concerned. The court said, and I am quoting from page 6 of the opinion:

> The State courts have held that the petitioners' conduct constituted breach of the peace under State law, and we may accept their decision as binding upon us to that extent. But it nevertheless remains our duty in a case such as this to make an independent examination of the whole record * * *. And it is clear to us that in arresting, convicting, and punishing the petitioners under the circumstances disclosed by this record, South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances.
>
> It has long been established that these 1st amendment freedoms are protected by the 14th amendment from invasion by the States.

It could not be any clearer than that.

Mr. ROGERS. May I ask, whether by that decision, those people in Birmingham then would have a right to file an action in the Federal court as individuals the same as was done in South Carolina?

Senator JAVITS. Of course, in South Carolina, there was a criminal prosecution. The demonstrators were arrested and were in court as defendants. Now you are asking me: "Could the individuals in the *Birmingham* case institute a suit in the Federal courts to protect their rights under the first amendment?"

Mr. ROGERS. Under section 1.

Senator JAVITS. I would say they probably can. Perhaps they already have.

Senator JAVITS. But the whole difference here is the majesty and power of the Federal Government, and the value of preventative relief obtained in the courts in advance by the Federal Government. That is what we are really talking about. That is why so many people, including the chairman and others on this committee, have felt so strongly that this authority, which we have so long sought to have granted to the Attorney General, is the key to domestic tranquility: because it would counter the kind of repression which results in these outbreaks, tantamount to a degree of public disorder.

Mr. MCCULLOCH. On that point, could I interrupt the Senator just to quote section 242, title 18, United States Code, under chapter 13 of civil rights, and I quote this section of the law:

> Whoever, under color of any law, statute, ordinance, regulation, or custom, wilfully subjects any inhabitant of any state, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or the laws of the United States, or to different punishment, pains, or penalties on account of such inhabitant being an alien or by reason of color or race, than are prescribed for the punishment of citizens, shall be fined not more than One Thousand Dollars or imprisoned not more than one year or both.

I just want that in the record at this time.

Senator JAVITS. I am very grateful to my colleague. That was my very next point: there is a criminal statute covering this, which the Congressman has read, which authorizes a Federal presence in these cases, either to enforce Federal law or to determine whether Federal law is being violated. That presence may be manifested by FBI

agents or by marshals or in whatever other way the President feels is necessary to carry out the Executive power. It authorizes arrest on an information, rather than grand jury indictment, since this statute creates a misdemeanor, not a felony.

Now, this is very important, Mr. Chairman, again, as bearing upon what the United States can do under existing law because it is true that there is a great problem as to whether southern juries will convict under this statute. Perhaps they will not convict. Nonetheless it seems to me this does not eliminate the obligation of the United States to arrest an on information if it feels that the crime covered by this statute has been committed. I do not deny the grave difficulties which are involved in such a course, but I still feel a major point would be gained for domestic tranquillity if, when the United States believed that this statute was being violated, information were sworn out under it in proper cases.

The CHAIRMAN. I take it, however, that you would not want intervention by the Federal Government until there is such violence that the violence might spread and affect the general welfare and, as you say, the domestic tranquillity of the Nation? Then the Federal authorities have no other choice but to step in.

But one would not want to see the Federal Government have do that. I think it should only be done when absolutely necessary.

Senator JAVITS. I would only add to the Chairman's thoughts that we are now talking about the serious responsibility of Government in exercising its authority. In my opinion, a President could act now. We are talking about when a man would exercise his power, which is a deep responsibility. In this case I would only add to the chairman's thoughts two points and I know the chairman and I would think alike on it. One case would be a threat of violence; in other words, not only the actuality of such outbreaks of violence that just make Federal intervention absolutely essential, but the very clear and present danger of it, within the highest judgment of the man with the authority, in this case, the President.

Secondly, in view of the situation which we face, I doubt very much that it could wait for the classic request of the Governor of a State for help in dealing with a condition of public disorder. I think, again, the supreme authority, the President, would have to determine that the situation has deteriorated to such a point that there is no other choice. Precisely that was done, of course, on the campus of the University of Mississippi. The President just made up his mind there was just no other way than the use of Federal troops. I agree. But I hasten to say that there were very different circumstances there because the case arose in terms of enforcing the order of a Federal Court, which is the classic example of the authority of the Federal Government. The same thing was true in Little Rock, Ark.

This is different. I hasten to say that. It is different and, in my opinion, therefore, would indicate perhaps a more sparing use of power in terms of degree, perhaps a somewhat later use of the power, again, in terms of degree. But I think the main point that I would like to lay before the committee is that the power is there and that it is based upon these provisions of the Constitution and the provisions of the criminal law to which I have referred and as to which I am sure the Chair and committee are very familiar.

Now, Mr. Chairman, to continue, I deeply believe that legislation in this field is a critical element in what we are able to do in order to cope with this situation, which is not only of mounting intensity but, in my opinion, has taken a totally new direction and a totally different order of magnitude, since the Negro community of our Nation has apparently made up its mind that only direct action will do. I believe at that point the evaluation of the respective civil rights packages becomes very different from what it has been up to now. Within this frame of reference, I deeply believe that the administration's civil rights program, with its measures related principally to voting, is completely inadequate to the issues facing the country.

I emphasize that they are fine bills in and of themselves but I deeply believe that, considering what we face today, they are inadequate, and I think they are inadequate primarily in the following respects. They are inadequate in failing to provide for the desegregation of public schools and in failing to provide, in my opinion, adequately for strengthening the U.S. Civil Rights Commission and extending its terms. I think it ought to be permanent. They are inadequate in not dealing with discrimination in employment, with discrimination in places of public accommodation, and with abuses in the administration of justice.

I would like to submit to the committee what I consider to be a list of the highest priorities in respect to civil rights legislation. I can only serve you gentlemen as a witness if I make my views very precise, and I think that the highest priorities in terms of civil rights legislation, in the present situation, are the following:

First. Legislation requiring the filing of plans for public school desegregation on at least a first compliance basis within a 6-month period.

Second. The sixth grade standard as a basis for qualification for voting. That bill was defeated in the other body last year, I know, but by the time you get through with civil rights legislation you may find that almost anything you want to do that is worthwhile was, at one time or another, tabled in the other body.

Now, may I issue sort of a caveat on that. Measures are tabled there for reasons other than the merits. For example, in 1961, we had a strong drive to do more than simply extend the Federal Civil Rights Commission for 2 years. The leadership on both sides determined that the Senate would get bogged down, that it was the end of the session and we would not be able to do anything other than just extend the Commission. Indeed the extension measure was a rider on an appropriation bill which required a two-thirds vote. Hence, a whole series of civil rights measures of various kinds were tabled.

They were not tabled on the merits. They were tabled to clear the road for the 2-year extension, yet someone testifying here might say to you there is no use in doing this or that or the other, including practically every civil rights measure before you, because the Senate has, in the past tabled it. They may have tabled it four times, but not particularly because of the merits; under the present situation, it need not be a precedent. I think the situation is changing, considering the intensity of the protest.

The CHAIRMAN. We neither frown, too, over on this side, because we have to run the gamut not only of the subcommittee but the full committee and then what we all call the Rules Committee, and some-

times the fate of a bill might not be known until it actually comes down to the grinder of the Rules Committee and you may not even recognize it.

Senator JAVITS. Well, Mr. Chairman, I served over here and am well aware of our mutual problems, but I feel, to justify any member of our own body testifying before us, it is desirable to bring some degree of expertise to the testimony and that is all I am trying to do.

The third item I think is of high priority is a Federal Fair Employment Practices Commission covering interstate commerce, covering Government contractors—which would give the President's Committee on Equal Employment Opportunity under Government contracts a statutory base, and covering the District of Columbia.

Fourth. Permanent extension of the U.S. Civil Rights Commission, making it a permanent body.

Mr. LINDSAY. May I interrupt. You said "Fair Employment Practices Commission" covering interstate commerce.

Senator JAVITS. Right.

Mr. LINDSAY. You mean that you would broaden it beyond the provisions in making a statutory body of the Commission? You would make it generally applicable to industry?

Senator JAVITS. I would. The reason is that time creeps up on us, and there is such a network now in the country of FEPC's which are working, that it seems to me that the argument which has heretofore been made that it is impractical, that it will bog down industry, that it will cause a lot of litigation, et cetera, is no longer valid. We have the valuable precedents of the many States and individual businesses having had experience with it, including, with the Supreme Court decision in the *Airplane* case that a State FEPC law applies even to interstate commerce, industry in interstate commerce, and I think the situation has mounted to the point where, in a social sense, we are ready for a Federal FEPC.

The CHAIRMAN. Do you know how many States have fair employment practices commissions by statute?

Senator JAVITS. My belief is, and perhaps counsel will tell us, that it is in the area of 20.

Mr. COPENHAVER. Twenty-four.

Senator JAVITS. Of some kind; there are some which do not have the enforcement powers which, for example, we have in New York. So while we are debating the subject in the country, the situation, socially, has gotten to the point where so many of the fears have been tested and in actuality found invalid.

The CHAIRMAN. On the question of the Civil Rights Commission, you want it made permanent, extend its life without any definite tenure?

Senator JAVITS. Yes.

The CHAIRMAN. Well, of course, that places a bit of despair on presenting this civil rights question. Do you really need it forever? We hope some day when we have the matter settled you will not need that Commission.

Senator JAVITS. Mr. Chairman, I do not despair at all. I deeply believe that, perhaps in the next two decades, we will really see the end of this dreadful blight upon our country completely, but I asked for this because I think that these recurrent renewals always give the misleading impression that something is being done about civil rights.

When you get the 2-year extension—or perhaps if we are lucky a 4-year extension, there is always the feeling that the Congress passed a civil rights measure, but it has not. Also, the Commission is always sitting on the edge of the abyss, to be pushed over at almost any time. It is fair game for anyone. I just do not think that is a tenable situation, considering what we expect it to do.

The CHAIRMAN. Of course, what Congress can do, it can undo. Of course we could make it forever and then cancel it out.

Senator JAVITS. Even a provision which permits termination of the operation of a statute by concurrent action of the House and Senate, without even the President's signature, has, it seems to me, been sustained fully in practice and has been used in a number of laws. It certainly could be used as to this one. I have no desire to see us yield our authority, but I do feel these recurrent renewals give the impression of action where there is really no action.

Now, the next item I would describe as of high priority is a prohibition of discrimination in motels and hotels in interstate commerce and the elimination of the separate-but-equal clauses which still exist in both the Hill-Burton Hospital Construction Act and the Morrill Land-Grant College Act.

The President has asked for the latter. The former is also a kind of anachronism in our law which still persists and ought to be repealed.

Sixth. I have already referred to broadening the authority of the Attorney General to bring suit in representative civil cases for denial of all rights under the 14th amendment, which would include the 1st amendment rights of peaceful assembly and petition for the redress of grievances.

Those are the six major items I believe require the highest priority in the civil rights field.

I believe if such a program were given the backing of the President and the administration as a major article of policy equivalent to any other legislative effort, including a tax cut, we would be demonstrating our understanding of what is occurring under our very eyes in term of Negroes' unwillingness to accept a depressed status any longer and we would be giving this situation the pressure which it deserves.

Now, I emphasized before, and I would like to bring my testimony to a close on this note, that the civil rights movement has taken a radically new direction since the first sit-in case of 1961. We are now challenged by direct action against not one or two or three discriminatory activities but a whole mass of racial discriminations by a whole community, in effect a revolt against an entire social order, which utilizes the constitutionally protected right of assembly and petition as a means of protest.

I think there really have been three phases here—1954 marked the culmination of seeking major relief through the courts; that was the *Brown* v. *Board of Education* public school desegregation cases; 1961 marked the emergence of the sit-ins, which were directed against one particular discriminatory evil, such as discrimination and segregation with respect to lunch counters.

Now we are in a third phase, in which the whole Negro community moves against the entire complex of discrimination, challenging the social order which perpetuates this kind of thing in our country. It is a very, very serious challenge for all of us and to my mind one that could easily assume the proportions of a real national emergency. The

danger is great and the hour is late. We could afford many mistakes in the Nation, but one mistake we cannot afford is failing to take account of the legitimate grievances of an enormous body of our citizens which go to the heart of their status as citizens of the United States. We are all to well aware of the propoganda value to the Communist world of the civil rights struggle and especially such manifestations as the arrest of children, use of police dogs and firemen's hoses, and we know how it can hurt us when used by Communist propaganda, as it will and must be used, we all know, throughout the world. How much more damaging it is when the specter of a rude shock to domestic tranquillity and order accompany it.

The remedies are in our hands, in my view, in both the executive and legislative branches. I think we have failed signally in the Congress to meet our responsibility to the Nation in its destiny on civil rights, and the country is beginning to reap the bitter fruits of our failure. As I said before, we may have to fight a battle in the Senate even with respect to the rule on unlimited debate as a preliminary to the civil rights struggle, but the times and our people will not let us wait. If we will not fail our country, we better get at it now.

Mr. RODINO (presiding). Any questions?

Mr. MATHIAS. Thank you, Mr. Chairman. Senator, in referring to the FEPC provisions of the proposed civil rights bill, I would direct your attention to the concept of limiting FEPC to Government contracts and to the necessity, as you have stated, for some statutory action in this area. One of the shortcomings of the Presidential Commission seems to me to be that it is limited entirely to the executive discretion in dealing with it. In the provisions of the contract between the United States of America, the Washington Public Power Supply System and the Portland General Electric Co. in connection with the Hanford Plant on the west coast, the executive has in written contracts provided that a violation of nondiscrimination clauses will not cancel the Government contracts. Now, do you have any feelings as to what steps we should take to prevent this kind of action in the administration of the law by the executive?

Senator JAVITS. I think, in the first place, the clear intention of the Congress would be that, by putting a statutory base under this activity, the Congress would participate in it, approve it, and underline its great importance.

Secondly, I think it must be made mandatory that there be no discriminatory practices. A procedure must be established which will afford due process under which the matter can be tried out, and we must express our determination that if violations are found, then that should result in certain penalties, including contract cancellation.

It is true that the Executive may nonetheless not do it, or that the Executive may nonetheless exercise his discretion in a way which we would not approve, but I believe it is far less likely to happen if we spelled out both the end result which we seek to achieve and the procedure by which we seek to achieve it, and have made all of it mandatory.

I would not, myself, notwithstanding my devotion to these ideas, deprive the Executive of discretion. You still have to run a government and you just cannot run it any other way, but I would nonetheless make crystally clear that we intend that such and such penalties should follow such and such violations somewhat along the order

of what we do in criminal statutes where we state an objective and then say that the punishment for violation shall be so many years in prison, or a fine, or whatever the penalty is.

Even under criminal statutes, the judge has wide discretion. He may place the convicted defendant on probation. He may not punish him at all. But the legislative design expressed in that way, it seems to me, is consistent with our system of government and is what we ought to do in order to make crystal clear our intention to hold the Executive to a stand.

Mr. MATHIAS. I think this is substantially what needs to be done and I think this Hanford case certainly illustrates it.

Just one other thing, Senator. I am very grateful for your discussion of the existing authority of the Executive to deal with situations such as we now are facing in Birmingham and this rounds out a coloquy which was held with the committee before you came in on the subject led by the gentleman from Colorado.

Going from the question of mere authority to the question of judgment, which of course is reposed entirely in the Executive, I would agree that a great danger exists not only in what is happening in Birmingham today but in warnings that have been given by distinguished Members of the Congress with respect to maintaining the peace in the District of Columbia itself. I suggest that these warning signs indicate that the next area of serious trouble will be the Eastern Shore of Maryland within a hundred miles of the Capital.

Do you feel that a lack of action on the part of the Exceutive might indicate the need to put some sort of guidelines into a bill which would set up some sort of standard by which the Executive should go into it?

Senator JAVITS. I think the most pertinent would be the giving of authority to the Attorney General to sue under the 14th amendment, which would include the 1st amendment.

The other thing which I think is very important is to legislate directly in those fields which cause the intensity of this drive. For example, in Birmingham the intensity of the drive is very heavily attributable to what Negroes consider a denial of equal opportunity in employment. I have listed the other fields in which I believe action must be taken on a high priority basis: school desegregation; literacy tests for voting; and public accommodations.

But it seems to me we can, first, by giving the Attorney General the authority which I have described, indicate clearly to the Executive that we intend to have a much stiffer line and, second, by legislating in the specific areas I have described, education, employment, voting, and in places of public accommodations—and I have given my own concept of the order of priority—give relief and outlet to this head of steam. I deeply believe that, if the Congress really got into this in a real way and began to show real activity in this field of the kind we are discussing this morning, it would have a very marked effect upon lessening the tension in the South and elsewhere in the country.

Though predictions are freely made that this head of steam has now reached the point where nothing can stop it, I personally—and I am only speaking personally, as one who has devoted a great many years of his life to this—deeply believe that, if the Congress really demonstrated that it is on the ball, as they say colloquially, that they understand what is going on, that it determines to do its utmost to

give relief to legitimate grievances and stay with it, I think it will have a very great effect even upon those people who now say that it will not. I think it will have a very great effect upon them and will considerably lessen the tension and take off this pressure which has been building up until it seems to me to be out of control.

Mr. MATHIAS. I am certainly in agreement with the Senator on that and thank you very much for the contribution.

Mr. LINDSAY. I would like to express my appreciation to my senior colleague in coming across Capitol Hill and testifying effectively, and we are very grateful to you for your continual leadership in this field.

Senator JAVITS. I am very proud of the Congressman and very pleased to have his commendation.

Mr. RODINO. Senator, we want to thank you for your very constructive observations and informative thoughts this morning and appreciate your sincere interest.

I would like to make one more comment, one observation. I am hopeful, like you, that this serious deficit in our ability to breach the gap between what we preach and practice will soon be wiped out. I cannot help but state, as many others before us have stated, that unless sincere dedicated individuals, who believe in the guarantee of civil rights, stand up and be counted regardless of partisanship, we are just going to be stumbling and bumping along. I think it behooves men like you on your side of the aisle, who are with very eloquent voice, to continue this fight. This gallant fight you are making along with us who are here on this side of the aisle is necessary in the interest of preserving and guaranteeing fundamental human and civil rights to each and every citizen. Unless we do this, there is just going to be talk, talk, and talk, and we are not going to be able to get to any place where we will relieve the stress and strain, and the image of America is going to continue to be blighted.

Senator JAVITS. I thoroughly agree with the chairman and am very grateful for that observation.

STATEMENT OF HON. CHARLES S. JOELSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. RODINO. I want to welcome my colleague from the State of New Jersey, and my very good friend, who is an ardent advocate of not only civil rights, but all human rights. He has been a very eloquent spokesman and I appreciate his coming here to give us his thinking and observations.

You may proceed.

Mr. JOELSON. Thank you.

I am here to support the legislation under consideration, and, as you know, I have introduced companion bills on the subject. I believe that the clock is running very fast against the possibility of our solving our civil rights problems by lawful and orderly means and this is probably the last chance we will have of using a potential to defuse a potential bomb.

I am of the opinion there are two fronts on which the minority groups problems must be solved. The first is on the economic front by guaranteeing employment opportunities to all people and of course

a bill of this nature, a very comprehensive bill, is before the House Education and Labor Committee.

I feel that, on the political front, it is important to move forward and that is why I would back any legislation designed to guarantee voting rights to our minority groups.

I remember going to school many years ago and being taught that in 1776 this country grew out of battle cry that "taxation without representation is tyranny."

We were born with that statement. Yet here we are today taxing our Negro citizens, indeed asking them to go to war for our country and yet denying them representation, denying them the right to vote, and I say that taxation without representation was tyranny in 1776 and it is no less tyranny in 1963.

That is why I am here today to support these bills and I certainly hope we will not, in America, substitute the symbol of the police dog for the symbol of the eagle.

Mr. RODINO. Thank you very much, Congressman Joelson.

Mr. JOELSON. Thank you.

STATEMENT OF HON. CHARLES A. VANIK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. RODINO. Our next witness is Congressman Charles Vanik of the State of Ohio. We are very pleased to welcome you and you may proceed as you wish.

Mr. VANIK. Thank you very much.

Mr. Chairman and members of the committee, on previous occasions and almost annually, I have come before this committee urging the enactment of meaningful civil rights legislation designed to eliminate the blight of discrimination which is violently retarding the mature development of our Nation and which obscures this Nation's rightful destiny and promise to the world.

The Birmingham blunder of police dogs, water pressure, and massive child jailing is almost sufficient proof that rational minds are not in control. These are the hallmarks of government by hate and hysteria.

There is very urgent need for legislation, as well as executive action. The peaceful march which was initiated in Birmingham by the Reverend Martin Luther King and his associates was a right of assembly guaranteed by the first amendment to the Constitution.

In the famous case of the *United States* v. *Cruickshank*, Chief Justice Waite declared:

> The right of the people peaceably to assemble for the purpose of petitioning Congress for a redress of grievances, or for anything else connected with the powers or the duties of the National Government, is an attribute of national citizenship, and, as such, under the protection of, and guaranteed by, the United States.

The use of cruel police methods to obstruct the right of peaceful assembly by the civil rights marchers provides full legal authority for Federal intervention. Under our doctrine of dual citizenship, both State and National, there are rights of national citizenship which must be protected and preserved.

I therefore recommend and urge your distinguished committee to approach this problem with your customary courage and hold further

investigations and hearings in Birmingham and in other places around the country, both North and South.

These hearings would provide an orderly forum which is very badly needed for the consideration of civil rights transgressions on the national scene and would provide the Congress with an excellent record on the need for vital legislation.

I am in hearty support of the legislation introduced by Chairman Celler as set forth in H.R. 5455 and H.R. 5456 to extend the life of the Civil Rights Commission and to expedite the handling of civil rights cases in the courts.

I am also in hearty support of legislation to establish a Fair Employment Practices Commission with wide authority. These approaches are long overdue and necessary. However, I do not share your high hopes that massive discrimination can be dismembered with such tiny tools as are provided by these laws.

I hope that your committee will pursue the cause of civil rights with renewed zeal. The entire Nation will be grateful for your efforts.

Mr. RODINO. Any questions?

Mr. Lindsay.

Mr. LINDSAY. I would like to ask, in view of the fact of mentioning the invoking of the first amendment with respect to the right to petition in this matter which has been going on in Alabama, do you not think, therefore, the Federal Government and executive branch have direct responsibility to safeguard the first amendment rights?

Mr. VANIK. Well, one thing about the *Cruickshank* case, as you are well aware, is the right to petition the Congress of the United States.

If the marchers had been marching on a Federal building or marching to a meeting of this committee being held down in Birmingham, the protection of the Federal Government would have been a mandatory action under the *Cruickshank* case.

In other words, if these people were coming to a hearing of this committee in Birmingham, the Federal Government would have the duty to protect them.

Mr. LINDSAY. Separating the rights as to church and other safeguards in the first amendment, you are stating that the Supreme Court decided this on the actions taken by the State, not the Federal Government, so are you saying the Federal Government does not have the power to protect first amendment rights if those rights are threatened by the coercion of a majority acting under color of law in a State?

Mr. VANIK. I do not know. I am not in a position to answer that at this moment, but I do know that the Court's decision goes very far in protecting the rights of people to assemble and to petition Congress and the Federal Government.

The people at Birmingham, as I understand it, were proceeding on the city hall on city land rather than Federal properties. I believe, if the course of marching had been directed toward the Federal buildings or to people in those buildings, to the members of this committee sitting in Birmingham on a hearing, the Federal Government would have clear-cut authority to protect the rights of the petitioners.

I think it goes to the powers to petition the Congress in the *Cruickshank* case.

Mr. LINDSAY. Your testimony is excellent, but what good does it do to talk about the need for safeguarding the right to petition if you then say the Federal Government has no powers in this case. Would

it not have whatever authority is necessary to safeguard first amendment rights, the right to petition?

Mr. VANIK. I would say to the gentleman I do not know how wide these powers are, but I do know, by this decision, that they are clearly established to protect the rights to petition the Congress of the United States or the Federal Government. I particularly urge your committee to go there or anywhere else where these disturbances occur. I think it would be rendering the Congress of the United States and the people of the United States a great service and I think it would give these people a place where they might present their petitions. I think it is the duty of the Congress to go out to the scene of these areas of disturbances and find out exactly what it is the people complain about and give them a forum in which to present their complaint.

I think the authority then is very well established by the first amendment to protect the marchers, the petitioners, and the right of their assemblage for this purpose.

STATEMENT OF HON. WILLIAM FITTS RYAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. RODINO. The next witness this morning is a distinguished Representative from New York, Mr. Ryan.

Mr. RYAN. Mr. Chairman and distinguished members of the committee, I appreciate this opportunity to appear and testify before this distinguished committee on a subject which I think holds the most crucial place in the Nation today.

I do not think there is any doubt about the fact the major item of unfinished business before us today is civil rights.

The strength and future of America depends upon the maximum development of the potential of every individual. Yet, discrimination and segregation thwart the full realization of their potential for millions of our citizens. And, the Nation is deprived of the increased growth and the scientific, cultural, and artistic enrichment which full equality would bring. The affluence, comfort, and opportunities of our society have largely excluded the Negro American.

Conditioned from their earliest years in separate but not equal schools to accept a lesser role in life, the incentive of Negroes to make the best of their abilities is blunted by the knowledge that, with few exceptions, the most challenging and rewarding positions in industry and the professions are closed to them.

Segregation has stifled the productive capacity of the Nation. The current 6 percent rate of unemployment is alarming enough; but, as of this February, 13 percent of the nonwhite labor force in this country were without jobs. In part these figures restate in statistical terms the well-known truism that Negroes are the last to be hired and the first to be fired in a period of overall economic slack; partly, too, they reflect the special vulnerability of Negroes, who comprise 10.5 percent of the total population but 30.5 percent of the unskilled farm and factory labor force, to the automation of routine work processes.

The rapid technological changes of our society affect with particular severity the members of minority groups; and the disadvantaged groups are by and large denied the opportunity to prepare themselves for coping with such changes.

Displacement by urban renewal and highway projects imposes unusual hardships on Negro families, who seek new housing in a drastically limited market.

The overcrowding of our schools is still another familiar social evil with a special impact on Negroes. In a study of 17 countries in which all the schools were segregated, the Commission on Civil Rights discovered that the pupil-to-teacher ratio was more unfavorable in Negro schools than in white schools in every case.

It is a vicious circle compounded by effective disenfranchisement which is no preparation, I am sure we all agree, for assuming the responsibilities of citizenship.

President Kennedy's message recently on civil rights February 28, 1963, summed up the situation:

> The Negro baby born in America today—regardless of the section or State in which he is born—has about one-half as much chance of completing high school as a white boy in the same place on the same day, one-third as much chance of completing college, one-third as much chance of becoming a professional man, twice as much chance of becoming unemployed, about one-seventh as much chance of earning $10,000 per year, a life expectancy which is 7 years less, and the prospects of earning only one-half as much.

For too long a time, Congress has left the full task of establishing equal rights to the Executive, the courts, and dedicated private citizens. When the same constitutional right must be upheld in case after case in the courts, when executive agencies must operate in an atmosphere of continuing uncertainty concerning their legal authority to protect the rights of minorities, the process is a slow one.

What is needed is a legislative war on discrimination. Armed with the Constitution, by acting now in this session, the Congress can launch a full-scale assault upon the evils of segregation and discrimination.

It is true that Congress has played some part in the drive for equal citizenship that is now sweeping our land. In 1957, and again in 1960, it passed laws designed to protect the constitutional right to vote. These were the start of the exercise of responsibility.

Measured by the demands of the present situation, however, they are inadequate. They deal with voting rights and the protection of property—vitally important laws, but only first steps. And, within the scope of these laws much remains to be done. With the exceptions of the antipoll tax amendment and the extension of the term of the Civil Rights Commission for another 2 years, since 1960 Congress has passed no civil rights legislation. Congress has failed to do its part in protecting the constitutional rights of the citizens it represents.

The need for civil rights legislation is recognized by both the Republican and Democratic platforms. I might remind you that during the presidential campaign, the then Senator Kennedy stated:

> * * * much legislation is needed, we must grant the Attorney General power to enforce all constitutional rights * * * not just the right to vote. We must wipe out discriminatory poll taxes and literacy tests, and pass effective antibombing and antilynching legislation. As we must continually strengthen the legal framework which will allow us to move toward economic, educational and political equality. (Sept. 9, 1960, Los Angeles.)

The necessity of civil rights legislation is known to all of us. It is shocking that more than 100 years after the Emancipation Proclamation, dedicated and courageous young Americans in Alabama and Mississippi and other parts of the country remind us that equality for all our citizens has not yet been achieved.

Discrimination still exists in every facet of our national life—in employment, housing, public facilities, banking, insurance, voting, police treatment, schools, labor organizations, and elsewhere.

Not only are Negroes and other minority groups denied their constitutional rights, but those who with dignity, decency and determination are fighting to obtain civil rights for others are also deprived of fundamental constitutional rights.

The time has come for the Congress to pass legislation which will, for the first time empower the Federal Government to stamp out discrimination in every field over which the Federal Government has jurisdiction. With this objective in mind, I have introduced a number of civil rights measures. I want to discuss seven of those bills which are pending before this committee.

Mr. Chairman, my bill H.R. 6028, an act, "To provide equal rights for all citizens" strikes at the heart of the problems. This bill has two major objectives: To eliminate unfair discriminatory practices and, secondly, to establish practical procedures for protecting voting rights.

As I have pointed out, racial and religious discrimination pervades our social and economic life. In the field of employment, for example, legislation is badly needed. There are some employers who will hire no Negro for any position. There are other employers who will hire Negroes only for the most menial jobs no matter how qualified the applicants are. When Negroes are hired, their chances for promotion are either nonexistent or much more limited than they would be were it not for their race.

In some areas of the country these discriminatory practices are used not only against Negroes but against Chinese or Japanese or Indians, Mexicans or Puerto Ricans. In other areas they are practiced against Catholics or Jews. The effect on our economy of job discrimination is obvious.

Because of discrimination we are not fully utilizing the talents and energies of many of our citizens. In addition, we must not overlook the affront to human dignity in being turned away from a job because of the color of one's skin or one's religion.

The employer is not the only factor in employment discrimination. Some labor unions are not without blame. The 1961 Civil Rights Commission report on employment states:

> As the craft unions generally control admission to apprenticeship training programs, racial discrimination policies also operate to exclude Negroes from these programs. Existing civil rights machinery within the AFL–CIO has not eliminated discriminatory practices and policies of some local unions.

Discrimination pervades other areas as well. The 1961 Civil Rights Commission report on housing points out the large number of Americans who are being denied equal opportunities in housing because of race or color.

Discrimination in housing is not only due to the prejudice of landlords and owners but is in large part caused by discriminatory practices of real estate brokers and lending institutions. The Civil Rights Commission housing report not only recommended that action be taken against discrimination in publicly assisted housing but also in regard to discriminatory practices of financial institutions engaged in the mortgage loan business.

The courageous citizens who have participated in the sit-ins, the freedom rides, and the freedom walks have demonstrated the fact that discrimination in public facilities is prevalent throughout a large section of our Nation.

To eliminate these unfair discrimination practices, H.R. 6028 would make the Commission on Civil Rights permanent, give it jurisdiction over discriminatory practices, and the power to issue court-enforcible cease-and-desist orders. Violators found guilty would be punishable by fine, imprisonment, or both.

Under the bill, it would be an unfair discriminatory practice:

For any employer in a business affecting commerce to discriminate against an employee because of race or color.

For a labor union affecting commerce to practice racial discrimination.

For an employer or labor organization affecting commerce to discharge, expel, or discriminate against a person because he opposes unfair discriminatory practices or because he has filed a complaint, testified, or assisted in any proceedings under the act.

For any publicly assisted housing to practice discrimination in renting or leasing.

For any business affecting commerce to deny equal treatment in facilities, services, or accommodations.

For any bank or credit institution insured by the Government or subject to Federal or State regulation to discriminate in granting loans or mortgages.

For any insurance company engaged in business affecting commerce to discriminate on terms or conditions of insurance.

For any real estate broker or agent operating in interstate commerce to practice racial discrimination.

And finally, the bill would outaw economic sanctions, or other forms of discrimination, aimed at preventing or punishing anyone from voting.

As I have pointed out and as we all know, discrimination is not confined to economic and social matters. The long arm of prejudice extends to the ballot box.

In evaluating the present voting laws the Civil Rights Commission said:

> Although the provisions of the 1957 and 1960 Civil Rights Act are useful, however, they are necessarily limited means for removing racial discrimination from the franchise. Suits must proceed a single county at a time, and they are time consuming, expensive, and difficult. Broader measures are required if denials of constitutional rights in this area are to be quickly eliminated.

Title II of H.R. 6028 is designed to safeguard the voting rights of every citizen. Whenever the Civil Rights Commission or a court finds that a voting registrar or other State or local official has, under color of law or by State action, deprived persons in any locality of the opportunity to register because of their race or color, the President is authorized to establish a Federal enrollment office in each registration district in the locality.

The Federal enrollment officers would judge the qualifications of the persons wanting to register and actually enroll them. The bill provides that people enrolled in this way shall have the right to cast a ballot and have it counted.

Voting rights are also the concern of H.R. 6029, which I have introduced and which abolishes literacy tests as a qualification for voting in any election.

Literacy tests, contrary to the explicit intent and command of the 15th amendment, have been openly used to deny the right to vote because of race or color.

In many sections of the country literacy tests disenfranchise prospective voters who are not literate in the English language. I might point out that the Spanish-speaking community in New York is directly affected by discriminatory literacy tests.

I believe Congress has power to act in the field under the 15th amendment in regard to both Federal and State elections.

The 15th amendment states:

> The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section two of the amendment states:

> Congress shall have the power to enforce this article by appropriate legislation.

This amendment is not limited to Federal elections. My bill eliminates the literacy test entirely. We know that literacy tests are used as a device to discriminate against American citizens. We also know that the illiteracy rate in the United States is the smallest in the world.

According to the Census Bureau, as of 1960 (the latest available figure) 2.4 percent of our population over 14 is illiterate. In 1900, 11.3 percent of our over-14 population was illiterate.

The only practical use of the literacy test is to stop American citizens from exercising their fundamental democratic right of voting.

Probably no civil rights issue is of more immediate concern to racial and ethnic minorities than the inequitable administration of justice. Police brutality is an old story to minority groups, but familiarity with the experience has made it no easier to bear.

No reader of newspaper accounts of recent events in Alabama and Mississippi will regard the problem as a thing of the past. Also, police power has been abused by refusal to protect members of minority groups from unlawful violence at the hands of private persons or groups.

H.R. 6030 provides both criminal penalties and civil remedies for specified acts of violence under color of law or for refusals to act. The bill also authorizes the Attorney General to institute proceedings for preventive relief against any individual who, under color of law excludes any person or groups of persons from grand or petit jury service on account of their race, color, or national origin. This provision gives full meaning to the most ancient and honored right of every man in our jurisprudence—the right of every man to be tried by a jury of his peers.

I have discussed three bills. The fourth bill, H.R. 6031, will be familiar to many members of this committee. It amends part III of the Civil Rights Act of 1957 to give the Attorney General the power to institute suits upon a finding that any person or group of persons is being deprived of, or is being threatened with the loss of, the right to the equal protection of the laws by reason of race, color, religion, or national origin.

This would apply to cases involving racial segregation in public schools. The Attorney General is also authorized to institute proceed-

ings against any two or more people who conspire to hinder duly constituted authorities in their efforts to secure any person's right to equal protection of the laws.

A separate section specifically empowers the Attorney General to intervene in civil actions brought by individuals arising out of racial segregation in public schools. Where the Attorney General finds that any person or group of persons is being deprived of, or threatened with deprivation of, their constitutional rights for having opposed the denial of the equal protection of the laws to others, he may bring an action for preventive relief.

This is designed to protect those courageous individuals who are carrying on the civil rights battle. I believe this measure is also essential to the maintenance of ordered liberty in our society.

H.R. 6077 is another bill designed to afford added protection and encouragement to those brave citizens who are sitting in, walking in, registering in, and putting their liberty on the line for democracy.

In recent years we have seen many citizens subjected to violence and arrest because of their activities for civil rights.

H.R. 6077 states:

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

The sixth bill before this committee is H.R. 2115 which provides criminal penalties against persons who take part in a lynching and governmental officers who have neglected or refused, or willfully failed to make all diligent efforts to prevent the lynching.

It also applies the crime of kidnapping to lynching. The subject of this bill is not new to this committee. Lynching is one of the most brutal affronts to our system of justice and legislation in this area is long overdue.

The final bill which I would like to discuss with the committee this morning is H.R. 5741, which I consider to be of tremendous importance. It would provide the Federal Government with an effective weapon to deal with the many, many instances of discrimination which are constantly coming to our attention and would put Congress clearly on record as opposing discrimination in any activity carried on by the Federal Government or through Federal expenditures.

It provides:

That notwithsanding any other provision of law, no financial or other assistance may be furnished under any law of the United States, directly or indirectly, to or for the benefit of any program or activity carried out in any State or possession of the United States, or in the District of Columbia, in the course of which any individual is discriminated against on the ground of his race, religion, color, ancestry, or national origin.

The bill, in other words, would deny Federal funds to any program which discriminates. It is aimed at denying funds to programs, not to any one State. Federal funds should not be used to underwrite segregation. How can we speak of our commitment to civil rights and continue to appropriate money for Federal programs which discriminate?

We all know that there is discrimination in Federal programs. The impacted areas program for the construction and operation and maintenance of schools and the Hill-Burton hospital construction program are just two examples in which there is widespread discrimination in this Nation. There are others.

Funds under the Defense Education Act, for example, go to schools which use the funds for segregated purposes. In the manpower retraining program funds have been used for segregated retraining centers.

These are just some examples of how Congress supports segregation. H.R. 5741 would clearly and equivocally stop Federal funds from being used for unconstitutional purposes.

Under the 14th and 15th amendments to the Constitution and the commerce clause, the Federal Government has the authority to exercise the powers which the bills I have discussed confer. Under our Constitution and our democratic ideals the Government has the obligation to take every possible step to eradicate the gravest internal threat to democracy—racial and religious discrimination.

We have the power and the obligation and the only question remaining is whether or not we have the will.

I think there is a historical parallel that can be drawn. In the early 1930's it was apparent that, if labor was to receive its constitutional rights, Federal legislation was absolutely necessary.

The Congress at that time had the will to protect labor's constitutional rights. It has long been the case the Negroes and other minority groups must have Federal legislation to guarantee their constitutional rights.

So far, the will has been lacking.

I urge the distinguished members of this committee to change that situation and approve legislation which would accomplish the objectives which I have outlined today.

When this comprehensive legislation is approved by the Congress, "Civil Rights For All Regardless of Color or Religion" will not be just a slogan but will be a reality.

Thank you very much, Mr. Chairman.

Mr. RODINO. Thank you very much.

STATEMENT OF HON. FRED SCHWENGEL, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. RODINO. The next witness is the distinguished gentleman from Iowa, Mr. Fred Schwengel.

Mr. SCHWENGEL. Mr. Chairman, and members of the committee, I have never appeared before a committee of the House for a cause that I felt more deeply concerned about than the cause of civil rights. The civil rights we ask for is a basic and acknowledged American right.

The fact is, since coming to Washington, D.C., as a Reppresentative, I have come to realize more and more the great meaning of the American ideals under which we function here. This is the focal point of this great Government, where, and I believe, more has happened here to benefit mankind than has happened anywhere else in all the rest of history for the benefit of mankind.

But more could have happened for their benefit had we realized the importance and validity of what our forefathers had in mind when they gave us this great ideal of freedom.

It has been just 100 years since the most American of all, Abraham Lincoln, issued the Proclamation of Emancipation. It was 100 years last December since he said in effect, in asking Congress to approve emancipation, that in giving freedom to the slave we gave freedom to the free, honorable alike in what we give and in what we preserve.

My good friends on the committee here, I would say that reading the newspapers of recent days and visiting the schools in the District, firsthand personal inspection of the problems of the District, has revealed to me the awfulness of the problems that are involved in not giving civil and equal rights to human beings in Washington, D.C.

I would like also to say that it is awfully late in the history of the free world to still find a need to sponsor a bill in the Congress of the United States implementing the oft stated American principles of civil rights.

It is not only late but it is a tragedy of monumental significance to note that the spirit, aims, and ambitions of our forefathers have not yet been fully implemented.

So I speak with urgency and with deep feeling on this subject.

I have great respect for the Judiciary Committee of the House and its veteran and eminent chairman, as well as its ranking minority member. It is therefore certainly not my intention to sit here and read a lesson in civil rights to this small but particular and deeply informed panel of experts. All I aim and hope to do is to add to the sense of compulsion that should move us all to embellish the posture of sincerity about freedom that we try to represent and should try to present better to the whole of mankind in our generation and we ought to do this before it is too late.

All I aim to do, with the agreement of so many of my colleagues in the House, and, I feel, with your agreement, is to so erase every vestige of hypocrisy from the American protestations of freedom, that even the slightest accusation by our most virulent enemies, will be overwhelmed by the truth.

And the truth in this area means civil rights so stated in the basic law of the land—the legislation of this Congress—that no citizen under this flag, no organization, no group, no minority, shall ever again be in a position to complain honestly that anyone of our 187 million inhabitants has not had the full and unimpaired protection and equal advantage of our laws.

That, Mr. Chairman and gentlemen of the Judiciary Committee, is my theme briefly today.

To this end, on February 7, 1963, I along with several others I believe introduced into the 1st session of this 88th Congress a bill that we call the Civil Rights Act of 1963.

It amends the Civil Rights Act of 1957.

It does what already has been done in some places and proposes to legislate on this question with permanence and for all of the people. It does, therefore, what has already been done by strengthening and extending the principles involved in civil rights.

I would like to point out at this point that, as I have paraphrased it on Lincoln's quote that I gave earlier, I firmly believe that, as we give more freedom and opportunity to other people, we have more of both ourselves. So what we should do here is to make permanent and approve the basic rights that should have had our dedicated attention long ago. Then we who already have so many freedoms will have more liberty too.

If I were not tired of the phrase I would say that my proposed bill, H.R. 3485, "puts teeth" in our Nation's legislative concern for civil rights.

Yet, the word "teeth" is an unhappy one.

Because my proposed bill is not punitive. It is not vindictive. It is not concerned with punishment.

The bill several of us have proposed, Mr. Chairman and gentlemen, is to render unto every man, as our Constitution provides and as our laws implement, the rights that are justly his.

This bill does no more; it asks no more.

But also it asks and does no less!

For this bill, H.R. 3485, means business.

It means it for all to understand. It corrects an incredible evil which no man within hearing of my voice seeks to perpetuate. What Thomas Jefferson said in words of flame and what Abraham Lincoln restated in the greatest utterance ever delivered on this soil, is merely made more actual, more practical—if you like, more workable—under the terms of my Civil Rights Act of 1963.

What we say we stand for, we bring to pass with the legislation more definitely and absolutely.

The words: "Conceived in liberty and dedicated to the proposition that all men are created equal" must be so put to work in our everyday lives, that every man, woman, and child living under our flag can feel their toughness, their strength, their protection—and, above all, feel the responsibilities that they entail from those among whom these words extend their benefits.

Thus it is that under title I the Civil Rights Act of 1963 directs that the Civil Rights Commission be made a permanent agency.

The history of the Commission so far is the best possible evidence of the need—indeed, the indispensability—for its perpetuation.

It is provided that the Commission shall, not later than January 31, of each year, submit a report to the President and the Congress setting forth its activities and findings during the preceding calendar year and its recommendations with respect thereto. The Commission may, of course, submit such other reports to the President and to the Congress at such times as the Commission and the President deem advisable.

This Commission through its reports may be said to be the thunder of public opinion.

In its words to the President and the Congress is the echo of the voices of the Founding Fathers. It is the voice—extended to our own time—of Lincoln crying out against injustice. In the words of this Commission is the unalterable pronouncements and the promise of the Constitution of the United States and its infinite decency.

Thus the permanence of this Commission is title I of my bill.

But the Commission, under this bill, is more than a voice, more than an official cry against injustice and suppression, hypocrisy and subversion.

Under this bill the Commission's investigative power and authority is amplified and strengthened. The teeth and the vigor this aspect of the measure had in 1957, are sharpened and made the more effective by this Civil Rights Act of 1963.

For instance, the new bill provides the addition of the following to the terminology of the bill of 1957. I quote:

*** * * investigate allegations in writing, under oath or affirmation, that certain citizens of the United States are being unlawfully accorded or denied the right to vote, or to have that vote counted, in any general, special, or primary election held solely or in part for the purpose of selecting or electing any candidate for the office of President, Vice President, presidential elector, Member of the Senate, Member of the House of Representatives, or Delegate or Commissioner from any territory or possession of the United States, as a result of any pattern or practice of fraud or discrimination relating to the conduct of such election.**

This ends the quote.

We put to work actually, in reality, definitely, without reservations, under the most absolute terms, the ideals and the decency that the Constitution of the United States enjoins upon us.

Of course this bill is not a total panacea, anymore than the Constitution itself was when it was first created. But this bill provides a path. It gives direction. It operates on workable principles.

It is aimed to be eminently just, tolerant to the intolerant, and generously fair to the victims of intolerance.

I say put this bill on the statute books of the United States of America and the posture of our country, first to ourselves, and then to the whole world, will take on a bright and exciting image that will help to win us the cooperation of all of free mankind, and the envy of the millions now lost in slavery.

Thus when I use the word "teeth" in sponsoring this bill this is what I mean, the power to investigate and uncover the truth so that all can see.

But the bill with justice and restraining, yet with firmness and sincerity, goes even further. It calls for such compilation of registration and voting statistics by the Bureau of the Census that comparisons can be made, data presented, showing, among other facts—

a count of persons of voting age in every State by race, color, and national origin who are registered to vote, and a determination of the extent to which such persons have voted since January 1, 1960.

The Civil Rights Act of 1963 deals thus, not only with the philosophy of our Government and the dream of justice for all that invests it, but it deals also with the arithmetic, the actualities, the brute facts that must rest behind the decent implementation of civil rights for our citizens.

Then what? Then this bill strengthens the equal protection of the laws. It carries out the spirit of the Declaration of Independence and I believe the spirit of the Constitution.

The Attorney General is authorized, upon written complaint on oath or affirmation of any person who has been denied admission, or whose child or ward has been denied admission to any public school on account of race or color, to institute for or in the name of the United States, a civil action or other proceeding for preventive relief, including an application for an injunction or other order against any person or persons who, acting under color of any

statute, ordinance, regulation, custom or usage of any State, or subdivision, or instrumentality thereof, has denied to such complainant, or the child or ward of such complainant, admission to any public school on account of race or color.

This ends the quote.

There, I insist, in the plainest language and as bluntly as necessary, are the words that mean the enforcement of justice, the words that mean the eradication under law of a great evil.

These are, of course, ancillary provisions that deal fairly with any possible transgressors. There is the well-known provision, for instance, that the courts of the United States shall not entertain proceedings instituted under this section with respect to a public school in any State unless—I quote—

the complainant has exhausted the remedies available to him under the laws of such State—

and so on.

This is not to be a one-sided bill. Nor does this bill propose to lend itself to administrative, or police, or judicial abuse by zealots and those more interested in fanatic self-assertion than in a judicial correction of great social wrongs.

What I am saying is that my Civil Rights Act of 1963 has a built-in insulation against the John Brown type of extremism and demagoguery. Its aim is not to throw mud. Its aim is not to excite agitation. Its aim is not to molest and embarrass and humiliate any State, any district, any area. Its aim is to prevent violence, mobs, police brutality. Its aim is to mete out justice under law and in accordance with it.

For instance, again, there is this self-explanatory provision in the bill, demonstrating the aim to be just to both sides on the issue; I quote:

The courts of the United States, * * * shall not enjoin, suspend or restrain any person or persons, named as defendants in such proceedings, if the public school to which admission is sought has entered upon a plan to desegregate its facilities with all deliberate speed.

I give this quote, as I have some of the others, even at the expense of possibly wearying you, only to prove again and again and still again, that this Civil Rights Act of 1963 is cloaked in a deliberately aloof judicial temperament and that its aim is to right wrongs, and not to inflame agitation, nor to be punitive, or to promote vengefulness.

Since I authored it I like to think it is invested with the spirit that touches, I know, your hearts as well as my own, the spirit of "malice toward none—charity for all." But the end is to seek out and establish, firmly and positively, the justice enjoined by our title—deeds of freedom.

It is in this attitude and precisely in this attitude that the bill calls for the establishment of a paid Commission on Equality of Opportunity in Employment.

Its membership, under Presidential appointment, is, of course, to be bipartisan. The bill provides rules of procedure for the Commission which are professional and make sense to experts skilled in administration and law.

Along kindred lines my bill does not ask for equality as a matter merely of literature and semantics. The bill precisely directs that Government contracts shall in their specifications command the posi-

tive enforcement of equality of opportunity in employment. My bill covers questions of layoff. My bill covers questions of discharge.

My bill makes enforcement as workable as possible under law. My bill enjoins the judicial process with full justice to any respondent charged with violation. The respondent is not without protection. There will be no witch hunts in reverse.

Again I point out the provision of my bill, which says, and I quote:

> The respondent shall have the right to file a verified answer to such complaint and to appear at such hearing in person or otherwise, with or without counsel, to present evidence and to examine and cross-examine witnesses.

The bill specifies further. I quote:

> The Commission or the member or designated agent conducting such hearing shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend its answer.

And, of course, all testimony shall be taken under oath.

The bill goes on with its implemented justice against racial discrimination which, to be sure, is of the essence of what we mean by civil rights.

Thus my bill extends itself into an educational program. It directs the Commission to encourage the furtherance of an educational program by employer and labor groups in order, the bill says—

> to eliminate or reduce the basic causes of discrimination in employment on the ground of race, creed, color, or national origin.

The bill then spells out specifications to make this principle work.

The bill answers fully my motivations in preparing it. Thus it is not only just, carefully thought out, incorporating basic ideas and points of view already more or less widely known, but it is comprehensive. It seeks to cover the whole field all-intensively and it is built on a hard foundation of equal rights under law and fairness.

You will recognize in it the benefits of a great deal of professional and knowledgeable consultation. By "comprehensive" I mean such provisions in the bill as the one that declares, and I quote:

> For the purpose of assisting State and local educational agencies to effectuate desegregation in public schools, there are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine.

The bill, basically, to be sure, covers the problem of a literacy test in Federal elections. There is the provision that any citizen who has not been adjudged an incompetent and who has completed the sixth grade in a school accredited by any State or the District of Columbia possesses sufficient literacy, comprehension, and intelligence to vote.

In its totality, then, what do we have in H.R. 3485—the Civil Rights Act of 1963?

Gentlemen, we have the Constitution of the United States at long last put upon a track and sent with deliberate and safe speed toward the fullest realization of the goals which the Founding Fathers set out to accomplish.

We have the sick mask of hypocrisy torn away from our pretensions as a free people.

We present to the minority groups in our country a shield of protection and a shield of Federal initiative that makes or should make relatively unnecessary the persistent antisegregation demonstrations, riots and near riots, marches and parades, that plague our country and give us an international black eye everywhere on earth.

The CHAIRMAN. Thank you, Mr. Schwengel, very much, for a very fine contribution to this very difficult subject.

The hearing will now stand in recess until 2 o'clock when we will hear further from Members of the House.

(Whereupon, the hearing recessed until 2 p.m. of the same day.)

AFTERNOON SESSION

The subcommittee met at 2:15 p.m. pursuant to adjournment in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee) presiding.

Present: Representatives Celler, Toll, Rodino, Rogers, Donohue, Brooks, Kastenmeier, McCulloch, Miller, Cramer, and Meader.

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The hearing will come to order.

We have our distinguished colleague from Illinois, Mr. Robert McClory.

Mr. MCCLORY. How do you do, Mr. Chairman? Do you want me to sit here?

The CHAIRMAN. As you wish. You may stand or sit. It does not make any difference. Be comfortable.

STATEMENT OF HON. ROBERT McCLORY, U.S. REPRESENTATIVE FROM THE STATE OF ILLINOIS

Mr. MCCLORY. Mr. Chairman and members of the Judiciary Committee, I come before you as a witness in support of equal opportunity on civil rights legislation and, primarily, in support of the bill which I think you have designated as the McCulloch bill—pursuant to which I have introduced H.R. 3157, which is identical with the bill of Congressman McCulloch.

I do not have a prepared statement at this time, but, if it is agreeable with the Chairman, I will give an oral statement. I would like the privilege of correcting the minutes that are made of the statement I make here.

Chairman CELLER. You have that privilege. You can submit additional matters subsequently.

Mr. MCCLORY. I would like to emphasize in my remarks, that I have had some experience with the subject of fair employment or equal opportunity legislation, having served for 12 years in the Illinois General Assembly. We considered such legislation there, and after trying for many years to secure that type of legislation, we finally enacted a bill at the 1961 session. And, I would like to report on that bill and the effect and the influence it has had in improving employment opportunities for minorities, primarily the Negro, in Illinois.

The legislation in Illinois is in some respects similar to Mr. McCulloch's bill, because, for the first time in Illinois, we established an equal opportunity commission similar to the permanent Civil Rights Commission which is designated in H.R. 3139.

I think this is an important characteristic of any civil rights or equal opportunity measure. If there is one frustrating experience or situation encountered by a Negro, or any minority group member who is denied employment, it is the lack of a forum to which to turn for

relief. Anyone who has had the experience, as I have had, of trying to find employment for a Negro—and going from one employer to another and being repulsed and rebuffed without any logical or given reason—realizes that there has to be some place to which such a person can turn for a hearing, whether or not he secures relief.

So, first of all, I would like to suggest that whatever measure you happen to recommend should provide for the establishment of a permanent civil rights commission.

Furthermore, I would like to suggest that the permanent Civil Right Commission be as far removed from and as independent as possible of the executive—or any other—department or agency of the Government. Thus, when a person appears before or has opportunity to utilize the Commission, there can be the knowledge that this is an independent and a continuing forum established for the purpose of hearing the individual's case, and to provide or recommend relief.

I do not suggest—and I do not think that anyone who has thought about this subject can suggest—that the mere enactment of legislation is going to make individuals tolerant or understanding or fair or equitable. However, I know from my own experience—and I know that others with experience with this type of legislation realize—that there are great benefits in the way of persuasion, and education, and, perhaps, even coercion. These result from the enactment of this type of legislation insofar as it affects employment and help to induce greater understanding, fairer treatment, and fuller utilization of the talents of our citizens.

Now, in referring to the situation in Illinois, I would like to point out that the State is both a "northerly" and a "southerly" State. They grow cotton in the southern portion and speak with accents similar to those we encounter below the Mason-Dixon line, while in the northern part of Illinois we are truly an industrial-type State. So, the enactment of equal opportunity or fair employment practices legislation in Illinois is a demonstration that this type of legislation can be effective, and can be utilized, both in the North and the South.

Another aspect of the legislation about which I would like to make reference is, if course, the enforcement of the right to vote, and the legal proceedings which are provided where the right to vote is denied or where the vote, when granted, is not counted.

This is certainly a Federal problem, as we find in the national elections, that frequently the outcome of a national election is determined by the validity and integrity of votes cast in the various States.

Without undertaking to reflect upon any party or individual, I would like to point to the shocking situation which developed in Illinois. At the 1960 elections there were between 400 and 500 precincts in the city of Chicago where discrepancies were demonstrated through discovery process, as disclosed under the operation of our State law.

It has been provided, by enactment of the Illinois General Assembly, that, where a vote fraud is suspected, a party or candidate may have discovery with regard to a certain number of precincts in which the fraud is felt to have occurred. And so, there were in the city of Chicago between 400 and 500 of these precincts where the discrepancies were substantial. After the discovery proceedings were completed, the suit was instituted for a recount.

I might say that the then county judge of Cook County had withdrawn himself from serving as county judge and they had placed another judge from outside of Cook County to serve instead.

At the hearing, the imported judge dismissed all of these cases on the ground that the discovery process had constituted a "tampering with the ballots" and therefore a recount of the ballots in these precincts would not be permissible. What this indicates—perhaps more than anything else—is that, where a Federal election is being held, the Federal Government should have the authority, with regard to the manner in which the election is held and the validity of the election, when it is held.

Without too great study of that aspect of the legislation being considered today, I note that it does provide for the protection of the right to vote and authority to determine that the votes are counted when cast.

I know, too, that the considered legislation is important with respect to the extremely difficult situation we have encountered and the unfortunate experiences we have had with regard to school integration. It seems to me that the various bills that are before this committee all provide for substantial relief in that regard, but I would like to emphasize the importance of having the Federal Government itself fully responsible. The chief law enforcement officer of the Federal Government must assume responsibility for correction of abuses of this type. To delegate that authority to a local jurisdiction or local individuals to enforce those rights would certainly jeopardize the effectiveness of this legislation.

I would reiterate that, with regard to equal job opportunity as well as that where the Federal Government is involved in a Federal contract, the Attorney General, himself, should assume responsibility for the enforcement of the equal right to a job by the qualified individual and not leave it to some contracting agency, or some other authority, which would not necessarily be guided by the will of the Congress as set forth in the legislation which the Congress may enact.

Now, I apologize for not having reduced this to writing. I will not ask leave to file a written statement as I think what I have said is substantially what I would include in any written remarks. I can, if the chairman will permit, file an exhibit, this being the first anual report of the Illinois Fair Employment Practices Commission. I do not think it should necessarily become a part of the minutes but as an exhibit to be attached.

The CHAIRMAN. It will be made a part of the file of this committee.

You have the privilege of extending your remarks to insert additional matter.

Mr. MCCLORY. Thank you. I might say, off the record.

(Discussion was had off the record.)

Mr. MCCULLOCH. Mr. Chairman, I would like to commend the witness on his position with regard to vote frauds and that is evidence among other evidence, that there is no part of the country that is free from all blame and I am glad to note that the witness has pointed out the importance of having a vote counted in accordance with the law and in accordance with the way that the person who voted expected it to be counted.

In my opinion, there is nothing that will ultimately destroy the representative process as will dishonest elections.

The CHAIRMAN. Thank you very much.

Our next witness is our distinguished Member from my own neighboring State of New Jersey, a man from whom we always like to hear, Frank C. Osmers, Jr.

STATEMENT OF HON. FRANK C. OSMERS, JR., A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. OSMERS. Thank you, Mr. Chairman.

In this era of great social, political, and economic unrest in every corner of the world, police dogs, night sticks, and firehoses are not the answer to civil rights problems. Great masses of humanity are struggling to cast off the chains of poverty, ignorance, and subjugation. In their fervent desire for freedom, self-determination, and a higher standard of living, many are falling prey to the fallacious lure of totalitarian communism. This generation must decide whether freedom is to endure or whether the world is to succumb to the tryranny of communism. The great question is, Shall the emerging nations of the world look to the Soviet Union or to the United States for examples to live by and for guidance in pursuance of their own destinies? In my opinion, it is imperative that in the treatment of our own citizens we set standards which the entire world can admire and follow.

Because of our great national heritage of individual freedom and the need for the steadfast protection of constitutional rights, we, in the United States, must face up to, and eradicate, the very real problem of unconstitutional discrimination with all its grave consequences.

Failure on our part to do so greatly harms us in our dealings with other nations. It saps our moral fiber here at home by relegating millions of our citizens to the category of "second class." It weakens our economy and slows its essential growth by the tragic waste of unused manpower due to discriminatory hiring practices and labor union exclusion. Most of our hard-core unemployable manpower results from the lack of vocational training and other educational opportunities which lack is largely the result of discrimination. Much of our present social unrest and civil disturbance also quite naturally stems from this inequality of opportunity.

Today, in our country, the Negro citizen bears the brunt of the dire economic and psychological consequences of unconstitutional and unconscionable discrimination. Perhaps the most significant and important discrimination is the denial of voting rights of millions of Negroes in many parts of our Nation by the most devious, unfair, and often violent means.

It is true that over the years we have made great progress in eliminating racial discrimination in education, in employment, in housing, and in the exercise of the voting franchise. But this progress has been painfully slow in coming. The Negro community has been remarkably patient as it strives for the full rights of citizenship. This patience is understandably wearing thin.

Congress should act promptly, constructively, and vigorously to pass legislation which will assure equal rights to all regardless of race, color, or creed without further delay.

My civil rights bill, H.R. 3159, is similar to the McCulloch bill and several others also now before you. Other civil rights proposals with

different provisions, but the same objective are also before your committee.

My bill makes the existing Civil Rights Commission a permanent agency which will insure the continuation of its excellent work. It requires the Bureau of the Census to conduct a nationwide compilation of registration and voting statistics so that we will know clearly the size and scope of the denial of voting rights and be able to measure our progress in solving it.

It establishes a presumption of literacy for voter registration for all who have completed the sixth grade in school thereby removing the principal artificial bar to universal suffrage.

My bill also extends the authority of the Attorney General to bring civil action in behalf of any individual denied admission to any public school on account of race or color and implements a Federal-aid program to assist the States in desegregating their schools. Also, under the bill, a Commission on Equality of Opportunity would be created to effectively deal with the many problems of discrimination in employment.

The responsibility for action is ours. Both major political parties for years have pledged in lofty platform prose that this problem would be solved. Let us do it now.

Mr. Chairman, Congress should act so that the words etched in stone above the entrance to the Supreme Court, "Equal Justice Under Law" do not remain a mockery to millions of our fellow countrymen. This Nation needs a sound and effective Civil Rights Act.

Thank you very much.

The CHAIRMAN. Thank you very much, Mr. Osmers. We appreciate your coming here.

Mr. Foley, do you have something?

Mr. FOLEY. We have statements from Representative Frances P. Bolton of Ohio, Representative Cunningham, Representative Wallhauser, Representative Sibal, Representative Bell, Representative Edwards, Representative Farbstein, Representative Curtis of Missouri, Representative Gilbert, Representative Healey, of New York, Representative Milliken, Jr., Representative Horton, and Representative Ostertag.

The CHAIRMAN. It is proposed to continue these hearings next week, Wednesday and Thursday and possibly Friday. On Wednesday we plan to hear from the Attorney General and from members of the Civil Rights Commission.

The committee will now stand adjourned.

(The prepared statements as listed follow:)

STATEMENT BY HON. FRANCES P. BOLTON, OF OHIO, ON H.R. 3481, CIVIL RIGHTS ACT OF 1963

Mr. Chairman, thank you very much for giving me an opportunity to present a statement in support of H.R. 3481, a bill I introduced on February 7 to amend the Civil Rights Act of 1957 and for other purposes. This measure is identical to the proposal introduced by Representative McCulloch, the ranking Republican member, and other minority members of this committee. The legislation as written is a comprehensive and reasonable approach to a complex problem.

The bill recognizes the national scope of civil rights denials and attempts to break the vicious circle of discrimination at several points. Specifically, the bills makes the Commission on Civil Rights a permanent agency, and extends its authority to investigate voting abuses—in other words, to assure not only the right to vote but also that the vote will be counted after it has been cast. Fur-

ther, it creates the presumption that a citizen with a sixth-grade education in an accredited school has sufficient literacy, comprehension, and intelligence to vote in Federal elections. Far from usurping State power to fix voter qualifications, this provision merely shifts the burden of proving that a citizen is not so qualified to the State.

H.R. 3481, my bill and the others introduced, will also give the Attorney General authority to initiate civil suits on behalf of parents and pupils attempting to enroll in segregated public schools. This provision lifts some of the burden from the shoulders of persons seeking to assert their constitutional right to a desegregated public school education. At present these citizens must bear the expense of initiating litigation and receive assistance from the Justice Department only after the initial suit is filed.

Another approach to the problem of integrating schools is contained in the provision for assistance to those communities which request it, to aid them in formulating and carrying out desegregation plans. Such assistance should be helpful in many cases in easing the period of transition from a segregated to a desegregated public school system.

The provision in the bill to establish a Commission on Equality of Opportunity in Employment would put Federal activities in this field on a statutory basis and increase the available investigatory and remedial powers. The Federal Government, its contractors, and employment agencies supported by Federal funds should never be parties to discrimination of any kind. This proposed Commission would go far toward insuring this situation.

Mr. Chairman, we do not claim that this legislation, comprehensive as it is, provides all the answers to our civil rights problems. However, it would go a long way toward guaranteeing all citizens the rights granted to them by our Constitution. At the same time it is a moderate bill and one that is designed to be able to become law.

May I take this opportunity to congratulate Representative McCulloch and the very able members who serve under him for the fine job they have done in drafting this proposed legislation. It is my hope that the Judiciary Committee will favorably consider it and speed a bill to passage by the House and Senate.

STATEMENT OF REPRESENTATIVE GLENN CUNNINGHAM, OF NEBRASKA, RELATIVE TO CIVIL RIGHTS LEGISLATION

Mr. Chairman and members of the subcommittee, it is a pleasure to endorse the comprehensive civil rights bill which I cosponsored with a number of the Republican members of the Judiciary Committee. It is a fair bill; it is a realistic bill; and it is a bill which goes to the heart of the problem facing minority groups today—lack of equal employment opportunity.

I was pleased to note that the administration, when its recommendations in this field finally reached the Congress, endorsed many of the provisions of this program first put forth by the Republicans on the Judiciary Committee although not the employment section. But I trust that this subcommittee and the parent committee can move forward now with bipartisan backing for a sensible program which will let us move toward equal opportunity.

I am not one who makes emotional appeals nor wild charges. But I do believe most sincerely that the serious unemployment in minority groups is responsible for much of the unrest, juvenile crime, family breakdown, and other problems which we face. True, there are other causes, but lack of equal opportunity in employment is a basic cause. I am pleased that the Congress has the opportunity to recognize this problem and to act. The threefold approach in the Republican bill—aimed at discrimination by business, labor, and employment agencies—will do more for improving race relations, opportunity, and individual responsibility than any other section of this legislation.

I urge all members of the subcommittee to give all possible consideration to this provision on employment, as I believe it the most important of the several provisions under consideration.

STATEMENT OF REPRESENTATIVE GEORGE M. WALLHAUSER, OF NEW JERSEY, CIVIL RIGHTS BILL, H.R. 3162

Mr. Chairman, I would like to take this opportunity to express my appreciation to you and the other members of this distinguished committee for the invitation to testify on the civil rights legislation which the committee is now considering.

It was a privilege for me to join members of this committee and others of my colleagues in the House of Representatives in the introduction of this very important, constructive piece of legislation.

Safeguarding the principles of "life, liberty, and the pursuit of happiness," upon which our Republic stands or falls, is the responsibility of each of us. Whereas we might agree that the major effort of assuring civil rights must be made by private individuals and groups and by local and State governments, the heavy obligation of the Federal Government is paramount and without question. It is a mandate under the Constitution.

I wish to emphasize the importance of this measure by reminding the committee members that the U.S. Commission on Civil Rights was originally created by Congress in 1957 as a bipartisan agency to study civil rights problems and report to the President and the Congress. Its function was to advise the President and Congress on conditions that deprive American citizens of equal treatment under the law because of their color, race, religion, or national origin.

In this bill, the Civil Rights Commission is made permanent and is given additional authority to investigate vote frauds, including the denial of the right to have one's vote counted. Freedom to vote and thereby to participate in the governmental process is the cornerstone of our form of government.

In a comprehensive approach to a positive, realistic civil rights program, the proposal calls for establishment of a Commission for Equality of Opportunity in Employment which shall have the authority to compel business organizations and labor unions to eliminate discriminatory practices where it discovers a pattern or practice of discrimination. Denial of employment because of the color of a person's skin, his faith, or his ancestry is, morally, an affront to human dignity; legally, it may be a violation of the Constitution, of legislation or of national policy; and economically, discriminatory practices often result in a waste of human resources and place pointless burdens on the community.

This civil rights bill also authorizes the Attorney General to institute civil action on behalf of a citizen who claims he is being denied the opportunity to enroll in a nonsegregated public school. It authorizes Federal appropriations to aid State or local school boards in desegregating, only if a request is made by them for such assistance.

Finally, the proposal provides that a person who is found otherwise qualified to vote in a Federal election is presumed to have sufficient literacy and intelligence to vote if he has completed six grades of an accredited elementary school. This provision does not presume to usurp the power of each State to determine the qualifications of its electors. It does presume, however, to prohibit action or inaction which deprives or threatens to deprive any person of the right to vote and have that vote counted in any Federal election.

This country became an independent Nation because men believed, and fought and died for their belief, that governments derive their just powers from the consent of the governed. It necessarily follows, therefore, and it is important for us as elected representatives of the people never to forget, that each citizen has a right to participate in governmental process by expressing his choice in the selection of officers of government.

I am hopeful that members of the committee will agree that this legislation fills an existing need which no longer can be ignored.

Additional Statement by Representative George M. Wallhauser With Respect to Civil Rights Legislation

Mr. Chairman, I would like to take this opportunity to express my appreciation to you and the other members of this distinguished committee for the invitation to testify on the civil rights legislation which the committee is now considering.

It is profoundly disturbing that the rights guaranteed to all citizens by the U.S. Constitution are still denied to a portion of our people. Although I am not a member of this committee, I would like to express my strong support for legislation that would take meaningful steps to make the American dream of equal rights for all a reality and not an empty promise.

The government of a free people must legislate to make the rights of freedom available where they are marred by discrimination. As Representatives, we

must act to insure equal voting rights, equal employment opportunities, equal use of public educational and recreational facilities. Abridgments of these rights stand as an insult to democracy.,

As evidence of the sincerity of my belief in these precepts I introduced, on January 31, 1963, H.R. 3162 and H.R. 6729 on June 3, 1963, which would act to bring an end to violations of the Constitution in these areas. The correction of the wrongs suffered by some of our citizens is a matter deserving of bipartisan support. If your committee, in its wisdom and experience, finds the President's civil rights legislation proposals preferable at this time, I assure you I will gladly give them my full support. But positive action must be taken now.

STATEMENT BY HON. ABNER W. SIBAL, A U.S. REPRESENTATIVE FROM CONNECTICUT, RELATIVE TO CIVIL RIGHTS LEGISLATION

Mr. Chairman, I am grateful for this opportunity to state my complete support for H.R. 3160, a duplicate of the civil rights bills which I and many other colleagues have introduced. I am also grateful to the committee for calling up these bills for consideration at this time. It has been my position for a long time that Congress ought to take the lead in the field of civil rights. As direct representatives of the people, we in Congress should not allow the executive and judicial branches to make the key decisions in a matter which strikes so deeply into the roots of our society.

The legislation now before the committee will fulfill congressional responsibilities and establish an orderly foundation from which both executive and judicial branches can proceed. This is the traditional method by which the American people have dealt with grave problems.

I fully recognize the difficulties standing in the road of legislative passage. Feelings and traditions run deep on this issue, but Congress is the proper place to test them. I am convinced these difficulties can be overcome. Certainly they will not be overcome if we do not even try. The campaign platforms of both political parties are pledged to fix into law measures which would fulfill the constitutional guarantees of individual liberty and equality of opportunity. Each stands committed to speed the day when considerations of race, creed, color, religion, or national origin will present no bar to the fulfillment of any person's ambition.

H.R. 3160 and the other identical bills being considered here are directed to the solution of the most critical problems remaining in civil rights.

It fixes the Civil Rights Commission as a permanent body and extends its authority to investigate vote frauds. This is an extremely important feature which seeks to guarantee every citizen's fundamental privilege to choose his political leaders.

It creates a Commission for Equality of Opportunity in Employment and grants it authority to investigate charges of discrimination in jobs.

It grants the Attorney General authority to institute civil action in behalf of a citizen who is denied admission to a nonsegregated public school. Under this provision, the Federal courts may issue an order in such cases only after the complainant has exhausted his State's legal remedies, provided that such remedies are plain, speedy, and efficient, and only if the local school has failed to institute a plan to desegregate its facilities with all deliberate speed.

The Federal Government is authorized to offer technical assistance to States and localities, at their request, to aid them in desegregating their public schools.

Finally, the bill establishes that citizens, otherwise qualified to vote, shall be presumed to have the necessary literacy and intelligence if they have completed six grades of an accredited elementary school. On this point, it is my belief that, as education is generally extended throughout all the population, the need for this provision will diminish substantially in years to come and, hopefully, disappear altogether.

The bill offers a sound, practical set of proposals that does not transgress on the right of any State or community, but which will rather extend to every citizen, legal guarantees to which he is entitled as an American citizen.

These problems cannot be solved by laws alone but without these laws, they will not be solved at all. Therefore, Mr. Chairman, I strongly and respectfully urge the favorable consideration of your distinguished committee for H.R. 3160.

STATEMENT OF HON. ALPHONZO BELL, U.S. REPRESENTATIVE FROM CALIFORNIA, RELATIVE TO CIVIL RIGHTS LEGISLATION

Mr. Chairman, in presenting a general review of the provisions of H.R. 3390, I would stress the fact that the task of realizing our Constitution is not going to be achieved until Congress takes the initiative under the mandate conferred upon it in the 13th, 14th, and 15th amendments to the Constitution. "Congress shall have power to enforce this article by appropriate legislation." If this authority had not been conferred upon the Congress, the constitutional injunctions of these amendments would probably still have been enforceable through judicial review of any action violative thereof. But the framers of these amendments deemed it wise to reenforce the congressional mandate of article I, section 8, clause 18, "The Congress shall have power * * * To make all laws which shall be necessary and proper for carrying into execution the foregoing powers * * *." These enforcement provisions were added to each one of the Civil War amendments so that there would be no question of the power of the Federal Government to affirmatively and actively enforce these provisions through legislation.

I will not use your time today to lament a century of lassitude in the carrying out of our constitutional powers. It is sufficient to observe in this, the year following the celebration of the centennial of the Emancipation Proclamation, that it is fitting that the Congress take permanent steps toward the realization of the sacred ideal of the Declaration of Independence, "All men are created equal," and toward the achievement of political and legal, educational and economic emancipation for all our people.

Title I of H.R. 3390 makes the Civil Rights Commission a permanent agency, in recognition of the need for a permanent governmental factfinding body to investigate, study, and make recommendations to the executive and legislative departments upon the deprivation of any right, privilege, or immunity secured by our Constitution.

This Commission has operated too long on a handout day-to-day basis. This measure would give the Commission the necessary authority and stature to more effectively accomplish its work. The Commission is further empowered to investigate allegations in writing, under oath, of fraud or discrimination in the conduct of any election for the office of President, Vice President, presidential elector, Member of the Senate or of the House of Representatives, or any delegate or Commissioner from any territory.

The factfinding need of the Federal Government is also met in the provision which authorizes the Bureau of the Census to conduct a nationwide compilation of registration and voting statistics to determine the extent to which persons of all races, color, and national origin have voted since January 1, 1960.

In this era, when the eyes of the whole world are upon America, when our schools are hosts to large numbers of foreign students from all lands, who are critically and objectively evaluating the meaning of American democracy, we can do no less than to take positive, affirmative action to implement the 1954 integration decision. Nine years after the decision in *Brown* v. *the Board of Education*, 347 U.S. 483, 495 (1954), that "separate educational facilities are inherently unequal," the token compliance in too many Southern States, and the regrettable defiant attitude in a few, belie the attempt to realize "good-faith implementation of the governing constitutional principles," under the decree of the court in *Brown* v. *Board*, 349 U.S. 294, 299 (1955). The public interest requires that the Congress, acting under the authority conferred upon it in the enforcement clause of the 14th amendment, authorize the Attorney General to institute civil action for preventive relief in the case of a child being denied admission to any public school on account of race or color. This H.R. 3390 would do. Consistent with the requirements of our Federal system, however, safeguards are included in these provisions. For no such action under this section can be taken unless there has been exhaustion of State remedies, if the laws of the State provide a plain, speedy, and efficient remedy.

Title II of H.R. 3390 has as its goal not only the economic betterment and consequent sociological amelioriation of the underprivileged minorities and nonwhite citizens of America. The moral ideals here are matched by hard business facts of economic realities. In these days when the United States is competing with socialistic economies of the Communist bloc, the revitalized economies of Western Europe, and the cheap labor competition of other nations, our manpower and technical skills must be utilized to the last iota. In the face of these moral and practical pressures, the establishment of a Federal Equal Employment Commission is mandatory. H.R. 3390 would create a bipartisan Commission on

Equality of Opportunity in Employment, whose seven members would be appointed by the President by and with the advice and consent of the Senate. Present executive orders covering Government contracts would be embraced within the comprehensive terms of title II. All proceedings under this section are to be conducted in conformity with the provisions of the Administrative Procedure Act. So long as labor unions and employment agencies are permitted to practice discrimination, this evil cannot be rooted out.

Thus H.R. 3390 makes it a discriminatory employment practice for an employment agency supported in whole or in part by Federal funds to discriminate in any manner against any individual on account of his race, color, religion, national origin, or ancestry. This act prohibits any discriminatory employment practice by any labor organization or joint labor-management committee of any employer having a contract with the United States, or a subcontract thereof. It is applicable to any organization which is the certified representative under the National Labor Relations Act, or the Railway Labor Act, and to any national or international labor organization or a local labor organization acting as the representative of employees under the provisions of those acts. Certification is to be denied discriminating unions. Thus, this measure would insure the realization of equality of opportunity in such employment.

The power of Congress to act affirmatively to implement the guarantees of the 14th amendment is utilized in title III, which, in setting up a Federal-aid program, would assist the States in desegregating their schools.

The right to vote and to have that vote counted is a cornerstone of our democracy. Yet, notwithstanding the provisions of the Civil Rights Act of 1957, there are today parts of Mississippi and Alabama, where less than 15 percent of the nonwhite population of voting age is even registered. The judicial invalidation of the numerous devices contrived by the white supremacists, the "grandfather clause," the "white primary," the "jaybird" scheme must be reinforced by legislative action for the strking down of the discriminatory literacy tests in Federal elections. Under this device Negroes with college education have been prevented from voting. This carefully drawn provision does no more than create a presumption of the competency to vote in a Federal election of a person who has completed the sixth grade in an accredited institution where instruction is predominantly in the English language. The presumption of literacy created by title IV of H.R. 3390 would be applicable only in a judicial proceeding brought by the Attorney General, under the Civil Rights Act of 1957. No possible assertion of invalidity can be made to such a judicially applied presumption.

Congress has made strides in the area of civil rights. But the Civil Rights Act of 1957 and 1960 must be amended if we are to accomplish the aim of first-class citizenship for every American. After careful study of H.R. 3390, it should be clear that this goal can only be achieved through the enactment of each and every one of its provisions.

STATEMENT BY HON. W. DONLON EDWARDS, A U.S. REPRESENTATIVE FROM CALIFORNIA, IN SUPPORT OF H.R. 4023, TO MAKE THE COMMISSION ON CIVIL RIGHTS A PERMANENT AGENCY IN THE EXECUTIVE BRANCH OF THE GOVERNMENT

Mr. Chairman, the name "America," signifies the principle that every man should have an equal chance to create the conditions of life for himself which he chooses and which he is mentally, morally, and physically capable of creating. America has always meant that a man's status in society is not inherited by birth into any privileged class, or caste, or race, but that his status in society is to be determined by his own creative initiative reflected in the accomplishments of his mind and hands.

Racial and religious discrimination in education, employment, or housing means rejecting the American social ideal.

The American political ideal of representative government is that government is not a power which is alien to the individual, but that political authority is founded on every man's right to manage his own affairs. The essential right which makes government truly representative is the right to vote.

It is our responsibility to secure the rights of every American.

But it is not enough to recognize rights in the abstract without regard to factual conditions which may prevent the exercise of rights. It is especially imperative that legislation which is meant to safeguard the rights of racial or religious minorities be directed against particular practices which effect denial of these rights.

The Eisenhower administration and the Kennedy administration have both found it absolutely necessary to have a Commission in the executive branch which would devote itself entirely to investigating the practices in States and localities which prevent persons of racial and religious minorities from exercising their civil rights. Unless we know the facts of such situations, it is impossible either for Congress to legislate effectively or for the President to perform his duty of executing the laws. Obviously we must know precisely what we have to deal with in order to secure the rights of every American citizen.

The Civil Rights Commission was created by the Civil Rights Act of 1957 with the single mission of getting the facts and of seeing, in light of the facts, whether our laws are adequate to secure civil rights. By its investigations the Commission has provided us with valuable information about discrimination against Negroes and others in employment, housing, eduction, and the administration of justice, and about denials of voting rights. But facts change constantly; yesterday's facts will be out of date tomorrow. The Congress and the President need a permanent factfinding Commission to keep them abreast of all future developments which threaten civil rights. For this reason I have introduced H.R. 4023, a bill to make the Commission on Civil Rights a permanent agency in the executive branch of the Government.

I began, not by speaking of the image of America, but by speaking of America itself. Nevertheless, the East-West struggle for the minds of men compels us to be concerned also with the image of America abroad. Victory in the ideological conflict depends in no small part on whether the peoples of the world see us as men who give little recognition in practice to the ideals we profess, or whether we are men true to our words. It is our responsibility to make America what it is meant to be.

STATEMENT OF HON. LEONARD FARBSTEIN, A U.S. REPRESENTATIVE FROM NEW YORK, RELATIVE TO CIVIL RIGHTS LEGISLATION

Mr. Chairman, I appear before this committee to raise my voice in behalf of those of our citizens who are being deprived of their rights under law. I know that we must look to this committee for the enactment of legislation which will afford all our citizens those rights to which they are entitled under the Constitution of these United States.

I believe that every necessary step should be taken by our Government to protect the rights and safety of citizens presently involved in events in certain parts of our Nation, about which events we have been made aware through the press, radio, and television.

Until the enactment of the Civil Rights Act of 1957 and 1960 which carried the name of the chairman of this important committee, very little, if any, progress has been made in this field since the days of the reconstruction. The only advances made since the enactment of these laws has been by executive action. I believe it is time that we again enter the field.

Is it any wonder that the deprivation of civil rights to masses of our citizenry has led to resentment which is gradually reaching the stage where those affected can no longer withhold making evident their resentment? How long can we deny equality of opportunity in housing, in education, in employment, in hospitalization facilities; denial of access to recreation halls, swimming pools, and churches; how long do we hope that we can avoid violence in the face of this situation?

I would like to quote a portion of the report of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights. This committee is one of the 51 committees established in every State and the District of Columbia pursuant to the Civil Rights Act of 1957 and consists of interested citizens of Mississippi of standing who are not compensated.

"The committee's investigations have indicated that in all important areas of citizenship, a Negro in Mississippi received substantially less than his due consideration as an American and as a Mississippian. This denial extends from the time he is denied the right to be born in a nonsegregated hospital, through his segregated and inferior school years and his productive years when jobs for which he can qualify are refused, to the day he dies and is laid to rest in a cemetery for Negroes only. This committee could have chosen to concentrate on any aspect of discrimination and found a plethora of examples of denial of equal protection of the law. This includes the denial of the fundamental right to vote and have that vote counted in elections. Sixty-five

sworn voting complaints from 13 Mississippi counties have been received by the Commission. This is the third highest in the Nation."

The question of the right of all citizens to vote is not sectional. Unfortunately, it is national. Even in New York, my own State, many American citizens, literate in the Spanish language are unable to vote. This has led to numerous bills being introduced in the State legislature seeking to overcome this prohibition. I understand there are at present 19 States which require literacy tests for voters; legislation alone can solve this problem; how about a solution to the balance of the problems of equality under the law? Cooperation of all the peoples in these great United States must be obtained to right these grievous wrongs. So that no foreign nation can point a finger at this deplorable situation presently existing in some parts of our country the good will of our citizens is required.

Decent Americans everywhere must be shocked by the photographs and reports of violence in Birmingham and other places. Photographs of police dogs attacking our citizens makes one believe that we are returning to the days prior to the Civil War.

I shall not discuss the individual pieces of legislation which are before this committee, but merely rest in the hope that this committee will do no less than dedicate itself to granting rights to others that they would grant unto themselves; that obstacles to equal representation, to equal rights of voting and otherwise be swept away by the action of this committee. This is not a question of politics and I believe that this committee will act in a nonpartisan manner in voting out those measures which will effectuate and safeguard the rights of all individuals.

The President of the United States in yesterday's daily press is said to have stated that he "continues to hope the situation can be resolved by the people of Birmingham themselves. This, of course, would be the ideal solution." With this I agree; but should the people be unable to resolve the difficult situation presently existing in that city, let us give the authorities the power to resolve these discriminations. Let us today translate into an ever more meaningful reality the principles set forth in our Declaration of Independence, in our Bill of Rights, and later amendments to our Constitution, and the Emancipation Proclamation whose 100th anniversary we marked this year.

SUPPLEMENTAL STATEMENT OF HON. LEONARD FARBSTEIN OF NEW YORK IN RE CIVIL RIGHTS

During this centennial of the Emancipation Proclamation, all Americans should stop to consider whether this country has succeeded in realizing the ideals upon which it is founded. We, as legislators, or particularly obligated to reassess the degree to which this Nation is achieving its stated goals. Can we be confident that our society witnesses the observance of the principles set forth so eloquently in our Declaration of Independence, our Constitution, and our Bill of Rights? Each time we pledge allegiance to the flag, are we sure in our hearts that this Nation is truly providing "liberty and justice for all"?

The answers to these questions do not come easily to a nation that has set itself up as a paragon of virtue, as a bastion of libery, equality and justice. It is all too apparent that in large areas of the United States many people are not afforded those rights that are theoretically given them at birth. Recent events, confined not only to the South, indicate that those who have been denied their rights will no longer tolerate this deprivation. They will not continue docilely to accept discrimination in housing, in education, in employment, in medical treatment, in receration facilities, and in churches.

The United States has hesitated too long in its efforts to end intolerance. Now it must act, for the concatenation of events makes inaction impossible. Accusations of discrimination can no longer be denied or shrugged off. In the words of Pascal, "We are embarked." Unless we are to negate the ideals of this Nation, we must act now to preserve them. As long as the task remains uncompleted, any attempt to stand pat will merely placate those who would keep others from exercising their inalienable rights.

As citizens, it is our obligation to ameliorate the present situation by promoting education and an atmosphere of tolerance. As legislators, it is our duty to provide a legal framework that will assure the individual his rights.

In creating this framework, we must not be pressured or swayed by the heated events of the moment or by the threat of future violence. We must not

yield in the face of opposition, nor should we act merely to bedevil those who are opposed. Instead, we must direct our attention solely toward the end to be achieved. We must work with the single purpose of guaranteeing the individual those rights that are promised him in the Constitution.

Specifically, I urge that the Attorney General be empowered to initiate suits to protect individuals whose rights are in jeopardy. He should be permitted to start these suits even if he has not received a written complaint from the person aggrieved. Such a provision will enable him to act in situations involving people who would not otherwise seek his assistance because of fears of physical or economic harm.

Finally, I take this opportunity to express the hope that this community will work effectively to end discrimination based on race, color, religion, or national origin—be it on a beach or at a literacy test, in a movie theatre or at a soda fountain. This committee should do no less than strive to insure for all the rights that are intended for all.

STATEMENT OF THE HONORABLE THOMAS B. CURTIS, U.S. REPRESENTATIVE FROM MISSOURI, IN SUPPORT OF H.R. 3146

Mr. Chairman, I appreciate having the opportunity to present this statement of my views on the proposal to amend the Civil Rights Act of 1957 which is now before your committee for consideration. I regret that I am unable to appear personally in behalf of this proposal, of which I am a cosponsor, but I do wish to take this opportunity to make clear my strong support of it.

There is no need for me to dwell on the importance of civil rights in a society such as that of the United States. Our concept of man and his relationship to his government and his fellow man has at its core the preservation, protection and promotion of the exercise of each individual's civil rights. Rather, I should like to stress the practical contributions which the various proposals contained in this bill would make to the cause of civil rights.

There are four title to this bill. Under title I, the Civil Rights Commission, whose work has been commendable in bringing a better understanding of the problems and progress in civil rights in this country, is made a permanent agency of the Federal Government. The scope of its investigations is broadened to include the second aspect of the right to vote—the right to have one's vote counted honestly. Here is an important civil right which has received all too little consideration in the past. Both of these—making the Commission permanent and allowing it to move into this second aspect of the right to vote—are significant steps forward in the cause of civil rights. Further, title I charges the Bureau of the Census with responsibility to obtain facts on voting to help give a better picture of where voting rights are being abused and denied. Finally, title I provides Federal assistance in civil actions to enforce public school desegregation.

Title II of this bill centers attention on the question of employment discrimination. Here, I believe, is one of the key problems we now face in the entire discrimination field. Unemployment, with all of the personal disruptions which this causes, finds especially fertile ground among the minority groups in our country. This proposal establishes a Commission on Equality of Opportunity in Employment, empowered to investigate job discrimination and bring the facts of this discrimination—by businesses, government contractors, unions and employment agencies—to light and to take action to end discrimination where it is found.

Title III turns to the difficult problem of school desegregation. By the provisions of this title, Federal assistance would be given to State and local educational agencies to help in planning and carrying out desegregation of public school facilities.

The final title of the bill would establish a presumption of literacy, qualifying a voter to vote in a Federal election where literacy is required, from the completion of a sixth grade education. Far more than the poll tax mechanism, which had largely died out at the time the Congress passed an amendment to the Constitution outlawing it, literacy tests are used to deny citizens the right to vote. This title would limit the use of these tests for discriminatory purposes.

In summary, this bill takes a practical approach to moving forward in the field of civil rights. It looks to the question of voting rights—the right to cast a ballot without the bar of a discriminatory literacy test and the right to have one's vote counted honestly; it looks to public school desegregation—Federal

assistance to school authorities in drafting and putting into execution plans for desegregation and aid to individuals in their civil actions to require school desegregation; and it looks to the important area of employment discrimination.

I appreciate having had this chance to put my views on this bill, the Civil Rights Act of 1963, before this committee, I sincerely hope that the committee will give these ideas serious consideration and that legislation incorporating these ideas can be acted upon in this 1st session of the 88th Congress.

STATEMENT BY HON. JACOB H. GILBERT, U.S. REPRESENTATIVE FROM NEW YORK, BEFORE THE HOUSE COMMITTEE ON THE JUDICIARY, RELATIVE TO CIVIL RIGHTS LEGISLATION

Mr. Chairman and members of the Committee on the Judiciary, I wish to thank the esteemed chairman of our committee for scheduling hearings on the numerous legislative proposals relating to the various aspects of civil rights which are now being considered.

In my recent statement to the General Subcommittee on Labor, on the subject of equality of opportunity in employment, I pointed out that inasmuch as the Emancipation Proclamation was signed 100 years ago, it is high time that we proceed, with alacrity, to do the job that should have been done generations ago. The legislation here under consideration is of equal importance, and the same urgency for prompt and effective action exists. Every vestige of discrimination based on race, color, religion, national origin, or ancestry, must be completely wiped out, and without delay.

I feel certain that you, my colleagues, are sickened, as I am, by the current newspaper headlines and pictures describing the recent outrage in Alabama. The violation of human rights in Alabama is causing grave harm to all Americans, and irreparable damage to our Nation's prestige on the international scene has been inflicted. The barbarities committed by Alabama police authorities against Negro and white demonstrators for civil rights, the use of police dogs and high pressure firehoses to subdue schoolchildren as well as adults is indeed a national disgrace. The jailing and placing in detention homes of many hundreds of teenagers and even younger schoolchildren because they are merely demanding their birthright of freedom must bring a blush of shame to the cheek of every right-thinking American.

All these disgraceful and inhuman proceedings are now front-page news in Europe, and we may be sure that they are being played up in Africa and Asia. We can be certain that the Communists will capitalize on these latest sins against our Negro citizens, what powerful propaganda we are furnishing them. We must remember that the United States is the most thoroughly reported country in the world, and to the world we have proclaimed and professed to have high standards of equal opportunity and treatment for all our citizens. When those abroad see these horrible pictures, how incongruous and how inconsistent our efforts to promote the democratic ideal must seem; how deceptive they must consider us when we ask the new emerging nations to emulate us and our form of government.

We must recognize that a revolution is underway throughout our country; every large city is fearful of the increasing racial tensions now prevalent. We can no longer close our eyes and hope that the trouble will go away; it will not. Negroes and other minority groups have reached the end of their patience over the insurmountable barriers which will keep their lives segregated and submerged; which prevent their obtaining jobs, promotions, decent housing, and education. They are tired of the degradations to which they have been subjected for so long. They are now demanding the full equality and freedom guaranteed them under our Constitution, and they mean to have them.

My bills, H.R. 187, H.R. 5603, H.R. 5604, and H.R. 185, are before our committee now. H.R. 187 provides for the better assurance of the protection of citizens of the United States and other persons within the several States from mob violence and lynching. In my opinion, it is most important that this protection be provided to assure that no citizen will be deprived of his right to orderly proceedings under the law and that no person will suffer violence or death at the hands of vengeful mobs.

My bills, H.R. 5603 and H.R. 5604, are identical with those introduced by our chairman; I introduced them to indicate my strong support of the legislation. H.R. 5603 includes four specific provisions which would implement the recommendations of the President; it would correct many abuses and lessen the delays which many citizens face in attempting to exercise their right to vote.

It would establish a presumption in voting suits that any person who has completed the sixth grade in an accredited school where instruction is predominantly in the English language possesses sufficient literacy to vote in any Federal election.

H.R. 5604 would extend the Civil Rights Commission for 4 more years and would authorize it to serve as a national clearinghouse to provide civil rights information and technical assistance to requesting agencies. It would also make it possible for the Commission to concentrate its efforts upon those problems within the scope of existing law which require the most attention.

H.R. 185 prohibits the application of unreasonable literacy requirements with respect to the right to vote and provides that an arbitrary or unreasonable test, standard, or practice with respect to literacy shall mean any requirement designed to determine literacy, comprehension, intelligence, or other test of education, knowledge, or understanding, in the case of any citizen who has not been adjudged an incompetent, who has completed the sixth primary grade in a school accredited by any State or by the District of Columbia. This would assure voting rights now denied to millions of our citizens.

I urge this committee to discharge its responsibility to the countless Americans whose rights are now denied them and who must look to us for help. I urge that we approve strong, effective, civil rights legislation, and I am hopeful that the Congress will recognize its clear duty to enact it into law. Only by laying a firm foundation of equality and freedom now can we hope to build here the true democracy and a society which recognizes the equality of all of our citizens, all of which we profess to have now but in reality do not have. The moment of truth has come; crises are upon us which must be met by law and order; Federal action is required to avert catastrophe. When individual States refuse to recognize their responsibilities, then the Federal Government must take the initiative in providing the equality, protection, and rights to all citzens as guaranteed under our Constitution.

STATEMENT OF CONGRESSMAN JAMES C. HEALEY, MEMBER OF CONGRESS, FROM NEW YORK, RELATIVE TO CIVIL RIGHTS LEGISLATION

Mr. Chairman, I am here today to urge favorable consideration of my bill, H.R. 2095, intended to prevent an otherwise qualified citizen from losing his right to vote solely because of unreasonable literacy requirements.

The text of the bill, as you have noted, gives a fairly detailed statement of the philosophy and facts upon which it is based. It expresses the simple truth that the right to vote is fundamental to democratic Government and that the Federal Government is responsible for the protection of that right. It further declares that unreasonable literacy tests have been used unjustly to deny that right.

How are we to protect our citizens from such abuses? How are we to safeguard our people against the deliberate use of technicalities to deny them their right to vote because of race or color? I believe the most effective device is the one I have incorporated in this bill. It consists of establishing an objective standard by which an individual's literacy may be judged. This device eliminates the intrusion of bias or prejudice in its administration. It requires the determination of fact, rather than a judgment or an interpretation.

Education is a reliable gage of literacy, of course, but how much education? At what point should the standard be set? My bill establishes the minimum line at the completion of "the sixth grade in school accredited by any State or by the District of Columbia." I believe this is a reasonable demarcation point, and it is obvious from the bills introduced by other Members that there is wide agreement on this point.

Mr. Chairman, no one will quarrel with the contention that voters ought to have certain basic equipment in order to vote intelligently. Certainly, we should expect the electorate to be aware of the issues. Furthermore, our society makes public education available to every American. Literacy is, therefore, a reasonable requirement to assure minimum understanding. We must not deny the voting privilege from persons who are demonstrably literate. This bill, I believe, will prevent such injustice and I urge its approval.

STATEMENT OF HON. WILLIAM H. MILLIKEN, JR., A U.S. REPRESENTATIVE FROM PENNSYLVANIA IN BEHALF OF H.R. 4783 RELATIVE TO CIVIL RIGHTS

Mr. Chairman, and members of the subcommittee, I am pleased to have this opportunity to testify on behalf of H.R. 4783, the comprehensive civil rights bill, which I introduced together with 38 other Republican Members.

Today, it seems to me, we, in this country, are more concerned with what happens outside our borders than what happens within. We are willing to spend billions of dollars to send the first man to the moon, but we are only halfhearted about getting the first Negro inside a local housing project. We are concerned about the right of East Germans or Cubans to cast a free ballot, but far less concerned about millions of our own citizens doing the same. We are intensely upset about potential rioting and bloodshed being let in Haiti, but close our eyes to the same potentialities occurring in Birmingham or Oxford. We send off Peace Corps men to farflung Africa and Latin America while areas and people in this country remain neglected and in want. We expend much wealth and energy in technical assistance and job training in many lands, while a goodly percentage of our citizens are unemployed because of racial discrimination, ill education, and ill training. These, and many more comparisons, could be listed to point up the strange inconsistencies of today's times. Not that I am opposed to furnishing assistance to foreign peoples, if such assistance is wisely managed, necessary, and keyed to our country's resources and abilities. But, there is a need to establish priorities and the No. 1 priority, at this time, is solid, meaningful assistance in the field of civil rights.

Our slogan should not be "America First." It should be "America Foremost." Each and everyone of us must strive, at this session of Congress, to enact comprehensive civil rights legislation which will make America foremost in the field of civil rights and make every citizen in the country, black, white, red, or what-have-you, a foremost American—an American who fully accepts his responsibilities because he will be fully receiving his rights.

Civil rights is not a single band of color in the spectrum, but a multitude of such colors which mean the sharing of equal job opportunities, equal voting privileges, equal housing, equal educational rights, and many additional events which make up our daily lives.

For that reason, assistance is provided in my bill to stimulate job equality to a degree greater than is afforded today. The Commission that is proposed would replace the existing Committee that was created by Executive order 2 years ago. That Committee has done good work, but there seems to be built into it structural weaknesses. For one, it has no effective means of ferreting out discrimination in employment. Second, it lacks subpena power. Most important of all, however, is that the Committee is composed of Cabinet officers who are incapable, because of time demands, to give sufficient attention to the task. This means that the day-to-day operations must be delegated to the Federal departments and agencies themselves which is somewhat like the cat asked to guard the milk. Overseeing the Government bureaus, of course, are the staff officials of the Committee, but they do not, in my mind, have the authority or the resources to manage the type of investigative and hearing procedures which I deem essential.

As for the educational aspects of my bill, there is granted to the Attorney General the right to bring civil actions in school desegregation cases. Progress has been made to some extent in this area of civil rights, but the progress has not been rapid enough, in my belief, to justify a standpat attitude. So few school districts have been integrated in more than a token manner and so many hundreds and hundreds remain "wait-and-seers" that an added impetus must be given. This, to my mind, can be done through such action by the Attorney General.

In the same pattern, my bill authorizes the appropriation of funds to be used to aid States and local school districts which are seeking to integrate the schools. This proposal seems only the logical extension of the proposal to permit the Attorney General to institute civil suits in behalf of school integration.

Another fundamental right—the right to vote—is supported in my proposed legislation through the creation of a presumption that any individual who has completed six grades in an accredited school is qualified to vote. As conditions presently exist, less than 20 percent of the ostensibly qualified Negroes in the

South are registered to vote. In many counties, as we well know, few or no Negroes are registered. This condition is plainly intolerable, particularly when it is realized that the right to vote is the key that unlocks the door of complete equality. On the one hand, we demand responsible citizenship and, on the other hand, we deny citizens the very instruments to be responsible. This dichotomy of behavior is not only illogical but untenable. It must be corrected or the force of events will correct it for us.

Finally, my proposal would make the Civil Rights Commission permanent and grant the Commission the additional authority to look into all forms of voter fraud.

The voter fraud provision is an essential extension of the Commission's jurisdiction since it makes little sense to finally concede a man the right to vote and then tear his vote up once it is deposited. The many techniques of vote fraud, as highlighted by Congress McCulloch, the distinguished ranking minority member, need not be repeated again by me. Enough is known of this illicit practice to warrant the grant of this authority.

This brings me then to the establishment of a permanent Civil Rights Commission. Initially, it may be said that an organization is only as good as its membership. And, I do not see how the Commission can attract and hold able, dedicated people unless there is assurance of tenure of employment and the prospect of time sufficient to carry out a task once started. Of greater importance, however, is the need to make the Commission truly independent. As it now stands, the Commission is extended every 2 or 4 years for a like period of time. By doing this it is held to a short tether by the existing administration in power and is made a pawn of that administration's policies.

I cannot say that I agree with the Commission's proposal to reduce Federal assistance to Mississippi. The infliction of punishment usually has the exact opposite result of what we intend and would probably make the leaders of Mississippi less responsive to their duties and responsibilities under the Constitution. Moreover, the very individuals that such a policy would be designed to aid would undoubtedly wind up worse off and more set against than before.

But, this does not mean that I cannot understand the forces behind the issuance of such a report. Unless I am greatly mistaken, these forces may be traced back directly to the frustration felt by the members of the Commission in their desire to conduct hearings in Mississippi. We know that the Attorney General made it quite clear that the administration was opposed to such hearings and we know that the Commission most reluctantly, and against its better judgment, acceded to this position. If the Commission had been permanent, however, it is logical to expect that it would have exercised its independent judgment—knowing full well that it was not jeopardizing its future existence. And, who knows, it might have created a far more conducive climate toward ameliorating the situation in that State than the use of Federal marshals and U.S. troops. At any rate, there would seem to be every reason for making the Civil Rights Commission permanent and no reason for stringing its lifetime out on 2- or 4-year intervals.

In concluding, Mr. Chairman, and members of the subcommittee, I would like to suggest that if Abraham Lincoln were to return to earth today, he would question the manner in which we Americans have squandered the century since his death. Make no mistake about it, though, we do not have a century before us in which to correct the abuses that still exist.

STATEMENT OF HON. FRANK HORTON, U.S. REPRESENTATIVE FROM NEW YORK, IN SUPPORT OF H.R. 4034, TO AMEND THE CIVIL RIGHTS ACT OF 1957

Mr. Chairman, I greatly appreciate the courtesy you have shown in inviting me to appear here this morning and testify in behalf of a bill I have introduced. That bill, H.R. 4034, as you know, sir, is similar in legislative intent to a number of other civil rights bills which also are being considered by your subcommittee.

Against the grim backdrop of current racial strife in our country today, we in Congress are attempting to enact into law measures that will lend additional guarantees to our constitutional heritage. In recent times, we have witnessed many examples of American citizens who have been denied equal protection of the laws, because of their race, creed, or national origin.

I know of no right which is more precious nor one which is more worthy of protection and preservation than the right of every American citizen to vote.

For every qualified citizen who is deprived of this right, our democracy is weakened by reduced public participation.

The bill which I have introduced would work to correct the injustice of vote fraud and denial. This bill would give the Civil Rights Commission permanent status and empower that body to investigate instances of fraudulent voting, including any denial of the right to have one's vote counted.

Another provision of this bill, which I think is of great importance in gaining a truer picture of how adequately the right to vote is being guaranteed to all our citizens, would instruct the Census Bureau to conduct a nationwide compilation of voting statistics by race, color, and national origins.

Just as voting guarantees are the "law of the land" so is the Supreme Court ruling on school desegregation. The bill I offer would authorize the Attorney General to act in behalf of a person seeking to enroll in an integrated public school. Significant in the language of this provision is the requirement that a claimant must first exhaust his State legal remedies before seeking Federal redress.

Other civil rights guarantees are also included in this bill. Among them is the creation of a Commission on Equality of Opportunity in Employment to investigate incidents of alleged discrimination in employment where Federal funds are involved. Another provision would provide Federal assistance to State and local educational agencies requesting aid in desegregating public schools. And, another important provision would presume that a sixth-grade education constituted sufficient literacy to vote in a Federal election. Further tests could not be required.

Mr. Chairman, as a fellow New Yorker, I know you are very much aware that if every State had on its books and implemented civil rights laws similar to those in New York State there would be little need for Federal legislation in this field. In fact, New York leads the Nation in assuring citizens the right to vote, the right to work, the right to own property, without regard to race, creed, or national origin.

However, there are many States which have tried to restrict the rights of citizens as guaranteed by the Constitution. In these, the term "second-class citizen" is a sad reality.

These conditions of deprivation of basic human dignity violate every ethical principle known to our society. The very mention of their existence should be repugnant to those who love what their country stands for and the structure which supports it.

I earnestly solicit the serious consideration of this subcommittee to the civil rights legislation which is before it, both in my bill and the bills of many of my colleagues. Despite the many obstacles—real and imagined—this legislation faces, few bills, if enacted, could more effectively serve the national purpose.

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

STATEMENT OF HON. HAROLD C. OSTERTAG, U.S. REPRESENTATIVE FROM NEW YORK, CONCERNING CIVIL RIGHTS LEGISLATION

Mr. Chairman, I appreciate this opportunity to present my views to the members of the Committee on the Judiciary, concerning the need for legislation in the field of civil rights. I introduced a bill, H.R. 4052, in the House of Representatives on February 21 of this year to strengthen civil rights law as related to voting, education, and employment, and I trust the committee will give favorable consideration to the provisions of this legislation.

Certainly, the daily events throughout the country underscore the need for improving the legal machinery by which all our citizens can obtain equal opportunity under our laws. Today's events make plain that existing statutes are not adequate and that the executive department is not able to take actions which are needed. True, there has been progress made in these fields, but that progress has not been sufficient or satisfactory. There is more to be done in the name of reason and justice.

The measure I have introduced represents a moderate but realistic program for strengthening civil rights in the areas I have mentioned. It is a comprehensive bill which avoids extremes; it seeks earnestly to advance the cause of civil rights in a reasonable, constructive fashion. I believe its provisions have broad support throughout the Nation and deserve the support of Congress.

What are its provisions? Let me describe them.

First, the bill makes permanent the U.S. Civil Rights Commission and empowers it to investigate vote frauds, including the denial of the right of having one's vote counted. In the voting process, the counting is equally as important as the casting.

Second, it empowers the Bureau of the Census to compile national registration and voting statistics to provide evidence of where voting and registration rights are denied. Our Constitution supposes that every qualified adult will have the opportunity to cast his vote for his representatives in government; however, these statistics will provide evidence of conditions where this is not so, and will suggest remedies for these conditions.

Third, a Commission for Equality of Opportunity in Employment is established, with power to investigate discrimination in employment by any business concern which holds a Federal Government contract or any labor union which works on these contracts. If the Commission finds a clear pattern of discrimination, it will have the authority to cut off the Government contracts and order labor organizations to cease discrimination as an unfair labor practice. There will, of course, be necessary safeguards on the Commission's powers, to protect all parties concerned.

A fourth provision authorizes the Attorney General to initiate civil action in behalf of a citizen who claims he is being denied the opportunity to enroll in a nonsegregated public school, and has exhausted all State remedies. This provision could greatly enhance the rate of progress in this area.

Fifth, the Federal Government could provide financial aid for administrative and technical purposes to school districts seeking to desegregate their schools.

The sixth section provides that a citizen who has completed six grades in school will have sufficient literacy and intelligence to vote in Federal elections, unless tests prove to the contrary.

As I have said earlier, Mr. Chairman, I regard this as a reasonable and desirable proposal for strengthening the civil rights which are basic to our American system of government. In this centennial year of the Emancipation Proclamation, the Congress should take these affirmative steps to fulfill the promise of that great human act. I hope the committee will act favorably in this matter and recommend this civil rights legislation to the House for approval.

(At 2:45 p.m. the subcommittee recessed to reconvene at 10 a.m., Wednesday, May 15, 1963.)

CIVIL RIGHTS

WEDNESDAY, MAY 15, 1963

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

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

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

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The committee will be in order.

The Chair wishes to announce that, according to our original schedule, the Attorney General was to address us this morning, but because of important other assignments, he asked that he be privileged to appear before the committee next week, or rather, the week following, on the 29th of this month. That day has been set for his appearance before this committee.

Meanwhile, we have some very distinguished members dedicated to the service of the Government today. Our first witness will be Mr. Milton Semer, General Counsel and Acting Deputy Administrator of the Housing and Home Finance Agency.

Will you identify the gentleman who are with you for the record, please?

STATEMENT OF MILTON SEMER, GENERAL COUNSEL, HOUSING AND HOME FINANCE AGENCY; ACCOMPANIED BY ASHLEY FOARD, ASSOCIATE GENERAL COUNSEL; AND ROBERT SAUER, ASSISTANT GENERAL COUNSEL

Mr. SEMER. Thank you, sir.

Mr. Chairman, and members of the committee, on my right is Mr. Ashley Foard, who is Associate General Counsel; and on my left, Robert Sauer, who is Assistant General Counsel in the Housing and Home Finance Agency, and is specializing on the work we have been doing since the Executive order on housing has been issued.

The CHAIRMAN. You may proceed.

Mr. SEMER. Mr. Chairman, I am pleased to have this opportunity to express the views of the Housing and Home Finance Agency on H.R. 24, a bill introduced by Representative Dingell, "to protect the right of individuals to be free from discrimination or segregation by

reason of race, color, religion, or national origin." My comments will be directed to title VII of the bill which relates to the prohibition of discrimination and segregation in housing.

As you know, the President's message on civil rights earlier this year recommended legislation which does not deal with the subject of housing. The President had already acted in this field through the issuance on November 20, 1962, of the Executive order on equal opportunity in housing. Although legislation along the lines of title VII would be helpful, as I will explain, we believe that the President's legislative recommendations are directed to the more urgent needs at this time.

There is no need to establish that discrimination in housing exists in all parts of the country and in all phases of the housing industry; nor is it necessary to dwell on the evil effects of such discrimination. In issuing his order, the President pointed out:

> * * * such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness.

The CHAIRMAN. Why couldn't that pronouncement be imbedded in permanent law?

Mr. SEMER. Mr. Chairman, there is no reason why it could not be. As the President stated in his civil rights message at the beginning of the conclusion, he said:

> The various steps which have been undertaken or which are proposed in this message do not constitute a final answer to the problems of race discrimination in this country. They do constitute a list of priorities, steps which can be taken by the executive branch, and measures which can be enacted by the 88th Congress. Other measures directed toward these same goals will be favorably commented on and supported as they have in the past and they will be signed, if enacted into law.

The CHAIRMAN. Why can't the Executive order that the President issued on November 20, 1962, be embodied in a permanent statute? That is the question I want answered. That is not an answer that you gave me, with all due respect to you.

Mr. SEMER. There is no objection to that at all.

The CHAIRMAN. There is no objection?

Mr. SEMER. None whatsoever.

The CHAIRMAN. Does the administration advocate permanent statutory enactment of the terms of the Executive order?

Mr. SEMER. The administration at the present time is not so recommending. The administration feels that there are higher priorities than taking the Executive order of last November and converting it into a statute.

The CHAIRMAN. Why should there be higher priority?

Mr. SEMER. The Executive order on housing of last November is now an operating program in the Federal Government. It is working well. We feel that there are other priorities which have been presented by the President that should command the attention of the Congress, rather than ——

The CHAIRMAN. If it works well, I can't conceive how it should not be a statute. If another President comes in, he may see fit to nullify the Executive order, or the present President may nullify the Executive order.

Why shouldn't it be the will of Congress to carry out exactly what the President says in his Executive order despite these priorities. The objectives are the contents of the Executive order. Why shouldn't that be a permanent statute?

Mr. SEMER. There is no objection to that at all, Mr. Chairman.

The CHAIRMAN. Why shouldn't your department recommend it?

Mr. SEMER. Speaking just for our Agency, we have as much as we can handle right now under the Executive order. It is working well. I personally don't feel that very much would be added, although it would be helpful. I don't think we would be assisted very much at the present time if we were to concentrate our efforts in trying to get this converted into a statute.

Mr. MCCULLOCH. Does the Executive order cover hotels and motels?

Mr. SEMER. Mr. McCulloch, I would like to answer that in two parts: Insofar as such facilities are in urban renewal areas, they are covered; insofar as they are not, there is still an open question as to where the line will be drawn.

Mr. MCCULLOCH. What percentage of loans are made to motels—construction loans, that is—and hotels that are covered by urban renewal?

Mr. SEMER. In our Agency we don't make any such loans.

Mr. MCCULLOCH. Would you know what percentage of new construction in motels and hotels that your Agency has cognizance of are covered by Executive order?

Mr. SEMER. I would have to get you that figure, Mr. McCulloch, because our Agency, ever since we got a court decision barring us from making FHA insurance available to transient facilities, we have been out of it completely.

Mr. MCCULLOCH. By "transient facilities" you mean motels and hotels?

Mr. SEMER. There is a kind of working definition as to what is transient and what is not. One definition is under 30 days for transiency, and over 30 days for permanent. I would rather give you a statement as to what the FHA position is because I would have to write it so it would be consistent with the court decision. But since that court decision we have not been in the business of assisting transient facilities.

Mr. MCCULLOCH. Would you have the figures on what percentage of your Agency's loans go to motels and what percentage go to hotels?

Mr. SEMER. We are not in that business.

Mr. MCCULLOCH. So the answer is "None."

Mr. SEMER. None, that is correct.

Mr. MCCULLOCH. I have one other question.

Does the Executive order cover FHA-insured loans on the secondary sale or the sale of used facilities?

Mr. SEMER. The Executive order does not cover a homeowner's sale of his home to a second party.

Mr. MCCULLOCH. Has your Agency considered the advisability of recommending that the Executive order cover that transaction and that use of mortgage premises?

Mr. SEMER. Yes, sir. The question of whether or not the Executive order should cover the sale of an owner-occupied home to another person has been considered right from the start, even before the order was issued. It has been considered by the States that have enacted statutes.

An exemption was specifically provided for, excluding that kind of a transaction. This was largely because we feel that it is administratively impossible to police it. This does not mean, however, that we do not cover, and we do cover the mortgage lender.

Mr. McCULLOCH. The original mortgage lender?

Mr. SEMER. Or a subsequent mortgage lender. But we don't attempt to try to police the homeowner who sells his own home to another party.

Mr. McCULLOCH. If the homeowner would sell his property to another party, and the mortgage was assumed, if that be lawful, then would you have any authority under that condition?

Mr. SEMER. If it is an assumption of a mortgage as distinguished from the sale and refinancing, so far as our coverage is concerned those are both in the same category.

Mr. McCULLOCH. Do you exercise vigilance of the Executive order in those instances where there is a sale and an assumption—a binding, legal assumption—by the buyer?

Mr. SEMER. We have not been faced with that yet on the new commitments issued since the Executive order. As a matter of fact, most of those homes have not been sold yet. The question you raise, if I can try to restate it, is: If there were a mortgage originated on a home that was covered by the Executive order and then later sold or later transferred through an assumption of the mortgage, then I think you are asking the question, since it was covered originally, would the coverage extend to the second, third, and fourth parties?

Mr. McCULLOCH. That is right, and if it extends, do you intend to enforce the order to the second, third, or however many buyers?

Mr. SEMER. I think the most accurate answer, Mr. McCulloch, is that it would not be covered because there is a specific exemption at the present time that excludes any kind of surveillance over the transfer of an owner-occupied home to a second party, and so on down the line, whether it be through assumption of mortgage or not.

Mr. McCULLOCH. Is that exemption spelled out in the Executive order, or is that pursuant to regulation adopted afterward?

Mr. SEMER. The latter. It is pursuant to regulation.

Mr. McCULLOCH. Has that proven to be satisfactory in all sections of the country where it has become known?

Mr. SEMER. I don't think it is a serious problem at the present time because we are in a transitional stage. We have not been faced with a large volume of problems relating to the coverage of housing that was already in being before the Executive order was issued. The Executive order specifically makes the principal sanctions available prospectively. The existing housing or used housing is covered to the extent that there is a mandate to our Agency and others to use our good offices and other appropriate means to see if we can work toward the elimination of discrimination.

Mr. McCULLOCH. I am glad to hear you say that, because I am inclined to believe that you are going to have an increasing number of problems as there are more and more transactions in the change of ownership and the assumption of mortgages since such a practice is advantageous to the second buyer. The assumption of the mortgage saves so many closing costs which have become so burdensome in financing homes in this country.

Mr. SEMER. We got a certain amount of guidance from experience in some of the States and municipalities that have experimented with fair housing laws. I think, universally, there is an exemption for the transfer from one person to another.

Mr. FOLEY. The same is true with regard to VA loans, is it not?

Mr. SEMER. That is correct. The administration of the Executive order for the FHA sector of the market, and the VA sector, are consistent, one with the other.

Mr. FOLEY. As to the District of Columbia, is this Executive order being carried out along the lines it was designed for?

Mr. SEMER. The Executive order applies to the District of Columbia as it does any other jurisdiction.

Mr. ROGERS. You said that the Executive order was effective to future transactions. If an urban renewal project has already started but it has not been finished, would the Executive order apply to that urban renewal project?

Mr. SEMER. The Executive order which, as you state, applies in the future—there are two separate sections. The first one makes available to the administering agency the sanctions, that it, the kinds of remedies that can be taken, for example, the cancellation of a commitment, the debarment of a contractor and so on. Those sanctions can be used only in transactions that got underway after November 20.

Mr. ROGERS. In other words, if I had filed an application and had it approved by the Agency, and the approval was made before November 20, 1962, then the Executive order would not apply?

Mr. SEMER. That section would not. The next section, Mr. Rogers, says that we should try to use our good offices to negotiate with the applicant or the contractor to try to induce him to adhere to the provisions of the Executive order, notwithstanding the fact that we cannot use the sanctions.

Mr. ROGERS. On the low-rent public housing program—if an application by a municipal authority was made prior to November 20, 1962, but was not approved by the Public Housing Administration until after November 20, 1962, would the Executive order then apply?

Mr. SEMER. In the case of public housing, the Executive order applies if the contracting parties, which in this case are the Federal Government and the local municipal authority, if they had not by that time entered into an annual contributions contract.

Mr. ROGERS. Suppose you have a city contracting agency that has from year to year made application and received authorization for construction of low-rent housing. I assume that where the money is already granted and where they are now constructing and renting those houses, that the Executive order does not apply?

Mr. SEMER. That is right.

Mr. ROGERS. Although the application for the grant was made prior to November 20 and it was not approved at that date—the point I am trying to find out is—would an application that is made prior to November 20, but which was approved by the Agency subsequent to November 20 be bound by the Executive order?

Mr. SEMER. Yes, sir; they would.

Mr. ROGERS. Thank you.

Mr. MCCULLOCH. Would the gentleman from Colorado yield to this question?

Mr. ROGERS. Yes.

Mr. MCCULLOCH. I wonder if the gentleman from Colorado has considered this angle to this very excellent questioning that has gone on: Notwithstanding the time of the approval of the application and the contract resulting therefrom, would it not be in the power of your agency to deny funds that might be committed thereunder if those funds were to be used in segregated housing contrary to law or the Constitution?

That is a difficult question, I know. If you have considered it, I would be happy to have your answer.

Mr. SEMER. I agree it is a difficult question.I also agree it is one we have to face. In the case of public housing, there has already been judicial determination in some of the circuits on that question. What the course of judicial work on that might be is anybody's guess. The answer to the previous question as to how the Executive order applies is that if we take a look at that case which you mentioned, if the application came in before November 20, but the contract was not signed until after November 20, it would be covered.

Now, suppose the contract was signed just before November 20. I take it the question now is, Don't you have means to cover it anyway? and the answer is "Yes." Under 102 of the Executive order, we are required to use our good offices to cover it.

Also in the case of public housing, that specific sector, the courts have been doing a certain amount of work on it.

The CHAIRMAN. As I understand it, the Executive order concerning bias in housing only applies to Government-financed housing or housing in which the Government plays some important part. It doesn't apply to private homes or private office buildings.

Mr. SEMER. It does not apply in the residential sector, Mr. Chairman, to what is usualy referred to as conventional lending.

The CHAIRMAN. It does not apply to office buildings, either, that are privately owned?

Mr. SEMER. That is correct. The closest we come to covering anything that is not what you and I would call a home is the kind of related facilities that you might get in an urban renewal area.

The CHAIRMAN. How many States have laws similar to the contents of the Presidental order? Do you know?

Mr. SEMER. Nineteen States plus the Virgin Islands, Mr. Chairman. The number of States that cover the conventional sector, that is 11. I don't have that broken down at the moment.

The CHAIRMAN. I have the report of the Civil Rights Commission, 1963. On page 144 I read as follows:

Nineteen States, fifty-five cities have barred discrimination in some areas in the housing market. In the past 5 years alone 3 cities, 11 States, and the Virgin Islands have adopted fair housing laws which apply to privately financed as well as governmentally aided housing. These are: New York City, Pittsburgh, Toledo, Colorado, Massachusetts, Connecticut, Oregon, California, Pennsylvania, New York State, New Jersey, Minnesota, New Hampshire, Alaska. Many of these laws established agencies composed of distinguished citizens to conciliate and mediate complaints and hold public hearings and to issue orders enforcible in the courts.

It is my own private opinion that if Congress would lead the way and pass a statute, rather than abide by an Executive order, we would have a ban on bias in public as well as private housing in many, many more States, because the States would follow the lead of the Congress.

What is your opinion, or would it be against the policy of your Department to express an opinion?

Mr. SEMER. I am not as well informed as you are, Mr. Chairman, as to what the States might do in response to a national move. What we expect to do before the end of this year is to enter into cooperating agreements with States. Obviously these cooperating agreements will be more effective where the State has itself made a move. How many more States beyond the 19 will move into this field I really don't know.

I would imagine from just my own passing knowledge, there are a number of States that are now considering legislation or executive rules, and there are quite a number of cities that are interested. There are some States that are pretty far off from entering this field.

The CHAIRMAN. Proceed with your statement.

Mr. SEMER. Discrimination in housing results in the concentration of certain minority groups, particularly Negroes, in segregated areas in most of our larger cities. These minorities are not only deprived of the many benefits of better housing, but are often required to pay higher rents and higher prices for substandard housing than others pay for good housing.

This concentration in minority ghettoes contributes to deprivation of equal educational opportunities which, in turn, results in deprivation of equal employment opportunities. The resulting lowering of economic status gives another turn to the cycle of diminished opportunities in housing and education as well as in all other areas of social and cultural advancement.

The principal provision of title VII of H.R. 24 is a declaration of national policy that, in the administration of specified Federal laws pertaining to housing, there shall be no discrimination affecting any tenant or owner of the housing involved or any borrower or other recipient or beneficiary of the Federal mortgage insurance or mortgage guarantees by reason of race, color, religion, or national origin, or any segregation by virtue thereof.

These laws cover almost all of the housing programs administered by the Housing and Home Finance Agency; the direct loan and mortgage guarantee programs administered by the Veterans' Administration; certain housing operations of the Department of Agriculture; and the operations of the Federal Home Loan Bank Board, including the Federal Savings and Loan Insurance Corporation.

The CHAIRMAN. Do you recommend that provision?

Mr. SEMER. My recommendation, Mr. Chairman, is as I have stated it earlier when you asked me what our position is with regard to converting the Executive order into a statute.

The programs of the Housing and Home Finance Agency affected by title VII of the bill include a number of functions administered through its constituent agencies:

(1) The various mortgage insurance programs administered by the Federal Housing Administration;

(2) The low-rent public housing program administered by the Public Housing Administration;

(3) Secondary market operations administered by the Federal National Mortgage Association;

(4) The urban renewal program administered by the Urban Renewal Administration; and

(5) The college housing program administered by the Community Facilities Administration.

The President's order on equal opportunity in housing applies to all of the programs covered in title VII of the bill except those of the Federal Home Loan Bank Board. In our judgment, we have adequate legal authority under the powers granted to us by the Congress to carry out the President's directives in that order.

Let me refer briefly to the scope and basic provisions of the Executive order. It directs all Federal departments and agencies, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take necessary and appropriate action to prevent discrimination because of race, color, creed, or national origin, in the sale, lease, or other disposition of residential property and related facilities, including land to be developed for residential use, or in the occupancy thereof if such property and related facilities are:

(1) Owned or operated by the Federal Government; or

(2) Provided after the date of the order with loans, grants, or contributions or loans insured or guaranteed by the Federal Government; or

(3) Provided after such date in urban renewal areas receiving Federal assistance after such date.

Federal departments and agencies are also directed to prohibit discrimination in the practices of lending institutions insofar as such practices relate to loans insured or guaranteed by the Federal Government.

The Housing and Home Finance Agency and other executive departments and agencies are directed to use their good offices and take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to existing residential property and related facilities which were previously provided with Federal aid.

Mr. RODINO. Mr. Semer, on that point, talking about the use of good offices and taking other appropriate action, can you cite where you have taken such action if incidents arose where such action was necessary?

Mr. SEMER. I think the principal area in which the good offices provision has been working, and working very well, is in the urban renewal program. As you know, the urban renewal program tends to be a drawn-out program over a number of years. There is long lead-time; although the application of the sanctions in the Executive order would not technically apply directly if the contract had been signed before November 20, 1962, we have been experiencing great success in using our good offices with local authorities to operate under the Executive order as if they were covered by the sanctions.

The negotiations started immediately upon the signing of the order with communities that have urban renewal programs, and even though not technically covered, they have covered themselves by the order. I can furnish the number for the record.

Mr. McCULLOCH. If the gentleman from New Jersey will yield, I would like to ask a question or two about urban renewal in Southwest Washington. I notice with very great satisfaction the very fine development down there.

Has there been complete integration in the use of those facilities in those urban renewal projects here in Washington?

Mr. SEMER. The residential structures that have been built are open. The reason you don't see more families from minority groups down there is that urban renewal in the District of Columbia, as in many other places, doesn't provide a dwelling unit, a home, that is financially accessible to a sufficient number of Negroes. In other words, Negroes, for example, are on the average a lower income level.

Mr. McCULLOCH. Let me ask you this, Mr. Semer: Where the Negroes are of a higher economic level, where they are U.S. Federal civil servants, with an average income of $5,800 a year, according to figures that I just had from the Civil Service Commission, is your agency using its good offices for the integration of those housing facilities in that section of Washington?

I want to tell you in advance one of the reasons I ask this question. From way up in Ohio I am getting communications asking my personal assistance for Negroes to have provided for them housing facilities in those urban renewal projects. I say that to you in advance so that your answer can point to the very problem that I am discussing.

Mr. SEMER. The answer is "Yes, we do use our good offices in places like Southwest Washington," but even more important is the contribution that we can make, and we made, I think, quite a major stride forward in the Housing Act of 1961, is to develop programs that bring the cost and rent schedules down, through FHA insurance programs and other aids. For example, to help a place like Southwest so that private enterprise can build a multifamily structure or townhouses or whatever they want to build at a price level that will reach a larger market and still make a profit.

Mr. McCULLOCH. Yes, but, Mr. Semer, I go back to this urban renewal project in our Capital City which we are told is the goldfish bowl of the world. Are you using your good offices constantly and effectively to make available, over roadblocks that apparently have been there up to this time, according to my correspondence, to these people who are on an economic level who can pay that rental? That follows the question of my very good friend from New Jersey, and it is an important factor in this hearing this morning, I believe.

Mr. SEMER. We certainly are using our good offices. We would appreciate and welcome any communications you would want to send to us so that we could help look into these situations with you.

Mr. McCULLOCH. One final question: Can you furnish to this committee the number of dwelling units available in Southwest Washington built under urban renewal legislation that are now occupied by Negroes?

Mr. SEMER. I will do the best I can to get that for you.

Mr. McCULLOCH. I think it would be helpful to have that for the record.

(The information to be furnished follows:)

HOUSING AND HOME FINANCE AGENCY,
Washington, D.C., May 24, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: At the hearings before Subcommittee No. 5 on May 15, Representative McCulloch asked that I inform the committee on the number of dwelling units in Washington's Southwest urban renewal area which are now occupied by Negroes.

At the present time there are 1,820 of these dwelling units occupied, and 154 of these units are occupied by Negroes. All of these are privately built dwellings.

Also, public housing projects near the urban renewal area have 923 units occupied, 879 of which are occupied by Negroes.

Sincerely yours,

MILTON P. SEMER, *General Counsel.*

Mr. ROGERS. Mr. Semer, you have been discussing the provisions of title VII of Mr. Dingell's bill H.R. 24, and on page 52 of that bill, section 701 states that, "No home mortgage shall be issued or guaranteed by the United States or any agency thereof or by any U.S. Government corporation" unless they do certain things.

When you say "any U.S. Government corporation," would that have reference to the FDIC that guarantees the deposits of those who have money in the building and loan associations who make conventional loans from that fund?

Mr. SEMER. As I read section 701, I don't think it was the intention of the author to cover the FDIC.

Mr. ROGERS. In other words, conventional loans made from guaranteed savings and loan funds would not be covered under this bill?

Mr. SEMER. Of course, the FDIC, to go back to the language you read, does not insure or guarantee home mortgages.

Mr. ROGERS. No, but it does insure and guarantee my deposit up to $10,000 if I want to invest in it. Would you see anything wrong with amending it to include that?

Mr. SEMER. I personally do not see any legal obstacle toward the inclusion of either the FDIC, which covers the commercial bank network, or the Federal Savings and Loan Insurance Corporation, which covers the savings and loan network.

Mr. ROGERS. Thank you.

The CHAIRMAN. I think at this point it might be well to put in the record the Executive order of the President of 1962 on equal opportunity in housing.

(The Executive order referred to follows:)

[No. 11063—November 24, 1962, 27 F.R. 11527]

EQUAL OPPORTUNITY IN HOUSING

Whereas the granting of Federal assistance for the provision, rehabilitation, or operation of housing and related facilities from which Americans are excluded because of their race, color, creed, or national origin unfair, unjust, and inconsistent with the public policy of the United States as manifested in its Constitution and laws; and

Whereas the Congress in the Housing Act of 1949 has declared that the general welfare and security of the Nation and the health and living standards of its people require the realization as soon as feasible of the goal of a decent home and a suitable living environment for every American family; and

Whereas discriminatory policies and practices based upon race, color, creed, or national origin now operate to deny many Americans the benefits of housing financed through Federal assistance and as a consequence prevent such assistance from providing them with an alternative to substandard, unsafe, unsanitary, and overcrowded housing; and

Whereas such discriminatory policies and practices result in segregated patterns of housing and necessarily produce other forms of discrimination and segregation which deprive many Americans of equal opportunity in the exercise of their unalienable rights to life, liberty, and the pursuit of happiness; and

Whereas the executive branch of the Government, in faithfully executing the laws of the United States which authorize Federal financial assistance, directly or indirectly, for the provision, rehabilitation, and operation of housing and related facilities, is charged with an obligation and duty to assure that those laws are fairly admistered and that benefits thereunder are made available to all Americans without regard to their race, color, creed, or national origin:

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, it is ordered as follows:

PART I—PREVENTION OF DISCRIMINATION

Section 101. I hereby direct all departments and agencies in the executive branch of the Federal Government, insofar as their functions relate to the provision, rehabilitation, or operation of housing and related facilities, to take all action necessary and appropriate to prevent discrimination because of race, color, creed, or national origin—

(a) in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use or occupancy thereof, if such property and related facilities are—

(i) owned or operated by the Federal Government, or

(ii) provided in whole or in part with the aid of loans, advances, grants, or contributions hereafter agreed to be made by the Federal Government, or

(iii) provided in whole or in part by loans hereafter insured, guaranteed, or otherwise secured by the credit of the Federal Government, or

(iv) provided by the development or the redevelopment of real property purchased, leased, or otherwise obtained from a State or local public agency receiving Federal financial assistance for slum clearance or urban renewal with respect to such real property under a loan or grant contract hereafter entered into; and

(b) in the lending practices with respect to residential property and related facilities (including land to be developed for residential use) of lending institutions, insofar as such practices relate to loans hereafter insured or guaranteed by the Federal Government.

Sec. 102. I hereby direct the Housing and Home Finance Agency and all other executive departments and agencies to use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices with respect to residential property and related facilities heretofore provided with Federal financial assistance of the types referred to in Section 101(a) (ii), (iii), and (iv).

PART II—IMPLEMENTATION BY DEPARTMENTS AND AGENCIES

Sec. 201. Each executive department and agency subject to this order is directed to submit to the President's Committee on Equal Opportunity in Housing established pursuant to Part IV of this order (hereinafter sometimes referred to as the Committee), within thirty days from the date of this order, a report outlining all current programs administered by it which are affected by this order.

Sec. 202. Each such department and agency shall be primarily responsible for obtaining compliance with the purposes of this order as the order applies to programs administered by it; and is directed to cooperate with the Committee, to furnish it, in accordance with law, such information and assistance as it may request in the performance of its functions, and to report to it at such intervals as the Committee may require.

Sec. 203. Each such department and agency shall, within thirty days from the date of this order, issue such rules and regulations, adopt such procedures and policies, and make such exemptions and exceptions as may be consistent with

law and necessary or appropriate to effectuate the purposes of this order. Each such department and agency shall consult with the Committee in order to achieve such consistency and uniformity as may be feasible.

PART III—ENFORCEMENT

Sec. 301. The Committee, any subcommittee thereof, and any officer or employee designated by any executive department or agency subject to this order may hold such hearings, public or private, as the Committee, department, or agency may deem advisable for compliance, enforcement, or educational purposes.

Sec. 302. If any executive department or agency subject to this order concludes that any person or firm (including but not limited to any individual, partnership, association, trust, or corporation) or any State or local public agency has violated any rule, regulation, or procedure issued or adopted pursuant to this order, or any nondiscrimination provision included in any agreement or contract pursuant to any such rule, regulation, or procedure, it shall endeavor to end and remedy such violation by informal means, including conference, conciliation, and persuasion unless similar efforts made by another Federal department or agency have been unsuccesful. In conformity with rules, regulations, procedures, or policies issued or adopted by it pursuant to Section 203 hereof, a department or agency may take such action as may be appropriate under its governing laws, including, but not limited to, the following:

It may—

(a) cancel or terminate in whole or in part any agreement or contract with such person, firm, or State or local public agency providing for a loan, grant, contribution, or other Federal aid, or for the payment of a commission or fee;

(b) refrain from extending any further aid under any program administered by it and affected by this order until it is satisfied that the affected person, firm, or State or local public agency will comply with the rules, regulations, and procedures issued or adopted pursuant to this order, and any nondiscrimination provisions included in any agreement or contract;

(c) refuse to approve a lending institution or any other lender as a beneficiary under any program administered by it which is affected by this order or revoke such approval if previously given.

Sec. 303. In appropriate cases executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract, for such civil or criminal action as he may deem appropriate. The Attorney General is authorized to furnish legal advice concerning this order to the Committee and to any department or agency requesting such advice.

Sec. 304. Any executive department or agency affected by this order may also invoke the sanctions provided in Section 302 where any person or firm, including a lender, has violated the rules, regulations, or procedures issued or adopted pursuant to this order, or the nondiscrimination provisions included in any agreement or contract, with respect to any program affected by this order administered by any other executive department or agency.

PART IV—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

Sec. 401. There is hereby established the President's Committee on Equal Opportunity in Housing which shall be composed of the Secretary of the Treasury; the Secretary of Defense; the Attorney General; the Secretary of Agriculture; the Housing and Home Finance Administrator; the Administrator of Veterans Affairs; the Chairman of the Federal Home Loan Bank Board; a member of the staff of the Executive Office of the President to be assigned to the Committee by direction of the President, and such other members as the President shall from time to time appoint from the public. The member assigned by the President from the staff of the Executive Office shall serve as the Chairman and Executive Director of the Committee. Each department or agency head may designate an alternate to represent him in his absence.

Sec. 402. Each department or agency subject to this order shall, to the extent authorized by law (including § 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691)), furnish assistance to and defray the necessary expenses of the Committee.

PART V—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL OPPORTUNITY IN HOUSING

Sec. 501. The Committee shall meet upon the call of the Chairman and at such other times as may be provided by its rules. It shall: (a) adopt rules to govern its deliberations and activities; (b) recommend general policies and procedures to implement this order; (c) consider reports as to progress under this order; (d) consider any matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. A report to the President shall be made at least once annually and shall include references to the actions taken and results achieved by departments and agencies subject to this order. The Committee may provide for the establishment of subcommittees whose members shall be appointed by the Chairman.

Sec. 502. (a) The Committee shall take such steps as it deems necessary and appropriate to promote the coordination of the activities of departments and agencies under this order. In so doing, the Committee shall consider the overall objectives of Federal legislation relating to housing and the right of every individual to participate without discrimination because of race, color, creed, or national origin in the ultimate benefits of the Federal programs subject to this order.

(b) The Committee may confer with representatives of any department or agency, State or local public agency, civic, industry, or labor group, or any other group directly or indirectly affected by this order; examine the relevant rules, regulations, procedures, policies, and practices of any department or agency subject to this order and make such recommendations as may be necessary or desirable to achieve the purposes of this order.

(c) The Committee shall encourage educational programs by civic, educational, religious, industry, labor, and other nongovernmental groups to eliminate the basic causes of discrimination in housing and related facilities provided with Federal assistance.

Sec. 503. The Committee shall have an executive committee consisting of the Committee's Chairman and two other members designated by him from among the public members. The Chairman of the Committee shall also serve as Chairman of the Executive Committee. Between meetings of the Committee, the Executive Committee shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee to the extent authorized by it.

PART VI—MISCELLANEOUS

Sec. 601. As used in this order, the term "departments and agencies" includes any wholly-owned or mixed-ownership Government corporation, and the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the territories of the United States.

Sec. 602. This order shall become effective immediately.

JOHN FITZGERALD KENNEDY.

THE WHITE HOUSE, *November 20, 1962.*

The CHAIRMAN. I will read into the record another statement from the Civil Rights Commission report of 1963, at page 143.

The order—

that is, the Executive order just put in the record—

was not as sweeping in its scope as some had expected. Its principal impact will be on new house construction and particularly those large suburban subdivisions and multifamily rental units which are built with Federal assistance. But the order does not cover existing housing or housing financed through conventional means. In regard to federally assisted housing not covered by the order, the President directed Federal agencies to "use their good offices and to take other appropriate action permitted by law, including the institution of appropriate litigation, if required, to promote the abandonment of discriminatory practices."

Apparently the Civil Rights Commission indicates that the President's Executive order did not go as far as was expected. That brings me back to that same question, namely, whether or not there is a need for Congress to take action in this field to embody in a permanent

statute the Presidential recommendations and go further to cover not only new construction, but old construction. My personal view on the matter is that there is.

You may proceed.

Mr. SEMER. It provides for appropriate conciliation and enforcement functions, and for the establishment of the President's Committee on Equal Opportunity in Housing to establish general policies and procedures and to coordinate activities under the order. As you know, the President has appointed the Honorable David L. Lawrence, former Governor of Pennsylvania, to head this committee. As the President also stated in issuing his order:

> It is neither proper nor equitable that Americans should be denied the benefits of housing owned by the Federal Government or financed through the Federal assistance on the basis of their race, color, creed, or national origin. Our national policy is equal opportunity for all and the Federal Government will continue to take such legal and proper steps as it may to achieve the realization of that goal.

We believe title VII of the bill, with appropriate amendments—and by that I mean minor amendments, and nothing of any substantive import—is consistent with this declaration and with basic and traditional constitutional principles expressed by the Congress and the Supreme Court of the United States.

The Congress almost a century ago enacted a law providing that:

> All citizens of the United States shall have the same right, in every State and territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real, and personal property.

More recently, in the Housing Act of 1949, the Congress established a national goal of:

> A decent home and a suitable living environment for every American family.

If the Congress should further express, as a matter of national policy, its opposition to discrimination in federally aided housing and related programs, such pronouncement would strengthen the hand of the executive branch of the Government in the enforcement of the laws and related regulations covered by the President's order. It would represent an additional moral force in support of all Americans who are endeavoring to eliminate discrimination in housing, and would reaffirm basic constitutional principles.

The CHAIRMAN. That is a pretty strong act that was adopted a hundred years ago. Most people have forgotten about it. In other words, everybody, regardless of race, color, creed, or national origin, shall not be discriminated as to inheritance, purchasing, leasing, selling, holding, conveying real, and personal property.

Why could not that act be enforced today? If I am denied an apartment because of my color, why could not that act be enforced, even if it is old rather than new construction? If I want to lease the apartment, why could not that act be enforced?

Mr. SEMER. I don't have a ready answer for you, Mr. Chairman, on that. This was a statute enacted pursuant to the 14th amendment about a hundred years ago. It is still on the books. The strategy of its enforcement and its effectiveness are matters I would not want to give you an ad hoc comment on.

The administrative techniques in the executive branch for the enforcement of equal opportunity in housing are methods that are developed in accordance with the Executive order of November 20 of

last year. It is operating very well. We have our hands full in carrying out the limited scope of that order.

It is a relevant parallel consideration as to what could be done under this statute that is quoted here, or this portion of the statute that is quoted here. I am not prepared to say right now what the administrative result would be if the administration had taken a different course in order to promote equal opportunity in housing other than the one we have taken through the Executive order of last November.

The CHAIRMAN. I would like to get counsel's opinion, if he would care to labor on it, and the record will be held open for him, to give us his views as to the interpretation of that old statute.

Mr. FOLEY. I think that the language quoted in your statement, which comes from the Revised Statutes, section 1978, and is now contained in title 42, section 1982, merely states that all citizens of the United States shall have the same right in every State and territory to inherit, purchase, sell, hold, convey, real and personal property.

The enforcement section is found in section 1983, which reads that every person who under color of any statute, ordinance, regulation, custom or usage of any State or territory subjects or causes to be subjected any citizen of the United States or other person within the jurisdiction thereof to deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in an action at law, suit in equity, or other provision for redress.

The criminal sanction, if there was a criminal violation, would be contained in sections 241 and 242 of title 18.

The CHAIRMAN. It looks like we have the statute on the books already.

Mr. MCCULLOCH. Mr. Chairman, commenting off the cuff, and I do not like to do that, the difficulty with this section is that it puts the burden on the individual who has been deprived of his right, and the financial burden of seeking redress which may take him to the Supreme Court of the United States, is prohibitive unless he be wealthy.

Mr. SEMER. I think that may be one problem.

Mr. MCCULLOCH. That is one of the reasons, Mr. Semer, why I am so anxious to properly exploit further authority of the Congress in this field. I particularly noted your statement of only a moment ago when you said that you more than had your hands full in implementing the Executive order which was of limited scope. If that be correct, the, why can't your Agency, after due course—and you don't need to answer this question—come to us and say, in addition to the Executive order, we recommend and we urge some type of legislation such as that as has been introduced by our colleague from Michigan?

I leave that for the record, since it is at the end of your testimony and under the conditions, you need not answer it unless you want to. You can give an answer at a later date, if you wish to.

Mr. SEMER. With your permission, I would like to give part of an answer to that. When I said we have our hands full, what I meant was that this area of trying to promote equal opportunity in housing is so intricate that even with an Executive order of limited scope we have our hands full in applying it.

The decision of the administration to draw the line where it did last November was a decision made in part, anyway, on the basis of

what could be administered. We did not want to put out an Executive order that was an empty gesture. We wanted to bite off a piece of work that we could do, given the limitations of bureaucracy and other work we have to do, and so on.

Mr. McCULLOCH. Could I then assume from what you are saying, if the Congress would give you legislation broad of scope, with all of the facilities for implementation, then more progress could be made in a shorter period of time?

Mr. SEMER. At this point, Mr. McCulloch, I will defer to the judgment of the Congressmen present as to the nature of that statute and what kind of support.

Mr. McCULLOCH. We can always remember that phrase by which you described the Executive order, as being "limited in scope," can we?

Mr. SEMER. It is definitely limited in scope in its present form.

The CHAIRMAN. I recognize this old statute has limitations in that it would put the burden on the individual. He might be confronted with strong vested interests and it might take a long time before he gets his rights. In any event, there is an instrumentality by which individuals can get their rights recognized.

Of course, that does not mean we should not strive to get that old act broadened so as to have a new act enacted which would insure complete Government aid in every respect where these rights are eroded in housing.

Mr. McCULLOCH. Mr. Chairman, one more comment.

Of course, you know we have been struggling with this very question in the matter of school integration. There has been the right of the student or the student's parents to go into court for some years now. But the cost and expense is prohibitive. This same problem is here in another facet of civil rights.

Mr. RODINO. Mr. Chairman, I have just one question. Mr. Semer, in your opinion, would the President's Executive order and the authority granted to you under it be considered adequate to guarantee equal opportunity in housing without legislative action or legislative implementations?

Mr. SEMER. The order in its present form is, as I have stated, limited in scope. One of the functions—perhaps the principal function—of the President's Committee on Equal Opportunity in Housing is to keep this order and its administration under constant review to see what can be done within the limitations of our system of government, to reach the objective either through amendment of the order—and I would not rule out, as I indicated in my statement, such support as could be given to this national effort by the Congress.

The President's Committee, which is getting underway in taking up many of the problems that are raised here, we expect in our agency to take the kind of broad look at this that you are suggesting. I frankly don't know the content or the timing of their conclusions after they have been underway for a while. As far as our agency is concerned, with the order such as it is, it is a full-time job.

There are many, many obstacles built into our society toward achieving this objective as rapidly as you might in other fields. One of the characteristics of the housing field is a very high economic price of admission to this particular opportunity. As was brought up earlier in connection with equal opportunity or access to residential facilities

in urban renewal areas, it doesn't do the Negro family much good if you have open occupancy in a structure that he can't afford.

The job of our agency is not only to promote equal opportunity, but also to develop programs so that the people that you are trying to help have financial access to these facilities.

Mr. FOLEY. Mr. Semer, I have one question.

Under section 303 of the President's Executive Order No. 11063, there appears this language:

> In appropriate cases, executive departments and agencies shall refer to the Attorney General violations of any rules, regulations, or procedures issued or adopted pursuant to this order, or violations of any nondiscrimination provisions included in any agreement or contract for such civil or criminal action as he may deem appropriate.

Can you tell me what is meant by "criminal actions he may deem appropriate"?

Mr. SEMER. With your permission, I would like to have Mr. Sauer, who works on this, to comment.

Mr. SAUER. This is a broad authority which is given to the various executive departments and agencies that are implementing the order to refer cases to the Attorney General. There are criminal statutes, for example, relating to false statements which a person may make. That would be a proper referral for criminal action or contempt proceedings for failure to obey an order of the court.

In civil actions, the Attorney General may institute mandamus proceedings or may institute injunction proceedings.

Mr. FOLEY. Let me ask you this: The crimes are specifically spelled out by statute, but what about violations of rules and regulations? Could that constitute a criminal action?

Mr. SAUER. It may where they are incorporated by reference in your contract agreements.

Mr. FOLEY. Does the agency have the authority to issue rules and regulations and under that statute is a violation of any such issued rule or regulation a criminal violation?

Mr. SAUER. I don't think so.

Mr. FOLEY. That is what I wanted to get clear.

Mr. SAUER. No, I don't think so. But it would provide the basis for a civil action for enforcement of the contract provision.

Mr. FOLEY. I understand the civil aspect of it. It is the criminal aspect that I wanted to get. You rely primarily upon a civil action in cases of a statutory violation?

Mr. SAUER. That is correct.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask a question there.

Do I interpret your statement correctly that the Justice Department or the Attorney General would have authority under this Executive order to bring civil suit against John Doe by reason of the violation of some provision in the Executive order?

Mr. SAUER. The Executive order would not add any authority to the Federal departments or agencies, which would include the Attorney General. It merely expresses the President's determination in this field, and a direction to the Attorney General and to the departments and agencies to exercise the statutory authority which they already have. In other words, it doesn't expand it.

Mr. McCULLOCH. Would they have any statutory authority in the case that I mentioned where John Doe, a citizen, would refuse to abide by one of these provisions of the Executive order?

Mr. SAUER. It all depends on the contractual relationship.

Mr. McCULLOCH. A rather ineffective provision, isn't it?

Mr. SAUER. In FHA, for example, if the builder gets an insurance commitment through his lending institution, the commitment is to the lending institution. There is a relationship there, a contractual relationship. Then the Attorney General may come in as representing the United States.

Mr. McCULLOCH. If I were denied the right to buy a house or to rent a facility in that project, I can call either directly or indirectly on the Justice Department to implement the Executive order. Is that the case?

Mr. SAUER. But it would be in the discretion of the Attorney General as to whether he should proceed or not, depending on the interests of the Government.

Mr. FOLEY. Has your agency issued any rules or regulations under the Executive order?

Mr. SAUER. Yes. Within a few weeks after the order was issued, each one of our constituent agencies issued rules and regulations and instructions to the field, and complaint procedures have been issued, also.

The CHAIRMAN. Legally, how do you have any sanctions under an Executive order?

Mr. SAUER. The Executive order does not expand any authority, as we view it. The authority is already vested in the departments and agencies. For example, in our agency, the Housing and Home Finance Agency, we have general regulatory authority in many of our statutes, not only vesting regulatory authority in the Housing Administrator, but also in the Federal Housing Commissioner and the Public Housing Commissioner, so that you have this overall authority to issue regulations to carry out those particular laws.

The CHAIRMAN. Suppose there is a case of a loan made for some development. Everything is according to Hoyle. There is financial stability. The people are of good character. The builder is efficient. The loan has been recommended in all respects. Then there develops the idea that there will be discrimination.

What right have you under the President's Executive order or any other order or statute to deny that loan, having approved it because it was sound in every respect and complied with the statute?

Mr. SAUER. The regulations have been issued which would authorize the Commissioner to refuse the loan.

The CHAIRMAN. You can't be arbitrary?

Mr. SAUER. No. Those regulations were issued pursuant to the general regulatory authority given to the Administrator by the Congress.

The CHAIRMAN. But I still say that the applicant has complied with everything, and you are satisfied in every respect. Then the idea arises that there is discrimination. The only basis for your action, I think, would be the Presidential order. Now, how can you by mere Presidential order take the stand that the loan will not be granted because of the prejudice? I don't offer this question to indicate that I am against

such action, but I am trying to find the legal basis which enables you to say that the loan shall not be made because of bias or prejudice.

Mr. SEMER. Mr. Chairman, for example, in a situation such as you mentioned, everything is fine except for the discrimination. If you assembled evidence and could prove discrimination, the first thing that would strike you was the fact that there had been a false certification, because in order to get the commitment and to get the go-ahead from the FHA to use its insurance system, the applicant will have certified.

The CHAIRMAN. When you ask the question in the application as to whether or not there is going to be discrimination, what do you do?

Mr. SEMER. We require the customer to certify that he is not going to discriminate.

The CHAIRMAN. Again to go back to the old proposition. What is the basis for such a question? What statute gives you the authority to even ask that?

Mr. SEMER. The statute on which such a regulation is issued is the National Housing Act, which gives regulatory authority, in the FHA case, to the FHA Commissioner. He has to issue regulations on what the interest rate is going to be, what the technical minimum standards are going to be, site planning, all the sort of thing that goes into the Federal regulation of the use of a Federal benefit.

The President's statement in the housing order of last November, which is a direction to Federal agencies, that this, too, will be taken into consideration in the granting of benefits to applicants. The housing order does not give the FHA Commissioner a power which he did not have before. He had the regulatory power given to him by the statute.

This is one more ingredient, one more component, in the bundle of regulatory considerations that he has to promulgate in order to issue the insurance commitment.

Mr. KASTENMEIER. I would like to raise a collateral question, which really came from the questions asked you by the gentleman from Ohio, Mr. McCulloch, relating to urban renewal and specifically to Southwest Washington.

I don't understand you to approve of that project in terms of what it did for housing opportunities for Negroes in this community, do I? As I understand it, many thousands of citizens in one quadrant of this city, mostly Negro, were uprooted and forced into the other three quadrants of the city. And in this quadrant we now have luxury, high-rent apartment houses. This does not aid the living opportunities for Negro citizens in this community, does it?

Mr. SEMER. Of course, at the time that the Southwest plan was conceived, we didn't have the proportions or the high proportion of Negro families in this community. Whether this was foreseen or not, I don't know. I don't think an urban renewal program can operate successfully on what used to be referred to as a 1 for 1 basis; that is, you clear this block, you should put in housing to rehouse the people who have been displaced from that block.

The urban renewal concept is a much broader one. There is nothing inconsistent between a sound urban renewal program and the relocation of families from the renewal area, most of whom are disadvantaged families, into housing in other parts of town. On the

other hand, I think you are quite right in drawing our attention to the fact that urban renewal cannot subsist entirely on the change of an area from what was formerly, let us say, a blighted, slum area into exclusively luxury apartments. That would be self-defeating.

Our efforts in the administration, with the help principally of the Housing Act of 1961, is to try to get a more sensible financial mix in the renewal areas.

Mr. KASTENMEIER. I will be very interested in the figures that you make available to Mr. McCulloch on this, because I think there may have been as many as tens of thousands of citizens who were displaced or relocated under this program. They were economically disadvantaged by this move and presumably very few of them will be moving back. The lost years that they have been in the other quadrants of the city competing with other people similarly disadvantaged cannot be taken into account in statistics, but I think if the masterminds of this project were friends of Negroes, the Negroes need fewer such friends.

Mr. SEMER. Without trying to defend in its totality the urban renewal program, I do think that the figures will show that the families relocated from urban renewal clearance areas in overwhelming proportions are in better housing than what they had. This is quite different and, I think, it is a favorable aspect of the urban renewal program.

This is a quite different consideration from a policy which the Congress did consider, and did not accept, at the time the urban renewal law was adopted in 1949 of what I referred to earlier as the 1-for-1 change within an urban renewal area.

The CHAIRMAN. Thank you very much, Mr. Semer. You have been very cooperative except in one respect, but we forgive you for that. We appreciate also your coming with your two very able assistants. Thank you.

Mr. SEMER. Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Semer, when you submit the data that Mr. McCulloch requested, will you make sure a copy comes to the committee so we can submit it for the record?

Mr. SEMER. I will submit it to the chairman.

The CHAIRMAN. The next witness is Mr. Richard M. Scammon, Director of the Bureau of the Census.

STATEMENT OF HON. RICHARD M. SCAMMON, DIRECTOR, BUREAU OF THE CENSUS, DEPARTMENT OF COMMERCE; ACCOMPANIED BY KENNETH McCLURE, OFFICE OF THE GENERAL COUNSEL, DEPARTMENT OF COMMERCE

Mr. SCAMMON. Mr. Chairman, with me this morning is Mr. Kenneth McClure of the Office of the General Counsel of the Department of Commerce.

The CHAIRMAN. You may proceed.

Mr. SCAMMON. Mr. Chairman, the Census Bureau is involved in this proposed legislation only with respect to section 103 which directs the Bureau of the Census to conduct a nationwide compilation of registration and voting statistics. A letter has been sent to you, Mr. Chairman, on this bill from Mr. Giles.

The CHAIRMAN. That will be inserted in the record but you might read it.

Mr. SCAMMON (reading):

GENERAL COUNSEL OF THE DEPARTMENT OF COMMERCE,
Washington, D.C., May 14, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in further reply to your request for the views of this Department with respect to H.R. 3139, a bill to amend the Civil Rights Act of 1957, and for other purposes.

As you know, the President in his message of February 28, 1963, called for a number of civil rights measures. We understand that the Department of Justice and other agencies directly concerned will discuss in detail the President's recommendations and we would defer to their views.

With respect to H.R. 3139, we confine our comments to section 103, which requires that the Bureau of the Census promptly conduct a nationwide survey of voting and registration statistics.

It would appear that the only practical way for the Bureau of the Census to obtain the information relating to the registration of voters in each State would be by taking a sample of the total population rather than a sample from voter registration records. After such a sample of the population has been completed, these records would be checked against registration records for completeness.

Section 103 refers to "a determination of the extent to which such persons have voted since January 1, 1960." We believe it would be necessary to have references made to specific elections rather than the present language of the bill.

It is assumed that the reference to "national origin" would have the same meaning as presently used in census statistics, that is, the country of birth of the person enumerated and place of birth of that person's parents.

An estimate of the cost of collecting this information on a single-time basis would run anywhere from $2.5 to $5 million. To collect the information as part of the decennial census would cost approximately $500,000.

In conformity with Reorganization Plan No. 5 of 1950, the authority in section 103 should run to the Secretary of Commerce rather than to the Bureau of Census.

The Bureau of the Budget advised there would be no objection to the submission of this report from the standpoint of the administration's program.

Sincerely,

LAWRENCE JONES,
(For Robert E. Giles).

Mr. COPENHAVER. Mr. Scammon, does the Bureau of the Census at this time compile any data of a nature similar to that requested in section 103?

Mr. SCAMMON. It compiles no registration data. In connection with our Congressional District Data Book and with our County and City Data Book we print some election data.

There is no original compiling of election data as such in the Bureau of the Census at this time. In the middle forties there was some work in this area but this was discontinued around 1946.

Mr. FOLEY. On that point, Mr. Scammon, over in Virginia where I reside—I live in Fairfax County but my voting geographic area is designated as a magisterial district. If there was some sort of discrimination in voting you would not have figures covering those eligible voters in that magisterial district, would you?

Mr. SCAMMON. The only data which the Bureau of Census would compile would be the number of persons of voting age. Each 2 years an estimate figure is issued by the Bureau as to this figure. However, this figure does not go below the State level and it includes aliens, it includes people who may not have satisfied local requirements, such as poll tax, residence, literacy, interpretation of a particular segment of the Constitution and the like.

So the only figures, to combine the two questions, the only figures which would be available in Virginia or any other State would be biennial estimates of the number of persons of voting age at the State level plus the results of the 1960 census.

Mr. FOLEY. Would they be broken down into the electoral areas?

Mr. SCAMMON. They would be broken down for 1960 by the individual magisterial districts and even by census tracts and enumeration districts. The estimates which are made each 2 years are only on a State basis. These are not broken down below the State level.

Mr. FOLEY. The reason I asked that is this. The Attorney General in the bill which he has submitted, H.R. 5455, which the chairman introduced, has a provision that when he goes into court in a voting case and alleges in his complaint that there is a pattern or practice of discrimination under existing law, he desires the authority of the appointment of a temporary voting referee if he can show that less than 15 percent of the total persons of that race in that particular area is not registered.

Would your figures be of any assistance to him with regard to that proposal?

Mr. SCAMMON. The exact figures on persons of voting age would be available in each jurisdiction as of April 1, 1960. They would not be available as of May 1963 since the census is taken only every 10 years in terms of an actual head count.

Mr. FOLEY. Those estimated figures would not go to eligible voters.

Mr. SCAMMON. No, because the Bureau of the Census would not be in a position to determine who was eligible; as I am sure each of the members of the subcommittee would recognize, there are problems of eligibility in each of their own jurisdictions. The State laws are different from one place to another. As Mr. McCulloch knows in the State of Ohio, some counties register in toto, some register in part, and some don't register at all.

The question of eligibility might be involved in the registration factor as well.

Mr. COPENHAVER. I wonder, Mr. Scammon, if you could take a moment to give us the procedure that the Bureau would have to go through as far as taking a sampling and relating it back to the registration figure.

Mr. SCAMMON. It was our premise that the intent of the bill was not actually to provide an individual head count, the cost of which would range somewhere between $50 and $100 million and would, in many respects, be a replication of the census of 1960, even though limited in this case to persons of voting age.

Therefore, the assumption was that the intent of the bill would be satisfied by the taking of a sample. The difficulty quite frankly on costing, as the question raised by counsel here indicates, is this: At what level would you want to have the sample taken?

Our present current population survey, which each month takes a sample of some 35,000 households in the United States, is in our view a valid sample for the whole country and for the four regions into which the census subdivides the country. If you were going to take a sample for each State this would mean that a separate sample would have to be constructed in each State.

It would not be enough to break out from those 35,000 households those segments which happened to be in a given State, because in that

given State, it would be too small a sample. The size of the sample is sufficient to form building blocks for national or regional samples.

Mr. COPENHAVER. In a sample on a State basis alone, would it be a valid sample in the issue of the right to vote if it is a sample based on the total population, white and Negro, or would there be a need to take a separate sample for the Negro and white population because of the wide variation in the registration?

Mr. SCAMMON. Any samples which were taken for a specific State would have to contain within it a sufficient representation not only of white and of nonwhite but also other elements for which separate statistics were needed within the population.

A sample could be built up for the whole country. Indeed it has been in the current population survey. It could be built up for a State or for Fairfax County or for one magisterial district.

Mr. MCCULLOCH. Could it be built up for a congressional district?

Mr. SCAMMON. Yes; it could. As a matter of fact, samples are built up for congressional districts by any survey research organization engaged in making a political poll within just one congressional district.

Mr. COPENHAVER. What would you judge would be an adequate sample on a State basis related to the population of the State. How many persons per thousand, for instance.

Mr. SCAMMON. This is a very difficult question to answer because it depends a good deal on the complexity of the statistical tabulations to be obtained. For example, if we were to take a sample of Newark, such a sample would require a fairly large number of cases if we wanted separate tabulations for various groups in the population.

On the other hand, to do a sample of the population of a rural county in Kansas in which no tabulations are needed for separate groups might not require as many persons in the sample. So I cannot answer that question with a firm figure.

Mr. COPENHAVER. You did give certain cost figures. I was wondering what criterion was used to get the cost figures.

Mr. SCAMMON. The cost of $2.5 million to $5 million are based on taking a State sample; not upon taking individual areas within States. If you were to do samples for individual cities and counties I would hate to even give a figure. It would run into a good many millions of dollars.

Mr. MCCULLOCH. Might I interrupt there. In the cost sample of which you talk is the result of the activity other than at the time of decennial census?

Mr. SCAMMON. Yes. The cost of getting these data as part of the decennial census would be much less. The registration and voting would be tacked on with a series of other questions in that census.

Mr. COPENHAVER. Assuming for example that you have prepared a sample for a particular State of x number of people, then how would you proceed.

Mr. SCAMMON. Under normal conditions if you had constructed a sample for State x and had determined that State x should have a sample of 10,000 persons, you would then, within the State, select the particular sampling units in which you wish to develop your random sample of persons, make 10,000 interviews, determine by a system of pretesting and examination of the results whether these were valid in fact, whether your structured sample really did what you

thought it would do, and then you would have your results for that State on a sample basis of persons of voting age who were eligible to vote and who were registered and who did vote.

Mr. COPENHAVER. Then you would match that back to registration figures.

Mr. SCAMMON. This would be part of your testing procedure. Unfortunately as you can imagine part of the problem in any sample questionnaire is the recall of the individual person. My own guess, and purely a guess, would be that more people would tell us that they were registered than actually were registered.

I would think more people would tell us they had voted than had actually voted. But this is just a guess on my part.

Mr. MCCULLOCH. Let me interrupt you. You would quickly have the records with which you could evaluate the total voting in any given district. If you came into my town, and we all try to create a good public image and say we were registered and voted, it would take 10 minutes to find out how accurate your composite figure was by calling the registration office and ask how many people are registered and how many voted.

Mr. SCAMMON. If you were dealing only with total numbers this would not be very expensive. But the bill indicates that we are to do a count of persons of voting age with a determination of the extent to which such persons voted.

Unless you can establish this you can't establish whether the nonwhite or the white or persons of certain national origins voted.

Mr. MCCULLOCH. I understand all that. All I am trying to get is the ability of your Bureau to get the facts if we determine it is worth a million or $5 million to get the facts.

Mr. SCAMMON. This the Bureau could do.

Mr. MCCULLOCH. If it is necessary in our opinion to get the facts to save a Birmingham by spending $10 million, it will have been cheap even for a Scotsman.

Mr. SCAMMON. This could be done. The facts could be ascertained either by direct count or by sample at a cost of x dollars.

Mr. MCCULLOCH. On the other hand it would be quite difficult if we wanted to do that frequently and make the figures available for both municipal elections and congressional elections.

Mr. SCAMMON. The cost would increase in direct proportion to the magnitude and depth of the study desired.

Mr. MCCULLOCH. So summarizing, you can do this if we wish to have it done and are willing to accept the responsibility for the cost thereof.

Mr. SCAMMON. Exactly.

Mr. COPENHAVER. I have just one more question, Mr. Chairman. Mr. Scammon, going back to what you actually do under the decennial census, could you explain in detail what figures you actually get in the decennial census which somewhat corresponds to section 103?

Mr. SCAMMON. You are speaking not of the sample but the actual census?

Mr. COPENHAVER. The actual census.

Mr. SCAMMON. The question which would be most applicable in a case of this instance would be first of all the age question. There would be some question with respect to movement, that is whether

people had moved or not, but too many of these, I think, would have to be interpreted in terms of State law.

In only one State, New York, do we ask the question on citizenship. This is asked because the State of New York pays us to do this so that they can reapportion their State legislature under New York law which requires that this be done on the basis of citizens rather than total population.

But there are a whole series of questions on eligibility to vote such as literacy in some States, the payment of poll tax in some States, residence in a precinct or some other subdivision of the State for a period of time, and citizenship in the other 49 States which would not be asked normally in terms of a decennial census.

Mr. McCULLOCH. Does the decennial census show the educational level of each person enumerated?

Mr. SCAMMON. It shows the number of years of schooling completed.

Mr. McCULLOCH. That would have bearing upon our educational qualification or literacy tests.

Mr. SCAMMON. It would have bearing provided the statutes permit a statement of a completion of school years as an evidence of literacy. I understand this is now a point in controversy.

Mr. FOLEY. Mr. Scammon, on the question as to literacy I think you are the Chairman of the President's Committee.

Mr. SCAMMON. Actually, Chairman of the President's Commission on Registration and Voting Participation. I hasten to add this is another hat and should not be confused with the census hat.

Mr. FOLEY. I understand. In regard to that are you the people looking into the question of literacy as it applies to qualification for voting and registration?

Mr. SCAMMON. We are.

Mr. FOLEY. Does the Bureau of the Census have a definition for "illiteracy"?

Mr. SCAMMON. The only way in which the word has recently been defined in the Bureau has been in some estimates of literacy we have made in which we have defined it as the "ability to read and write a simple message." This is itself subject to a number of definitions, but literacy and illiteracy as such is not a question which is asked on the census.

The CHAIRMAN. In certain cities we have pockets of foreign born, Spanish in some sections, for example. They have had schooling and have reached the sixth or seventh grade of school but often can't speak English. Would you say they were nonetheless literate?

Mr. SCAMMON. It would depend on how you define it. If you said literacy in English you could not accept these people. If you say literacy in any language you could accept them. In the Census Bureau definition it is interpreted as being "literate in any language." In the registration legislation in New York State I understand it is interpreted as being "literate in English."

The CHAIRMAN. It must be in English in New York. In a number of bills we have before us it says in English, too.

Mr. COPENHAVER. Mr. Scammon, to recapitulate under the decennial census you find out the age of the person. You can find out if he is a citizen.

Mr. SCAMMON. This has been found out in one State. It could be done for the whole country.

Mr. COPENHAVER. A separate question could be inserted?
Mr. SCAMMON. Yes.
Mr. COPENHAVER. You get the race?
Mr. SCAMMON. Yes.
Mr. COPENHAVER. And the national origin?
Mr. SCAMMON. For the first and second generations, yes.
The CHAIRMAN. Some questions have been asked which seemed to indicate a rather arbitrary standard, and I am quite sure that you would agree that they are not tests of literacy. For example, the question is asked, How many seeds are in a watermelon or how many drops are there in a lemon? That would not be a test of literacy?
Mr. SCAMMON. In the Census Bureau's definition of literacy, watermelon seeds would not be included. Putting on my hat as Chairman of the President's Commission, it would seem to me that this might be a test of something but that to say it would be a test of literacy would be torturing the word beyond human recognition.
Mr. FOLEY. What about the situation in Mississippi where you have a paragraph interpreting a certain section of the State constitution. Would you think that would be an element or factor of literacy?
Mr. SCAMMON. I am sure members of this subcommittee would have a great deal of difficulty in getting an agreement on the definition of what is due process of law. I suppose if you wish you can make it under the present statutes a requirement for being registered as a voter in any place in which this is required.
If the administrator of the registration legislation is given discretion to make a decision as to whether or not a given person has been able to define this or another specified part of the constitution, he might very well say they had not so defined it.
I would presume from the point of view of the subcommittee and those interested in this particular type of legislation and from the point of view of the President's Committee, the primary concern here is how is that administered and not what the law says.
If it is administered for a purpose against public policy this is a rather different situation than if it is administered in terms of the actual law.
Mr. FOLEY. The thing I was driving at is in Mississippi, they have a literacy requirement but also as part of the qualifying test they ask you to write out this paragraph and interpret it. I am just wondering if the administration of that would be construed whatever you write out in the English language as being a factor in determining the literacy qualifications as distinguished from the additional qualification of knowledge of the State constitution.
Mr. SCAMMON. I would presume the subcommittee would have to get that from the various registrars in the various counties in Mississippi.
Mr. COPENHAVER. At this time there is no question on the decennial census concerning who is registered to vote or who has voted?
Mr. SCAMMON. There is not.
Mr. COPENHAVER. That question could be included recognizing the former statement that it may not be totally reliable.
Mr. SCAMMON. Let us put it this way. Such a question could be added at the option of the Congress. I am not sure that it would normally be added as a part of the ordinary census count of the

population. I think there might be a feeling it went beyond the normal purposes of the census.

However, if the Congress instructed us to ask such a question it would be asked. Moreover there are bills before the Congress now which would take the census in 1965 as well as in 1970; these call for a "mid-decade" census on a head-count basis rather than with all the detail on housing and the rest included in the decennial. If that were approved this material could be asked in the mid-decade census in 1965.

Mr. McCULLOCH. Do you have any estimate of the cost of such a census?

Mr. SCAMMON. Depending on the amount of questioning asked it would run somewhere between $60 million and $75 million.

The CHAIRMAN. Thank you very much, sir.

Mr. SCAMMON. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Abe McGregor Goff, Vice Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. ABE McGREGOR GOFF, VICE CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY BARNARD A. GOULD, ASSISTANT DIRECTOR OF THE BUREAU OF INQUIRY AND COMPLIANCE, INTERSTATE COMMERCE COMMISSION, ROBERT WALLACE, LEGISLATIVE COUNSEL, ALVIN SCHUTRUMPF, PERSONAL ASSISTANT, AND HENRY SNAVELY, ATTORNEY ADVISER, BUREAU OF OPERATING RIGHTS

Mr. GOFF. Mr. Chairman, and members of the subcommittee, my name is Abe McGregor Goff, and I am a member of the Interstate Commerce Commission and the Vice Chairman of it. I have with me Mr. Bernard A. Gould. He is the Assistant Director of the Bureau of Inquiry and Compliance at the Interstate Commerce Commission and is presently the Acting Director of that Bureau as the Director is out of the city.

Mr. McCULLOCH. Mr. Chairman, might I interrupt there. I am glad to have Mr. Goff back. He is a former colleague of ours in the House and he will have much information to give us.

Mr. GOFF. Thank you, Mr. McCulloch. It is a pleasure for me to be here since your chairman and Mr. McCulloch were in the Congress when it was my privilege to serve here.

The CHAIRMAN. When did you leave Congress?

Mr. GOFF. I was in the 80th Congress. Mr. McCulloch came to Congress at the same time I did. I also have with me Robert Wallace who is our legislative counsel and Alvin Schutrumpf who is one of my personal assistance and also Mr. Henry Snavely who is attorney adviser in the Bureau of Operating Rights.

I am appearing today on the Commission's behalf to testify on H.R. 1985, a bill which was referred to the Commission by the committee and which, I understand, is one of many civil rights measures under consideration at these hearings.

Many of the provisions of H.R. 1985 relate to matters which do not in any way relate to transportation or otherwise involve the duties and responsibilities of the committee. Our comments, therefore, shall

be confined to those provisions on which we are qualified to speak, namely, those pertaining to transportation matters.

Section 2 of the bill would amend the Civil Rights Act of 1957 by adding thereto a new part entitled "Part VII—Prohibition Against Discrimination or Segregation in Interstate Transportation." This part would provide, in section 181(a) thereof, that all persons traveling within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, and privileges of any public conveyance operated by a common carrier engaged in furnishing transportation in interstate or foreign commerce, and all the facilities furnished or connected therewith, without discrimination or segregation based on race, color, religion, or national origin. Section 181(b) of the new part would make it a misdemeanor for anyone, whether acting in a private, public, or official capacity, to deny or attempt to deny any such traveler the full and equal enjoyment of any—

> Accommodation, advantage, or privilege of a public conveyance operated by a common carrier engaged in interstate or foreign commerce, except for reasons applicable alike to all persons of every race, color, religion, or national origin, * * *.

Section 182 of part VII would similarly make it a misdemeanor for any common carrier engaged in interstate or foreign commerce, or any officer, agent, or employee thereof, to segregate, or attempt to segregate, or otherwise discriminate against passengers using any public conveyance or facility of such carrier, on account of race, color, religion, or national origin. It also would provide penalties and other relief for violations.

At this point, I have a comment of a technical nature. As shown above, paragraph (a) of section 181 preserves to all passengers traveling in the United States the full and equal enjoyment of "the accommodations, advantages, and privileges of any public conveyance operated by common carrier" and "all the facilities furnished or connected therewith". Section 182 provides penalties for discrimination against passengers using "any public conveyance or facility of such carrier engaged in interstate or foreign commerce". However, paragraph (b) of section 181 provides penalties for discrimination only in connection with "any accommodation, advantage, or privilege of a public conveyance operated by a common carrier". You may wish to give consideration to amending paragraph (b) of section 181 to include on sheet 6, line 8 of the bill, after the first comma, the words and all facilities furnished or connected therewith".

At the present time, it is unlawful under section 3(1) of the Interstate Commerce Act—

> or any common carrier subject to the provisions of this part [pt. I] * * * to make, give, or cause any undue or unreasonable preference or advantage to any particular person * * * or to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

This provision relates to rail carriers. There are similar provisions in the other parts of the act applicable to motor and water carriers and freight forwarders.

Racial segregation of passengers by common carriers—steamboats, railroads, and, more recently, motorbuses—has been a perennial source of litigation before the regulatory commissions and the courts for many years. When I say "regulatory commissions" I am referring

to the State commissions as well as our own Interstate Commerce Commission. A series of decisions by the Federal courts and this Commission in recent years, however, make it clear that the antidiscrimination provisions of section 3(1), as to railroads, and section 216(d) as to motor carriers, are violated when such carriers segregate passengers traveling on interstate trains or buses, or using related terminal facilities. *Mitchell* v. *United States*, 313 U.S. 80 (1941) : *Henderson* v. *United States*, 339 U.S. 816 (1950) ; *Boynton* v. *Virginia*, 364 U.S. 454 (1960) ; *United States* v. *Lassiter*, 203 F. Supp. 20, aff'd per curiam, 371 U.S. 10 (1962) ; *Lewis* v. *The Greyhound Corp.*, 199 F. Supp. 210 (1961) ; *National Assn. for A.O.C.P.* v. *St. Louis-S.F. Ry. Co.*, 297 I.C.C. 335 (1955) ; *Keys* v. *Carolina Coach Co.*, 64 M.C.C. 769 (1955), and *Discrimination—Interstate M. Carriers of Passengers.* 86 M.C.C. 743 (1961).

In the last-cited proceeding, this Commission, upon petition of the Attorney General of the United States, promulgated a number of general regulations designed to implement further the provisions of section 216(d) of the act with respect to the nonsegregated use of motor buses and related facilities operated and utilized in the interstate common carrier transportation of passengers. The lawfulness of the regulations thus issued was upheld by the Courts in *State of Georgia* v. *United States*, 201 F. Supp. 813, aff'd per curiam, 371 U.S. 9 (1962). In view of these decisions, the racial segregation of passengers using interstate transportation or terminal facilities by common carriers subject to the Interstate Commerce Act is clearly established as a violation of that act. In the words of the Supreme Court:

> The question is no longer open ; it is foreclosed as a litigable issue.

(*Bailey* v. *Patterson*, (369 U.S. 31, 33)).

The CHAIRMAN. The Supreme Court, as a matter of fact, said:

> We have settled beyond question that no State may require segregation of interstate or intrastate transportation facilities. The question is no longer open ; it is foreclosed as a litigable issue.

Mr. GOFF. That is true. Mr. Chairman, for the convenience of the committee I have here a number of copies of the report and the decision we got out in the last referred to case. I think you would be interested in seeing the rules that we promulgated. I have them here. I will give you one for the record. I suggest that, after my testimony is over, there be intersted in the record only the part in the very back that does set forth the "Regulations on Discrimination, Interstate Motor Carriers and Passengers," adopted by the Interstate Commerce Commission.

The CHAIRMAN. You have that privilege.

Mr. GOFF. I invite your attention particularly to the regulations that are set forth in the very back of the report. I could read them to you, but I think you can glance through them yourselves. It is in the very last part, and there are some of the proposed regulations submitted by the Attorney General and some of the amendments submitted, and the final recommendations adopted by the Commission. This is really appendix B.

The CHAIRMAN. You may proceed.

Mr. GOFF. To the extent that H.R. 1985 would prohibit racial discrimination or segregation in interstate transportation by common carriers subject to the Interstate Commerce Act, its enactment would,

therefore, appear to accomplish the same substantive result as that reached by this Commission and the courts in the aforementioned cases. It should be noted, however, that the proposed measure establishes certain penalties and procedures which differ somewhat from those under the Interstate Commerce Act. Thus, for example, the bill prescribes a fine of not exceeding $1,000 for each offense, whereas under section 10(1) of the Interstate Commerce Act, the willful violation of the provisions of part I, relating to railroads, is punishable by a fine of up to $5,000 for each offense. In addition, motor and water carriers now are subject to fines of not less than $100, nor more $500, for the first offense, and of not less than $200, nor more than $500, for each subsequent offense. In this situation we assume that the penalties and other remedies provided in H.R. 1985 are not intended to repeal those prescribed by the Interstate Comemrce Act. However, to avoid confusion we suggest that appropriate clarifying language should be inserted in the bill. Because, in effect, the prosecution, whether made under this proposed act or under the Interstate Commerce Act, would involve the commission of the same act which would be an offense under two different statutes.

As the proposed measure would not specifically modify or amend the provisions of the Interstate Commerce Act relating to racial discrimination or segregation by common carriers subject to the jurisdiction of this Commission, its enactment, in our view, is a matter which the Congress must decide on the basis of broad policy considerations. Accordingly, we take no position either for or against H.R. 1985.

Mr. Chairman, we would like to express our appreciation for the opportunity to appear and present our views on this measure. If there are any questions, I would welcome the opportunity to answer them.

(The report referred to follows:)

M-10459

INTERSTATE COMMERCE COMMISSION

No. MC-C-3358

DISCRIMINATION IN OPERATIONS OF INTERSTATE MOTOR CARRIERS OF PASSENGERS

Decided September 22, 1961

Upon petition, rules and regulations to be observed by motor common carriers of passengers operating in interstate or foreign commerce, governing the practices of such carriers with respect to unjust discrimination, prescribed

Hon. Robert F. Kennedy, the Attorney General of the United States, *Byron R. White*, Deputy Attorney General, *Burke Marshall*, Assistant Attorney General, *St. John Barrett, Irving N. Tranen, John L. Murphy, Robert L. Saloschin*, and *Robert S. Burk*, for petitioner.

Hon. Dean Rusk, the Secretary of State, on behalf of the Department of State.

Hon. Robert S. McNamara, the Secretary of Defense, on behalf of the Department of Defense.

Hon. MacDonald Gallion for the State of Alabama, *Hon. Joe T. Patterson* for the State of Mississippi, *Norman Berkowitz* for the Michgan Public Service Commission, *Thomas Hal Phillips, Norman A. Johnson, Jr.*, and *W. E. (Bucky) Moore* for the Mississippi Public Service Commission, and *Hon. David D. Furman*

and *William Gural* for the State of New Jersey and the New Jersey Board of Public Utility Commissioners.

Hon. Clifford P. Case, Hon. William Fitts Ryan, R. H. Vaughn, Florence C. Chick, James Farmer, J. Francis Pohlhaus, Carl Rachlin, Wyatt Tee Walker, James Lawson, Jr., Joseph Charles Jones, John H. Moody, Jr., and Henry Thomas for themselves and other interested persons.

Thomas J. McCluskey, Fred H. Figge, R. C. Hoffman, Jr., Clifford D. Cherry, John R. Sims, Jr., Gordon Allison Phillips, J. I. Gilliken, and *Richard Fryling* for various respondents.

Frederick S. Hill, Robert J. Corber, and *Bertrand T. Fay* for motorbus associations.

John E. Linstrom for the Bureau of Inquiry and Compliance, Interstate Commerce Commission.

REPORT OF THE COMMISSION ON ORAL ARGUMENT

BY THE COMMISSION:

This proceeding, instituted under part II of the Interstate Commerce Act and section 4 of the Administrative Procedure Act, upon petition of the Attorney General of the United States, brings before us for determination the lawfulness and propriety of certain regulations proposed by the Attorney General to implement further the provisions of the Interstate Commerce Act with respect to the nonsegregated use of motorbuses and related facilities operated and utilized in the interstate common carrier transportation of passengers. Our order instituting this proceeding set forth the regulations proposed; named as respondents all motor common carriers of passengers operating in interstate or foreign commerce within the United States subject to the act; and provided for the filing by interested persons of statements of facts, views, and arguments, and of replies thereto, all of which have been considered; and for oral argument, which has been held.

No one has challenged the procedure followed or requested oral hearing, and the facts concerning segregation practices disclosed by the record are not in dispute. In a reply statement, the Attorney General submitted certain clarifying amendments to the regulations which do not broaden the scope of his original proposal, and to which no objection was made by any of the parties. The proposed regulations as so amended are set forth in appendix A hereto.

Briefly, it is the position of the Attorney General and those favoring his proposal that the decision in *Keys* v. *Carolina Coach Co.*, 64 M.C.C. 769, and *Boynton* v. *Virginia*, 364 U.S. 454, call for further definitive action by use to implement fully the mandate against discrimination expressed in section 216(d) of the act; that conditions existing over a large portion of the Nation make the establishment of the proposed regulations necessary; and that, although the act prohibits the racial segregation of interstate passengers, such regulations will facilitate the enforcement of the statutory prohibitions and eliminate the unjust discrimination alleged to have adversely affected the morale of Negro service personnel and the conduct of the United States' foreign relations.

The States of Alabama and Mississippi oppose prescription of any regulations. Generally the opposition otherwise is directed to specific provisions of the regulations. Basically, the arguments advanced in opposition (1) challenge our power through the proposed regulations to control or affect intrastate commerce, (2) claim that regulations affecting interstate commerce are unnecessary because the Interstate Commerce Act now prohibits discrimination directed against interstate bus passengers, and (3) question the wisdom of prescribing general regulations applicable in areas where such unjust discrimination does not exist. The motor carrier respondents to whom the proposed regulations are directed, and whose operations would be directly affected, as a whole did not file factual representations. Their position is primarily one of overall opposition to the establishment of the regulations.

We have no doubt as to this Commission's power to promulgate regulations of the nature proposed. Section 216(d), as pertinent here, provides:

"It shall be unlawful for any common carrier by motor vehicle engaged in interstate or foreign commerce to make, give, or cause an undue or unreasonable preference or advantage to any particular person * * * in any respect whatsoever; or to subject any particular person * * * to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever * * *."

While these provisions are usually enforced by orders entered, after opportunity for hearing, under section 216(e) requiring a particular carrier or carriers to cease and desist from discriminatory or pejudicial practices in which they are found to have been engaged, such procedure does not represent an exclusive remedy for the enforcement of the prohibitions contained in that section. The Commission has, in fact, exercised its rulemaking power in this area. See *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467; 47 M.C.C. 119; 53 M.C.C. 177; 71 M.C.C. 113. Power to enforce provisions of part II of the act by the promulgation of general rules or regulations is also conferred by section 204(a)(6). The nature and scope of the rulemaking power there set forth were delineated by the Supreme Court in *American Trucking Assns., Inc.* v. *United States*, 344 U.S. 298, 311 (1953), where it was held that our power under section 204(b)(6) is "coterminous with the scope of agency regulation" and "must extend to 'the transportation of passengers and property by motor vehicle engaged in interstate or foreign commerce and to the procurement of and the provision of facilities for such transportation,' regulation of which is vested in the Commission by § 202(a)."

The record clearly establishes that discriminatory practices in violation of section 216(d) are being followed by the passenger-carrier respondents. Indeed it is not disputed on this record, and we so find, that in a substantial part of the United States many Negro interstate passengers are subjected to racial segregation in several forms. On vehicles, they continue to be subjected to segregated seating based upon race. In many motor passenger terminals, Negro interstate passengers are compelled to use eating, restroom, and other terminal facilities which are segregated. In some instances, such racial segregation of interstate passengers is enforced by the carriers or their employees. In many cases, it has been enforced by local officials purporting to apply various State and local racial segregation laws and ordinances. Many terminals display signs which in various ways indicate racially designated facilities. Some signs appear to distinguish between intrastate and interstate passengers by means of such legends as "colored intrastate," "white intrastate," and "interstate." Moreover, Negro interstate passengers are often required to establish affirmatively, as by producing a ticket, their interstate passenger status to avoid being subjected to racial segregation in the use of terminal facilities, a showing which is not required of white passengers.

Our experience in the administration of part II of the act also indicates the prevalence of these practices. It has been over 5 years since the Commission's decision in *Keys* v. *Carolina Coach Co., supra*, at which time it was our hope that carriers working in conjunction with State and local authorities would eliminate the last vestiges of segregation in interstate bus and terminal facilities. Contrary to our hope, many obstacles have frustrated the workings of the law. Since the decision in the *Keys* case and in *National Assn. for A.O.C.P.* v. *St. Louis-S.F. Ry. Co.*, 297 I.C.C. 335, the Commission has received approximately 100 informal complaints of racial discrimination. Following these decisions, an arrangement was made with the Department of Justice under which complaints alleging racial discrimination indicating violation of the Interstate Commerce Act are investigated by us; and similar complaints alleging discriminatory practices not appearing to constitute violations of the act are referred to the Civil Rights Division of the Department of Justice for appropriate action. Included in the latter category are complaints of discrimination practiced by carriers with respect to intrastate passengers and of discrimination encountered by interstate passengers due to the action of local or State officials acting under local or State statutes, as distinguished from acts of the carrier. In addition, if the facts developed by our investigation disclose that there is no violation of the act, the results of the investigation are furnished to the Department of Justice. As to cases in which discrimination in violation of the act is shown, the policy is to refer those cases to the appropriate United States Attorney with recommendations for appropriate action, usually criminal prosecution of the carrier and in some instances its responsible officials or employees. The Department of Justice is also informed of our action in those cases at the time of such reference.

The action taken with respect to these complaints, in accordance with the decisions of this Commission and the Federal courts may be summarized as follows: 13 cases were closed without investigation because the complaints disclosed no violation of the act or because this Commission lacked jurisdiction in the matter; investigations disclosed in 16 cases that no violations of the act were involved; investigations in 17 cases disclosed that the discrimination resulted from actions

of local police or others over whom this Commission had no jurisdiction; in 9 cases investigations disclosed insufficient evidence to warrant court action; in 15 instances investigations disclosed that the complaints were justified but that sufficient remedial action already had been taken by the carriers involved; and investigations in 10 cases disclosed evidence of violations of the act and these were referred to United States Attorneys with recommendations for criminal prosecution. However, the record here shows that segregation has been practiced on such a regular basis as to convince us that case-by-case action initiated by individual complaints under section 216(e), standing alone, is not an adequate remedy. Accordingly, we conclude that the prescription of general regulations directed to interstate motor common carriers of passengers over whom we have jurisdiction is warranted to supplement the remedy provided by section 216(e).

It is recognized that many bus operators subject to our jurisdiction have for reasons of efficiency combined their interstate operations with operations in intrastate commerce. Thus buses carrying interstate passengers also carry intrastate passengers, and terminals used to accommodate interstate passengers are also utilized by intrastate passengers. The question is therefor presented whether any regulations which we may prescribe may lawfully be made to affect the transportation of intrastate passengers who are traveling in the same vehicle and at the same time as interstate passengers. In *Baldwin* v. *Morgan*, 287 F. (2d) 750 (1961), a case presenting such a situation, the Court of Appeals for the Fifth Circuit held that it was discrimination violative of the Fourteenth Amendment and the Civil Rights Act to require a Negro interstate passenger to prove that he was an interstate passenger before he was permitted to use the interstate waiting room while not subjecting white passengers to the same treatment; and that the Negro plaintiffs were entitled to injunctive relief against the enforcement by local officials of waiting room segregation of intrastate passengers in the Birmingham, Ala., railroad station and to the elimination of any distinction between interstate and intrastate passenger status.

Similarly, the voluntary transportation by a passenger carrier of interstate and intrastate passengers on the same vehicle may not be offered as a justification for the separation on a racial basis of interstate passengers. Nor may interstate passengers using such common facilities be subjected to any inquiry as to whether they are traveling in intrastate or interstate commerce. Such practices would result in discrimination prohibited by section 216(d). It is our view that to enforce the provisions of the act prohibiting unjust discrimination against interstate passengers it is necessary to prohibit the use in interstate operations of any vehicle or facility on which or in which segregation is practiced.

We have considered the proposed regulations in the light of the reservations of State jurisdiction contained in the Act. Section 202(b) provides, as pertinent, that "Nothing in this part shall be construed * * * to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof." And the concluding proviso of section 216(e) states:

"That nothing in this part shall empower the Commission to prescribe, or in any manner regulate, the rate, fare, or charge for intrastate transportation, or for any service connected therewith, for the purpose of removing discrimination against interstate commerce or for any other purpose whatever."

Since the proposed rules are limited to facilities operated in interstate commerce, or performing services connected therewith, we see no interference with the legitimate exercise of the exclusive jurisdiction of the States to regulate intrastate commerce. The fact that compliance with the rules may for economic reasons compel a carrier to provide nonsegregated facilities for its intrastate passengers as well as its interstate passengers, presents no legal impediment to the prescription of such rules as are necessary to remove unjust discrimination against interstate commerce. We conclude, therefore, that prescription of rules such as those proposed would not conflict with the regulatory jurisdiction reserved to the States. Indeed, it has been held by the Federal courts under the equal protection clause of the Fourteenth Amendment that the States have no power to regulate intrastate transportation by requiring the segregation of intrastate passengers on vehicles or in the use of terminal facilities. See *Baldwin* v. *Morgan, supra; Browder* v. *Gayle*, 142 F. Supp. 707, affirmed 352 U.S. 903; and *Morgan* v. *Virginia*, 328 U.S. 373.

Careful analysis and evaluation disclose that the purpose of the regulations is one with which we are in substantial agreement. We are concerned, however, with certain features of the Attorney General's proposal.

Section 1 reads as follows:

"No interstate motor carrier of passengers shall as such operate vehicles on which the seating of passengers is based upon race, color, creed, or national origin."

This section would prohibit, in effect, the use of any bus to transport passengers in interstate commerce in which the seating of passengers is segregated by race, color, creed, or national origin. In other words, a carrier may not use a bus or other vehicle to transport interstate passengers, where *any* seat on such bus is assigned on the basis of race, color creed, or national origin. The necessity for and our power to prescribe such a rule have been discussed in the foregoing and need not be further detailed here.

Section 2 would provide that:

"Every interstate motor carrier of passengers shall conspicuously display and maintain, in each vehicle which it operates as such, a plainly legible sign or placard containing the statement, 'By order of the Interstate Commerce Commission, seating aboard this vehicle is without regard to race, color, creed, or national origin.'"

We believe that the posting of an appropriate notice aboard buses carrying interstate passengers is desirable since it will visibly serve to remind passengers of their legal rights and to inform the public unequivocally of the carriers' intention and duty to obey the law.

Respondents and others object to this as a general requirement on the principal ground that sign posting is not warranted except in the limited geographic areas where discrimination has been shown to exist. In this connection, however, it is pertinent to note that certificates of public convenience and necessity issued by us to bus companies domiciled outside the so-called affected areas authorize operations within as well as without those areas, and that in numerous instances—indeed, as an everyday operating matter—buses originating in one section of the country are used on "through schedules" to and through other sections. In the circumstances, we do not believe that any territorial limitation of the requirement is warranted.

We are not convinced at this time, however, that the problem sought to be met requires the prescription of this rule for an indefinite period, and we are of the opinion, and find, that such requirement should terminate 1 year from the effective date of our order herein, unless this Commission shall be subsequent order modify the time. We find also that concurrently with such termination of sign posting in vehicles, there shall become effective a requirement that every motor common carrier of passengers shall cause to be printed on each ticket sold by it for transportation on a vehicle operated in interstate or foreign commerce a plainly legible notice to the same effect as that described in section 2. Carriers may begin printing this notice on tickets as soon as they elect. While not as conspicuous as vehicle signs, the fact that each passenger possesses such assurance on the ticket as part of his contract for transportation should tend to protect the individual from harassment.

Section 3 of the proposed regulations, dealing with terminal facilities, would provide that:

"No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof or in the use thereof on the basis of race, color, creed, or national origin. As used in this regulation the words 'terminal facilities' mean all facilities including waiting room, restroom, eating, drinking, and ticket sales facilities available to interstate passengers of motor carriers as a regular part of their transportation."

The meaning of the term "terminal facilities" affects not only section 3 but sections 4 and 5 of the proposed regulations as well. The definition of this term is phrased in the language of the Supreme Court in *Boynton* v. *Virginia*, *supra*, applying section 216(d). Also section 203(a)(19) provides that:

"The 'services' and 'transportation' to which this part applies include all vehicles operated by, for, or in the interest of any motor carrier irrespective of ownership or of contract, express or implied, together with all facilities and property operated or controlled by any such carrier or carriers and used in the transportation of passengers or property in interstate or foreign commerce or in the performance of any service in connection therewith."

In the consideration of this regulation, we are constrained on this record to be guided by the language of the Court in *Boynton* v. *Virginia*, *supra*, at pages 460–464, reading as follows:

"And so here, without regard to contracts, if the bus carrier has volunteered to make terminal and restaurant facilities and services available to its interstate passengers as a regular part of their transportation, and the terminal and restaurant have acquiesced and cooperated in this undertaking, the terminal and restaurant must perform these services without discriminations prohibited by the Act. In the performance of these services under such conditions the terminal and restaurant stand in the place of the bus company in the performance of its transportation obligations. * * *"

* * * * * * *

"All of these things show that this terminal building, with its grounds, constituted one project for a single purpose, and that was to serve passengers of one or more bus companies—certainly Trailways' passengers. * * * All of this evidence plus Trailways' use on this occasion shows that Trailways was not utilizing the terminal and restaurant services merely on a sporadic or occasional basis. This bus terminal plainly was just as essential and necessary, and as available for that matter, to passengers and carriers like Trailways that used it, as though such carriers had legal title and complete control over all of its activities. Interstate passengers have to eat, and the very terms of the lease of the built-in restaurant space in this terminal constitute a recognition of the essential need of interstate passengers to be able to get food conveniently on their journey and an undertaking by the restaurant to fulfill that need. Such passengers in transit on a paid interstate Trailways journey had a right to expect that this essential transportation food service voluntarily provided for them under such circumstances would be rendered without discrimination prohibited by the Interstate Commerce Act. * * * We are not holding that every time a bus stops at a wholly independent roadside restaurant the Interstate Commerce Act requires that restaurant service be supplied in harmony with the provisions of that Act. We decide only this case, on its facts, where circumstances show that the terminal and restaurant operate as an integral part of the bus carrier's transportation service for interstate passengers."

It is difficult to envision a situation in which it would not be a violation of the proposed rules for a carrier operating its buses in interstate commerce on regular schedules and over regular routes to utilize any place of business as a regular rest or meal stop which provides the usual terminal facilities on a segregated basis. If the carrier volunteers to make the services available and those actually furnishing the services acquiesce and cooperate in this undertaking, the services must be furnished without discrimination. However, considering section 203(a)(19) and the *Boynton* case together, as we must, it seems clear that proposed rule 3 would not be applicable, for example, to every independently operated roadside restaurant at which a bus stops solely to pick up or discharge occasional passengers, or to every independently operated corner drugstore which sells tickets for a motor carrier. In determining what type of terminal facility is contemplated by the act and will be subject to the regulations adopted herein, we believe that not only physical characteristics but service characteristics as well should be considered. To illustrate, where a carrier's ticket agent does nothing more for the benefit of the carrier's passengers than sell tickets and post schedules, we would not consider his place of business to be a terminal facility which a motor carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of their transportation. On the other hand, if in addition to selling tickets, the agent offers or provides terminal services and facilities for the comfort and convenience of interstate passengers, such as a public waiting room, restroom, or eating facilities, it would appear that the premises where these services and facilities are made available should be considered as part of the carrier's terminal facilities.

Proposed section 4 of the regulations reads as follows:

"As used in the preceding section the word 'separation' includes, among other things, the display or any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished, on the basis of race, color, creed, or national origin."

This regulation, when read in conjunction with section 3, would prohibit a carrier from utilizing in interstate commerce any "terminal facility" in which there appears a sign designating facilities for the separate use of the races. The mere presence of such a sign would be enough to prohibit a carrier from utilizing the facility in interstate commerce.

Section 5 would provide that:

"No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the avail-

ability of, or follow any practice which includes the availability of, any terminal facilities in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of this regulation. Such a sign or placard shall be captioned, in large black type, "PUBLIC NOTICE: Requirements of Law for Terminal Facilities and Stops of Interstate Motor Carriers of Passengers, by Authority of the Interstate Commerce Commission of the United States Government.'"

There is justification for requiring that a notice be posted at "terminal facilities" utilized by carriers for the reasons explained in connection with rule 2. Such action will constitute notice to all concerned that segregation may not be practiced in interstate terminal facilities.

The sixth section of the proposed regulations provides that:

"Nothing in this regulation shall be construed to relieve any interstate motor carrier of passengers of any of its obligations as such under the Interstate Commerce Act or its certificate(s) of public convenience and necessity."

This section would make it clear that respondents are not to be relieved of any obligations under the act, and we believe that its adoption is justified. The duty to provide service to the public and to provide for the safety and comfort of passengers will not be altered by the adoption of the proposed regulations. A carrier may still exercise reasonable control over its passengers as, for example, in the ordinary request made by the driver of a crowded coach to "move to the rear of the aisle" or "step behind the 'safety line'." It is not the purpose of the regulations to change any lawful functions of a carrier. A carrier may continue under the prescribed regulations to provide a bona fide reserved-seat service, or continue to offer its equipment for the exclusive use of charter parties, provided, of course, that in so doing it engages in no discriminatory practices.

Section 7 of the proposed regulations would provide that:

"Every interstate motor carrier of passengers shall report to the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic, with its observance of the requirements of law, including this regulation. Such report shall include a statement of the actions that such carrier may have taken to eliminate any such interference."

This regulation would require respondents to report to this Commission any interference by others with their observance of the regulations. Our power to prescribe a rule in this area is found in sections 204(a)(7) and 220(a) of the act. We believe this regulation is a logical substantive aid to enforcement of the requirements of the act, and will inform local officials and others of the requirement which the Interstate Commerce Act places upon interstate motor carriers of passengers to refrain from unjust discriminatory practices

The proposed regulations are worded so as to apply to "interstate motor carriers of passengers." Our order instituting this proceeding and our discussion herein have dealt only with motor *common* carriers of passengers because of the fact that section 216(d) is directed to common carriers. Accordingly, the regulations prescribed will reflect this statutory limitation. Similarly, our jurisdiction does not extend to the operations of an interstate carrier when such a carrier is transporting no interstate passengers and its vehicle is, in fact, engaged exclusively in intrastate commerce. We believe that the use of the words "as such" in sections 1 and 2 of the proposed regulations reflects this limitation, but the regulations prescribed will be appropriately clarified. Other necessary minor changes have also been made. Several other modifications of the regulations have been suggested by the parties. To the extent that these suggestions, including the definition of "terminal facilities" proposed by respondents and the requested exemption from these regulations of charter bus operations, are not incorporated or discussed in our conclusions or findings, they have been considered by us and found to be impractical or unnecessary. The regulations, amended in accordance with the foregoing discussion, are set forth in appendix B.

In summary, we are prescribing in this proceeding substantive regulations further implementing the prohibitions of the act, as construed by the courts and this Commission, designed to eliminate unjust discrimination resulting from segregation of interstate passengers by bus operators subject to our jurisdiction. Obviously, we cannot anticipate the precise effect of application of the regulations to each and every factual situation that may arise, but the regulations should make clear to respondents and others the rights of passengers under the Interstate Commerce Act.

We find, in view of the persistence and prevalence of the practices described in the foregoing, that requiring certain interstate passengers to establish their interstate passenger status, while not requiring such a showing by other such passengers, constitutes in itself an unjust discrimination, undue prejudice and disadvantage, forbidden by section 216(d) of the Interstate Commerce Act against interstate passengers subjected to such identification requirements; that in order to prevent discrimination, preference, and prejudice among interstate passengers, it is necessary to prohibit discrimination, preference, and prejudice in connection with the operation by respondents of motor vehicles in interstate or foreign commerce with respect to both interstate and intrastate passengers; that the rules which we prescribe in this proceeding are necessary to eliminate discrimination and prejudice prohibited by section 216(d); and that the regulations (49 C.F.R. 180a(1) et seq.) set forth in appendix B hereto are reasonable, necessary, and lawful, and that they should be adopted and made effective in accordance with the terms of the attached order.

An appropriate order will be entered.

APPENDIX A

The proposed regulations as amended

Section 1: No interstate motor carrier of passengers shall as such operate vehicles on which the seating of passengers is based upon race, color, creed, or national origin.

Section 2: Every interstate motor carrier of passengers shall conspicuously display and maintain, in each vehicle which it operates as such, a plainly legible sign or placard containing the statement, "By order of the Interstate Commerce Commission, seating aboard this vehicle is without regard to race, color, creed, or national origin."

Section 3: No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof or in the use thereof on the basis of race, color, creed, or national origin. As used in this regulation the words "terminal facilities" mean all facilities including waiting room, restroom, eating, drinking, and ticket sales facilities available to interstate passengers of motor carriers as a regular part of their transportation.

Section 4: As used in the preceding section the word "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished, on the basis of race, color, creed, or national origin.

Section 5: No interstate motor carrier of passengers shall provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of this regulation. Such a sign or placard shall be captioned, in large black type, "PUBLIC NOTICE: Requirements of Law for Terminal Facilities and Stops of Interstate Motor Carriers of Passengers, by Authority of the Interstate Commerce Commission of the United States Government."

Section 6: Nothing in this regulation shall be construed to relieve any interstate motor carrier of passengers of any of its obligations as such under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

Section 7: Every interstate motor carrier of passengers shall report to the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic, with its observance of the requirements of law, including this regulation. Such report shall include a statement of the actions that such carrier may have taken to eliminate any such interference.

APPENDIX B

The regulations adopted

(1) *Discrimination prohibited.* No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall operate a motor vehicle in interstate or foreign commerce on which the seating of passengers is based upon race, color, creed, or national origin.

(2) *Sign to be posted in vehicle.* Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall conspicuously display and maintain, in all vehicles operated by it in interstate or foreign commerce, a plainly legible sign or placard containing the statement: "Seating aboard this vehicle is without regard to race, color, creed, or national origin, by order of the Interstate Commerce Commission." This section shall cease to be effective on January 1, 1963, unless such time be further extended by the Interstate Commerce Commission.

(3) *Notice to be printed on tickets.* Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall cause to be printed on every ticket sold by it for transportation on any vehicle operated in interstate or foreign commerce a plainly legible notice as follows: "Seating aboard vehicles operated in interstate or foreign commerce is without regard to race, color, creed, or national origin." This section shall be applicable to all tickets sold on or after January 1, 1963.

(4) *Discrimination in terminal facilities.* No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce provide, maintain arrangements for, utilize, make available, adhere to any understanding for the availability of, or follow any practice which includes the availability of, any terminal facilities which are so operated, arranged, or maintained as to involve any separation of any portion thereof, or in the use thereof on the basis of race, color, creed, or national origin.

(5) *Notice to be posted at terminal facilities.* No motor common carrier of passengers subject to section 216 of the Interstate Commerce Act shall in the operation of vehicles in interstate or foreign commerce, utilize any terminal facility in which there is not conspicuously displayed and maintained so as to be readily visible to the public a plainly legible sign or placard containing the full text of these regulations. Such sign or placard shall be captioned: "Public Notice: Regulations Applicable to Vehicles and Terminal Facilities of Interstate Motor Common Carriers of Passengers, by order of the Interstate Commerce Commission."

(6) *Carriers not relieved of existing obligations.* Nothing in this regulation shall be construed to relieve any interstate motor common carrier of passengers subject to section 216 of the Interstate Commerce Act of any of its obligations under the Interstate Commerce Act or its certificate(s) of public convenience and necessity.

(7) *Reports of interference with regulations.* Every motor common carrier of passengers subject to section 216 of the Interstate Commerce Act operating vehicles in interstate or foreign commerce shall report to the Secretary of the Interstate Commerce Commission, within fifteen (15) days of its occurrence, any interference by any person, municipality, county, parish, State, or body politic with its observance of the requirements of these regulations. Such report shall include a statement of the action that such carrier may have taken to eliminate any such interference.

(10) *Definitions.* For the purposes of these regulations the following terms and phrases are defined:

(a) *Terminal facilities.* As used in these regulations the term "terminal facilities" means all facilities, including waiting room, restroom, eating, drinking, and ticket sales facilities which a motor common carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of their transportation.

(b) *Separation.* As used in section 4 of these regulations, the term "separation" includes, among other things, the display of any sign indicating that any portion of the terminal facilities are separated, allocated, restricted, provided, available, used, or otherwise distinguished on the basis of race, color, creed, or national origin.

Mr. GOFF. I will say this, Mr. Chairman. As referred to in my formal statement this matter of racial discrimination has been the subject of irritation and of constant complaint and action by our Commission dating clear back to when the Motor Carrier Act became effective in 1936.

However, these were very few. It was not until the 1950's that the public began to give attention to this and we began to receive a substantial number of complaints. These were acted on under the Inter-

state Commerce Act with the Attorney General, as we always act in any criminal statute. We make the investigations and refer the matter to the Department of Justice.

There are numerous proceedings that were instituted. But the Department of Justice reached the conclusion that these could be more effectively handled if we made some formal rules and regulations for motor carriers in regard to discrimination. A petition was presented to our Commission, I believe on May 29, 1961, requesting us to adopt formal regulations on the subject of discrimination and submitting some suggested regulations.

The Commission proceeded at once to consider the matter. In June we had worked out what we felt was a matter of so great public interest and consequence, that it required the most expeditious action possible. We worked out a special procedure under a section of the Interstate Commerce Act that gives us the right to conduct our proceedings and business in the best way that we deemed to accomplish the purpose of the act, providing it was not in derogation of the Administrative Procedure Act.

We adopted a special procedure where, instead of holding hearings as we usually do throughout the country, we provided for the filing of written statements by anybody. We made all the registered motor common carriers of passengers that had operating rights from the Commission and were under our regulation defendants in this proceeding.

Then we invited any interested persons to file any statement they desired in connection with the proposed regulations. We printed a copy of the draft regulations that had been submitted by the Attorney General. We received a large amount of correspondence in various forms. There were formal legal documents and letters, hundreds of them.

Thereafter we set the matter down for oral hearing. An oral hearing was held, I believe, on August 15, in which people who desired to appear personally and orally could appear. The Commission took it as a full Commission case. They appeared before us. We gave them an opportunity if they had any testimony to present it.

Some of the bus operators, a representative of the Attorney General, and various private persons appeared at that hearing. None of those who appeared or in their letters objected to the procedure that we adopted. We thought it would be an expeditious way of handling the matter.

No objection was made by anybody. I believe it was on September 22 we published and issued the decision, a copy of which is before you. You see it roughly covered only a period of 4 months.

It was a matter of great public concern and interest. We carried the matter through as stated in my remarks before. It was taken to court by some interested parties in the South, some of the State officials, with the result that I have enumerated as far as the Supreme Court is concerned when it finally reached the Supreme Court.

Now in making these regulations, you will note that we provided for a notice that was to be posted in every vehicle. This sign or placard was to contain this statement:

Seating aboard this vehicle is without regard to race, color, creed, or national origin by order of the Interstate Commerce Commission.

There was some argument whether we should require the sign to be carried only in certain sections of the country where there was a public issue. But we decided the only way to proceed was to make a uniform regulation that applied everywhere. This regulation was required to be published on all buses that carried passengers. We also provided that operators of motor vehicles should print a notice on the ticket, but this was not required until January 1, 1963.

Thereafter motorbus operators would have to have it on all their tickets.

The CHAIRMAN. You had to put signs on the station, also, didn't you?

Mr. GOFF. That is right. I won't enumerate all these. The regulations speak for themselves. Everybody that was interested, the Attorney General, and everybody else, had a hand in the recommendations for these regulations. This was the unanimous consensus of opinion of the Interstate Commerce Commission.

Mr. MCCULLOCH. Mr. Chairman, could I interrupt the witness. In view of the fact that there was unanimity in the matter, have you proceeded to see that your regulations were implemented insofar, and I use the very phrase, as facilities furnished or connected therewith in interstate transportation are desegregated, in States like Alabama, Mississippi, and political subdivisions thereof such as Birmingham and Jackson?

Mr. GOFF. As I started to say we had no difficulty about the motor carriers. The motor carriers are used to our regulations. We had no difficulty whatever. The management proceeded at once to put this into effect.

We did have trouble when we came to the facilities. I think you would be interested in what we said about this in this report to understand just what we meant by this. In discussing what we meant, reading from page 750, we said:

It is difficult to envision a situation in which it would not be a violation of the proposed rules for a carrier operating its buses in interstate commerce on regular schedules and over regular routes to utilize any place of business as a regular rest or meal stop which provides the usual terminal facilities on a segregated basis.

If the carrier volunteers to make the services available and those actually furnishing the services acquiesce and cooperate in this undertaking the services must be furnished without discrimination. However, considering section 203(a)(19) and the *Boynton* case together, as we must, it seems clear that the proposed rule 3 would not be applicable to every independently operated roadside restaurant at which a bus stops solely to pick up or discharge occasional passengers or to every independently operated corner drugstore which sells tickets for a motor carrier.

In determining what type of terminal facility is contemplated by the act and will be subject to the regulations adopted herein we believe that not only physical characteristics but service characteristics as well should be considered. To illustrate, where a carrier's ticket agent does nothing more for the benefit of the carrier's passengers than sell tickets and post schedules, we would not consider his place of business to be a terminal facility which a motor carrier makes available to passengers of a motor vehicle operated in interstate or foreign commerce as a regular part of the transportation.

On the other hand, if in addition to selling tickets, the agent offers or provides terminal services and facilities for the comfort and convenience of interstate passengers, such as public waiting rooms, restrooms, or eating facilities, it would appear that the premises where these services and facilities are made available should be considered as a part of the carrier's terminal facilities.

Now to return to Mr. McCulloch's question. Yes, we did have some trouble. Not with the carriers. But it was from the volunteers, the fellow who was a crusader for his point of view, and from local police officials. We also had difficulty with local prosecuting attorneys.

In some of these areas there were suits brought to restrain taking down the signs that we required in terminals. The States claimed they still had a right to control and segregate intrastate passengers, and there were some injunctions sought by local attorneys on that score.

These resulted in some suits. Mr. Gould who is here with me personally handled all these cases. He thought it was very important and the Commission thought it was important.

The CHAIRMAN. You won them all, didn't you?

Mr. GOFF. They are not all determined.

The CHAIRMAN. You have in Alabama, Louisiana, and Mississippi?

Mr. GOFF. I could say that we did have some difficulty in bringing in these third persons. We asked for an injunction from the lower court in Mississippi. The district court denied it. I believe Mr. Gould—could I read from this statement you made here or would you prefer to do so?

Mr. GOULD. As you please.

Mr. GOFF. For your information, immediately after the Commission's regulation involving passenger terminals of motor carriers became effective, a civil injunction suit was instituted in a special three-judge court for the northern district of Mississippi involving the Greenwood, Miss., bus terminal of the Greyhound Corp.

On November 20, 1961, that court issued a preliminary injunction which is still outstanding preventing the city attorney, John J. Fraser, Jr., from taking any steps to enforce an injunction which had been obtained in a State court, which would have compelled the bus company to maintain signs outside of the terminal directing the races to different portions thereof.

At the same time the Greyhound Corp. and its commission agent were enjoined from complying with the State court injunction or for maintaining any signs indicating or suggesting that any of the terminal facilities are for the use of persons of any particular race or color.

The CHAIRMAN. May I ask you this to satisfy my curiosity on this point. We passed a very sweeping act in 1958 under which you have issued these very broad regulations. Do you think there is any further legislation required on the part of Congress so as to insure absolute integration in interstate commerce as far as transportation is concerned?

Mr. GOFF. I am not really authorized to take a position. We are leaving it to you, Mr. Chairman. I will say this: The only possible feature that might not be fully covered—and we have a court proceeding now on that down in Mississippi—about these people on the theory that they aid and abet, is committing an offense against the Interstate Commerce Act.

The offense is failure to obey our regulations. Aside from that point I don't see, so far as we are concerned, that we need any further legislation because so far it has worked out very satisfactorily. We

treat this as a routine manner. We have an effective enforcement procedure.

We handle it in connection with the other violations of the Interstate Commerce Act. Unless the Department of Justice feels that they need this additional arm under a different act, and that is under the Civil Rights Act, so far as we are concerned we don't feel we need any further legislation.

Because it is our duty to enforce the Interstate Commerce Act, the courts have held that the regulations we made under it are no longer litigable. We don't anticipate any more of these legal questions.

The carriers are complying and, generally, even these volunteers who got into the thing first, they are inclined to say it is the Interstate Commerce rule and that is all there is to it. You will have some trouble, but I want to particularly point out that the bus companies and their employees for the most part are in compliance, although there might occasionally be some bus operator that some person would claim asked him to take a seat that was reserved for somebody, because of race or color.

We investigate each one of these. We refer the matter to the Department of Justice and even our own regional attorney may institute a civil action in connection with the local district attorney. So far as we are concerned, and so far as the Interstate Commerce Act is concerned, we think it is as effective as can be reasonably expected.

Mr. FOLEY. How many complaints do you receive in a year as to violations in this particular field.

Mr. GOFF. Mr. Gould has this particular job. We put him on this job. His primary job is enforcement and includes taking care of this particular thing.

Mr. GOULD. Mr. Congressman, in the report handed up to you we refer to the receipt of approximately 100 complaints. I believe that computation was made up to about June 1, 1961. We have kept no exact statistical record of each one of these complaints. They are incorporated among many others. My best estimate would be that we had approximately 100 to 150 more since June 1, 1961, ranging from clearly nonjurisdictional matters to complaints alleging serious violations of the law.

The CHAIRMAN. I don't think we need to continue the testimony or propounding any more questions to you. You have been very enlightening and we appreciate your coming here, Mr. Goff and your assistant.

We appreciate the contribution you have made. We will now put in the hearing certain data which counsel wishes to insert.

Mr. FOLEY. At the completion of Mr. Goff's testimony we will insert the report of the Interstate Commerce Commission filed with the chairman on May 1, 1963.

(The report referred to follows:)

OFFICE OF THE CHAIRMAN,
INTERSTATE COMERCE COMMISSION,
Washington, D.C., May 13, 1963.

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

DEAR CHAIRMAN CELLER: This is in response to your letter of April 10, 1963, requesting an expression of the Commission's views on a bill, H.R. 1985, introduced by Congressman Addabbo, "to provide additional means of securing and protecting the civil rights of persons within the jurisdiction of the United

States." This matter has been considered by the Commission and I am authorized to submit the following comments in its behalf:

Many of the provisions of H.R. 1985 relate to matters upon which we are not qualified to express a helpful opinion based on our experience in the regulation of transportation. Our comments, therefore, shall be confined to those provisions which relate to transportation matters.

Section 2 of the bill would amend the Civil Rights Act of 1957 by adding thereto a new part entitled "Part VII—Prohibition Against Discrimination or Segregation in Interstate Transportation." This part would provide, in section 181(a) thereof, that all persons traveling within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, and privileges of any public conveyance operated by a common carrier engaged in furnishing transportation in interstate or foreign commerce, and all the facilities furnished or connected therewith, without discrimination or segregation based on race, color, religion, or national origin. Section 181(b) of the new part would make it a misdemeanor for anyone, whether acting in a private, public, or official capacity, to deny or attempt to deny any such traveler the full and equal enjoyment of any "accommodation, advantage, or privilege of a public conveyance operated by a common carrier engaged in interstate or foreign commerce, except for reasons applicable alike to all persons of every race, color, religion, or national origin, * * *"

Section 182 of part VII would similarly make it a misdemeanor for any common carrier engaged in interstate or foreign commerce, or any officer, agent, or employee thereof, to segregate, or attempt to segregate, or otherwise discriminate against passengers using any public conveyance or facility of such carrier, on account of race, color, religion, or national origin. It also would provide penalties and other relief for violations.

As shown above, paragraph (a) of section 181 preserves to all passengers traveling in the United States the full and equal enjoyment of "the accommodations, advantages, and privileges of any public conveyance operated by common carrier" and "all the facilities furnished or connected therewith." Section 182 provides penalties for discrimination against passengers using "any public conveyance or facility of such carrier engaged in interstate or foreign commerce." However, paragraph (b) of section 181 provides penalties for discrimination only in connection with "any accommodation, advantage, or privilege of a public conveyance operated by a common carrier." You may wish to give consideration to amending paragraph (a) of section 181 to include on sheet 6, line 8 of the bill, after the first comma, the words "and all facilities furnished or connected therewith."

At the present time, it is unlawful under section 3(1) of the Interstate Commerce Act, "For any common carrier subject to the provisions of this part [pt. I] * * * to make, give, or cause any undue or unreasonable preference or advantage to any particular person * * * or to subject any particular person * * * to any undue or unreasonable prejudice or disadvantage in any respect whatsoever." This provision relates to rail carriers. There are similar provisions in the other parts of the act applicable to motor and water carriers and freight forwarders.

Racial segregation of passengers by common carriers—steamboats, railroads, and, more recently, motorbuses—has been a perennial source of litigation before the regulatory commissions and the courts for many years. A series of decisions by the Federal courts and this Commission in recent years, however, make it clear that the antidiscrimination provisions of section 3(1), as to railroads, and section 216(d) as to motor carriers, are violated when such carriers segregate passengers traveling on interstate trains or buses, or using related terminal facilities. *Mitchell* v. *United States*, 313 U.S.C. 80 (1941); *Henderson* v. *United States*, 339 U.S. 816 (1950); *Boynton* v. *Virginia*, 364 U.S. 454 (1960); *United States* v. *Lassiter*, 203 F. Supp. 20, aff'd per curiam, 371 U.S. 10 (1962); *Lewis* v. *The Greyhound Corp.*, 199 F. Supp. 210 (1961); *National Assn. for A.O.C.P.* v. *St. Louis-S.F. Ry. Co.*, 297 I.C.C. 335 (1955); *Keys* v. *Carolina Coach Co.*, 64 M.C.C.769 (1955); and *Discrimination—Interstate M. Carriers of Passengers*, 86 M.C.C. 743 (1961).

In the last-cited proceeding, this Commission, upon petition of the Attorney General of the United States, promulgated a number of general regulations designed to implement further the provisions of section 216(d) of the act with respect to the nonsegregated use of motorbuses and related facilities operated and utilized in the interstate common-carrier transportation of passengers.

The lawfulness of the regulations thus issued was upheld by the courts in *State of Georgia* v. *United States*, 201 F. Supp. 813, aff'd. per curiam, 371 U.S. 9 (1962). In view of these decisions, the racial segregation of passengers using interstate transportation or terminal facilities by common carriers subject to the Interstate Commerce Act is clearly established as a violation of that act. In the words of the Supreme Court: "The question is no longer open; it is foreclosed as a litigable issue." *Bailey* v. *Patterson*, 369 U.S. 31, 33.

To the extent that H.R. 1985 would prohibit racial discrimination or segregation in interstate transportation by common carriers subject to the Interstate Commerce Act, its enactment would, therefore, appear to accomplish the same substantive result as that reached by this Commission and the courts in the aforementioned cases. It should be noted, however, that the proposed measure establishes certain penalties and procedures which differ somewhat from those under the Interstate Commerce Act. Thus, for example, the bill prescribes a fine of not exceeding $1,000 for each offense, whereas under section 10(1) of the Interstate Commerce Act the willful breach of this section is punishable by a fine and, in certain circumstances, by imprisonment for not more than 2 years. In addition, motor and water carriers now are subject to fines of not less than $100, nor more than $500, for the first offense, and of not less than $200, nor more than $500, for each subsequent offense. In this situation we assume that the penalties and other remedies provided in H.R. 1985 are intended to be apart from those prescribed by the Interstate Commerce Act. However, to avoid confusion we suggest that appropriate clarifying language should be inserted in the bill.

As the proposed measure would not specifically modify or amend the provisions of the Interstate Commerce Act relating to racial discrimination or segregation by common carriers subject to the jurisdiction of this Commission, its enactment, in our view, is a matter which the Congress must decide on the basis of broad policy considerations. Accordingly, we take no position either for or against H.R. 1985.

Sincerely yours,

LAURENCE K. WALRATH, *Chairman.*

The CHAIRMAN. Thank you very much.

Mr. GOFF. Thank you for the opportunity.

The CHAIRMAN. We will now adjourn until tomorrow morning at 10 o'clock.

(Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 10 a.m., Thursday, May 16, 1963.)

CIVIL RIGHTS

THURSDAY, MAY 16, 1963

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

The subcommittee met at 10:05 a.m., pursuant to recess, in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the committee) presiding.

Present: Representatives Celler, Rodino, Rogers, Donohue, Brooks, Toll, Kastenmeier, McCulloch, Meader, Lindsay, and Mathias.

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The meeting will come to order.

Our first witness this morning is the Assistant Administrator of the GSA, Mr. Robert T. Griffin.

Mr. Griffin.

STATEMENT OF ROBERT T. GRIFFIN, ASSISTANT ADMINISTRATOR OF THE GENERAL SERVICES ADMINISTRATION; ACCOMPANIED BY JOE E. MOODY, GENERAL COUNSEL; CHARLES W. GASQUE, DIRECTOR, OFFICE OF PROCUREMENT AND ECONOMIC POLICY; AND A. HENRY ROSENFELD, FAIR EMPLOYMENT OFFICER

Mr. GRIFFIN. Good morning, Mr. Chairman.

The CHAIRMAN. Will you please identify the men who are with you at the table, please?

Mr. GRIFFIN. I will, Mr. Chairman, first, I am Robert T. Griffin, Assistant Administrator of General Services, and I have with me Messrs. Joe E. Moody, our general counsel; Charles W. Gasque, Director of our Office of Procurement and Economic Policy; and A. Henry Rosenfeld, our Fair Employment Officer.

As you know, Mr. Chairman, by letter dated April 23, 1963, you requested the Administrator of General Services, or his representative, to appear before your subcommittee on Thursday, May 16, 1963, for the purpose of testifying on those civil rights bills, H.R. 24 and H.R. 3139, which you had referred to GSA by your letters of April 22, 1963, for a report thereon.

Since it was not possible for the Administrator, Mr. Bernard L. Boutin, to attend the hearing today he asked me to represent him and express to you and the members of your subcommittee his views on H.R. 24, a bill to protect the right of individuals to be free from discrimination or segregation by reason of race, color, religion, or national origin, and H.R. 3139, a bill to amend the Civil Rights Act of 1957, and for other purposes.

In his message to the Congress, February 28, 1963, on civil rights—House Document No. 75—the President discussed certain specific aspects of contemporary civil rights problems and stressed the corrective steps which can be taken by the executive branch and the remedial measures which can be enacted by the Congress.

Further, the President pointed out in his message that these various corrective steps and remedial measures were proposed on the basis of priority and urgency and do not constitute the final answer to the problems of race discrimination in this country. Within this framework, the General Services Administration would not object to the enactment of suitable legislation which would carry out the general objectives of H.R. 24 and H.R. 3139.

The provisions of these bills which would especially affect the functions of GSA are those which deal with nondiscrimination under Government contracts, and, therefore, our comments will be addressed to such provisions.

In this regard, title II of H.R. 3139 would, in effect, provide a legislative framework for a Government contract nondiscrimination program similar in purpose at least to that presently conducted pursuant to Executive Order No. 10925, of March 6, 1961, and regulations issued thereunder by the President's Committee on Equal Employment Opportunity.

However, such title appears to orient the nondiscrimination program substantially around adjudication of complaints, a somewhat narrower sphere of activity than that embraced within the existing program which permits broader administrative applications to new or changing discrimination patterns. Flexibility in modes of approach to the solution of discrimination problems might be restricted by the rather formalistic provisions of title II of H.R. 3139.

Further this title appears to apply only to first-tier subcontractors. This would substantially limit its application. Similarly, this title limits rules and regulations to those which would govern the proceedings of the Commission and does not provide for rules relating to the administration of nondiscrimination provisions.

H.R. 24, title III, would appear to limit application of nondiscrimination program therein contemplated to prime contracts. In its provisions for administration of a Government contract nondiscrimination program, title III of H.R. 24 is substantially more limited in scope and application than either title II or H.R. 3139 or the present program.

Unlike H.R. 3139 which in section 246 of title II provides for an orderly windup of the existing Government contract nondiscrimination program, no recognition is given by title III of H.R. 24 to the existing program and machinery, its personnel, records, and pending actions.

The reference in section 310 of H.R. 24, title III, to any contract which requires the employment of at least 50 individuals appears questionable, first because contracts do not generally require any specific number of employees, and secondly, because this might unduly restrict the application of the program.

As you know, a very active program to prevent discrimination in Government contract operations is presently being conducted by Government contracting agencies under rules laid down by the Presi-

dent's Committee on Equal Employment Opportunity, a body created by Executive Order 10925 of March 6, 1961. The General Services Administration, as the largest Federal civilian procurement agency and the agency charged by law with the responsibility for prescribing Government-wide procurement policies and regulations, strongly supports the concept of this program. The existing nondiscrimination machinery has proven increasingly effective in achieving the objectives of the program.

In its statutory role of prescribing Government-wide procurement policies and regulations GSA has continuously worked with and in support of the President's Committee on Equal Employment Opportunity. For example GSA assisted in formulation of the Committee's rules and thereafter prescribed the nondiscrimination clause for inclusion in contracts of executive agencies; the services of GSA's Interagency Procurement Policy Committee were made available to the President's Committee; GSA made provision for the logistical aspects of the program including the stocking and distribution of the nondiscrimination posters and compliance forms; on a day-to-day basis GSA works with the staff of the Committee in clarifying and supplementing its rules.

As a contracting agency GSA has an effective compliance program to promote observance of the requirements of the nondiscrimination clause contained in its contracts.

In closing, Mr. Chairman, we wish to thank you for affording us the opportunity of appearing before your subcommittee today for the purpose of discussing those provisions of H.R. 24 and H.R. 3139 which would especially affect the functions of GSA. This concludes my prepared statement but if you or members of your subcommittee have any questions you may wish to ask, we shall be happy to answer them at this time or supply the desired information for the record.

The CHAIRMAN. In other words, you believe that the present machinery you have, namely, the Executive order of the President and the President's Committee on Equal Employment Opportunity, works very well at this present juncture?

Mr. GRIFFIN. As far as it concerns Government contracting and GSA's role in Government contracting, we think that it works very well and that our relationship with the Committee is resulting in excellent progress.

The CHAIRMAN. Do you make any positive recommendations for any changes in the bill here?

Mr. GRIFFIN. Well, none beyond those which are contained in my prepared statement, Mr. Chairman. We feel that we have an excellent situation as is now constituted under the President's Committee.

If the bill, particularly H.R. 3139, were enacted into law, we would not want to lose the flexibility which the program now has by limiting the program to primarily taking care of grievances and complaints. As I view H.R. 3139, it appears to confine the program to the adjudication of complaints. In GSA, working closely with the President's Committee, our nondiscrimination program now goes a great deal further than that.

In addition to that, H.R. 3139 does not provide any additional instructions for the administration of the program. If it were

enacted into law we would want to see changes of a positive nature which would provide for both of these requirements.

The CHAIRMAN. Does the Executive order of the President and/or the President's Committee on Equal Employment Opportunity regulations apply to prime contracts as well as subcontracts?

Mr. GRIFFIN. Yes, Mr. Chairman. A further difference between the existing program and the proposed legislation is that title II of H.R. 3139 limits its application to first tier subcontractors. Under the present program, as far as the purchase of regular commercial supplies is concerned, the program goes to second tier subcontractors, and as far as construction contracts are concerned it goes all the way down to all levels of subcontractors. This is a great deal broader than the provisions of this proposed legislation.

The CHAIRMAN. Well now, of course, the Executive order is by its nature temporary. The power that granted the order has the power to rescind the order.

Now, insofar as you find that your present operation under the Executive order is effective, is it your recommendation that we embody the Executive order and the President's Committee on Equal Employment Opportunity in a statute?

Mr. GRIFFIN. There is no doubt, Mr. Chairman, that by embodying it or embedding it in a statute would certainly provide additional prestige and additional status to it. We certainly would not object to such a statute.

In answering your question I would also have to reiterate that there has been outstanding progress made because of the aggressive activity by the President's Committee and the very enthusiastic leadership which the Vice President has provided the Committee. If, in its present form, it is embodied in a statute, it certainly would provide additional status and prestige to the body.

The CHAIRMAN. Any questions?

Mr. ROGERS. Mr. Chairman, Mr. Griffin, you let contracts for maintenance of buildings that are operated by the Government or are Government-owned? Is there any attempt in letting those contracts to see that there is no discrimination against the employees that may be employed?

Mr. GRIFFIN. Yes, Mr. Rogers. In every contract we let, a nondiscrimination clause is included wherever required by the rules and regulations of the President's Committee.

Just to give you an additional idea of many of the things which the Administrator of General Services has done as a result of his discussions and working relationship with the President's Committee, he has instructed the Commissioner of our Federal Supply Service and the Commissioner of our Public Buildings Service, GSA's two largest Services, that not only will they respond very quickly and genuinely to complaints which are received, but prior to the letting of such contracts which meet the dollar value required they will have precontract inspection by the contracting officer and a determination will be made that the contractor can fulfill the nondiscrimination statement which is included in all Government procurement contracts which the bidder must sign.

On construction, repair and improvement, and cleaning contracts, there is a preaward conference with the successful bidder. Although this is an element of our program which has just gotten underway

in the past several months, such a preaward conference is now held for the purpose of explaining the requirements under the Executive order to each proposed contractor and ascertaining their willingness, not only to comply with the program but an assurance that they understand and accept these provisions.

Mr. ROGERS. And if they do accept them and do you follow through to see that they comply?

Mr. GRIFFIN. We have a very thorough compliance machinery for this purpose.

Mr. ROGERS. Let us take the instance where it is necessary for you to obtain space in buildings where you ask for bids and those bids require them to clean up the building and render certain services. Now, do you have any provision as it relates to those buildings?

Mr. GRIFFIN. This is another example, Mr. Rogers, of the flexibility under the administrative machinery now in effect. At the behest of the subcabinet group, GSA on June 21, 1962, issued an order which since that time, at the request of the White House, has been distributed and adopted by other agencies of the Government. This order contains a clause which is known as a nondiscrimination clause in Government leases and any lease, the cost of which exceeds $10,000 per year, requires that there will be a total facilities nondiscrimination agreement between the lessor and the Government.

Mr. ROGERS. I think that is a step in the right direction.

Now, let us go one step further. The GSA is also given the authority to dispose of all properties, real or personal, that are declared surplus.

Now, in examining H.R. 24, section 7 thereof, there is a provision to the effect that any mortgage or any loan made by a Federal agent, before that loan can be granted the person getting the money, the mortgager, is obligated to sign a certificate to the effect that he will not sell it to anybody who practiced discrimination and at the same time that he will not discriminate against any person because of race, color, or creed.

Now, when you sell, or advertise for sale, real estate that the Federal Government owns, is any restriction placed on that real estate as to its use in the future, as to discrimination because of race, color, or creed?

Mr. GRIFFIN. There is not, Mr. Rogers. In the rules and regulations which cover Government contracting, issued by the President's Committee on Equal Employment Opportunity, there is a provision which deals with sales contracts. This provides that contracts and other transactions covering the sale of Government real and personal property, where no appreciable amount of work is involved, are exempt from the requirements of section 301 of the Executive order. Therefore, this is an area of Government activity to which the nondiscrimination clause up to this time does not apply.

Mr. ROGERS. It does not apply?

Mr. GRIFFIN. No sir, it does not apply. There is not a great amount of work involved in such sales as a normal matter, so to tie this on to all of the contracts would be something which would require considerable review.

Mr. ROGERS. In other words, you have not made a study of what effect it may have upon the disposal of real estate, even if you had those provisions attached to it?

Mr. GRIFFIN. It would be a qualification on the bid.

Mr. Moody, our general counsel, has spent a great deal of his life supervising the disposal of Government surplus property and I would ask him to comment on this. There has been some discussion about this matter but up to the present time, we, of course, are guided by the President's Committee and such a requirement has not been made manifest to us, although we within GSA have given consideration to it. One of the things which affects the entire area of surplus personal property, as you know, is that we have thousands of sales actions which go on every year and there would be no gain, as I see it, to attaching an administrative device requiring nondiscrimination in the sale of personal property because I do not think there would be any way of actually managing, supervising, and monitoring such a requirement. I would ask Mr. Moody to make any additional comment he might care to make.

Mr. MOODY. Mr. Rogers, I do not think I could add very much to Mr. Griffin's comments. As he has explained the present clause is applicable to contracts calling for the performance of work for the United States. It is an employment arrangement and since these disposal contracts do not call for the performance of work for the Government, in most instances, the Committee has seen fit to exclude them from applications of the provisions of the Executive order and regulations. We have, as Mr. Griffin said, given consideration to it and, as a matter of fact, have it presently in our mind. In direct response to your question, we have not made a study of what the possible impact on the disposal program might be or might result from the inclusion of such a clause.

Mr. ROGERS. You have not made any study as to what impact it may have if it was included in real estate sales?

Mr. MOODY. That is right, sir.

Mr. ROGERS. So far as personal property sales you have certain rules and regulations which if a person meets those and submits the highest bid, so to speak, he gets the property upon payment of the cash according to the terms of the bid, and you do not make any distinction as to how he should bid?

Mr. MOODY. That is right, Mr. Rogers.

Mr. ROGERS. That is, as regards race, color, or creed.

Mr. MOODY. That is right. The same rules apply with respect to real estate as well.

Mr. ROGERS. But there is this provision in section 7 of H.R. 24 which in effect says that every person who purchases or gets his mortgage insured agrees that he will not practice discrimination, nor will he sell to anyone who does practice discrimination.

Since you have not made any study as to the effect of this upon sales of real estate, do you foresee any hindrance or getting less money for the sale of real estate if this was attached to every sale and become a part of the law?

Mr. GRIFFIN. It would really take a more comprehensive study than we now have made to comment on whether there would be a bid impact, so I think we would prefer to study the matter further before risking it. I would be inclined to doubt that there would be a total impact on the whole program. There may be an impact here or there, but without a real study it would be very difficult to give you a valid comment.

Mr. ROGERS. Thank you.

Mr. MEADER. Mr. Chairman.

The CHAIRMAN. Mr. Meader.

Mr. MEADER. Mr. Griffin, how many enforcement actions have occurred under Executive Order 10925 or any precedessor Executive orders?

Mr. GRIFFIN. Mr. Meader, I have to ask you what you mean by enforcement actions?

Mr. MEADER. I mean, have there been violations of contracts in which the Attorney General has started injunction proceedings or criminal proceedings for the falsification of statements or have there been rescission of contracts? Have these penalties provided in Executive Order 10925 ever been exercised to your knowledge?

Mr. GRIFFIN. As far as the experience of GSA is concerned in the procurement field, the contracting field, Mr. Meader, these penalties have not been necessary. We in the past 2 years have had 186 complaints or grievances registered by people under contracts. These 186 grievances have been levied against 59 companies. In every case our compliance people or the Fair Employment Officer of GSA, has visited with the companies involved and every one of these problems have been resolved to the satisfaction of all parties, except that we have now current 25 complaints against 10 companies which are still under investigation.

Further, as far as GSA is concerned, criminal penalties as instituted by the Department of Justice have not been necessary. We have been able to successfully negotiate.

Mr. MEADER. Have you ever referred a case to the Department of Justice?

Mr. GRIFFIN. We have not needed to, sir, so we have not.

Mr. MEADER. And you have never canceled a contract?

Mr. GRIFFIN. We have not needed to cancel a contract.

Mr. MEADER. Thank you.

Mr. MCCULLOCH. Mr. Chairman, in this connection I would like to ask a question. Have you had any complaints against any local labor organizations alleging that discriminatory practices have been engaged in by local labor organization?

Mr. GRIFFIN. Well, under the terms of the Executive order, Mr. McCulloch, and the rules and regulations of the President's Committee, we have not had any such grievances. However, we have had an incident which has been reported in the newspaper concerning a GSA contract at Howard University which stemmed from complaints of personnel at the university rather than an aggrieved person as contemplated under the Committee rules.

Mr. MCCULLOCH. Well, have you made any investigation on your own?

Mr. GRIFFIN. Oh, yes sir.

Mr. MCCULLOCH. Under this order where these discriminations exist in local labor organizations? And I ask you a leading question, because I am sure you are informed that these discriminatory practices are prevalent right here in Washington, where we can see if we will look. So I ask you that leading question.

First, have there been any complaints by any persons aggrieved, and secondly, if there have been no complaints made to you, have you done any investigation on your own?

Mr. GRIFFIN. Yes, we have done investigation on our own.

Mr. MCCULLOCH. Where did you do your investigation?

Mr. GRIFFIN. Well, the investigation I am sure, to which you have reference, Mr. McCulloch, would be the matter in connection with Howard University.

Mr. MCCULLOCH. Have you made any local investigations other than the Howard University?

Mr. GRIFFIN. No, sir. Basically, Mr. McCulloch, under the existing working arrangement between the President's Committee and GSA, as the contracting agency, the approaches and the matters of problems with labor unions are left mainly with the Committee, which assumes responsibility for the handling of such cases.

Mr. MCCULLOCH. Do you have any knowledge of their activity in this most important elementary field? The Committee's activity?

Mr. GRIFFIN. Mr. Rosenfeld; our Fair Employment Officer who heads up this program in GSA works daily with the Committee. I would ask him to respond to that question.

Mr. ROSENFELD. Mr. McCulloch, the President's Committee staff does have a section which deals directly in labor relations with the unions and if we have a question involving that we funnel it through that particular section.

Mr. MCCULLOCH. Do you know whether that committee has authority to act and has been acting in, any case?

Mr. ROSENFELD. Well, I would not want to say whether they have been acting because I would not be able to tell what their business is.

Mr. MCCULLOCH. I see, that is not within your own knowledge.

Mr. ROSENFELD. That is right.

Mr. MEADER. I think we might follow up by asking Mr. Rosenfeld, you say you refer complaints against labor unions to the President's Committee on Equal Opportunity, have you referred any?

Mr. ROSENFELD. No, sir, I did not say we referred complaints against labor unions. When matters come up involving labor in the course of our investigations, sir, we then refer them to this particular section of the President's Committee, because we have dealt in that manner with them.

Mr. MEADER. All right. Whatever it is that you refer to the committee, have you, in fact, referred any such cases?

Mr. ROSENFELD. Yes, sir.

Mr. MEADER. How many?

Mr. ROSENFELD. We have referred about four cases within the last 6 months.

Mr. MEADER. And what was the nature of the matter referred and how did it come to your attention?

Mr. ROSENFELD. These were cases which came to our attention by way of original complaints coming to us from the President's Committee and which after our investigation went to the point where there were allegations that rules and regulation of the labor unions were somewhat discriminatory. We therefore asked the President's Committee, through its labor relations section, to take that matter up.

Mr. MEADER. And these were four——

Mr. ROSENFELD. Please do not hold me to the exact number. There may have been four or five within the last 6 months.

Mr. MEADER. They related to matters within the District of Columbia, did they?

Mr. ROSENFELD. Oh, no, sir.

Mr. GRIFFIN. The question, Mr. Rosenfeld, dealt principally with local matters. How many do we have locally?

Mr. ROSENFELD. We have no complaints locally. If you are talking about the District of Columbia, Mr. Meader, I am sorry, sir, we have had none locally.

Mr. MEADER. I was following up Mr. McCulloch's question which I thought dealt with the District of Columbia.

Mr. GRIFFIN. The four or five cases which Mr. Rosenfeld referred to would be nationwide, outside of the District of Columbia.

Mr. MCCULLOCH. To pursue that one step further, then there have been no complaints by individuals aggrieved by this discrimination that came to you from the District in the last year?

Mr. ROSENFELD. Oh, no, sir; we have had one other case in which there was a regular complaint process which has been adjusted to the satisfaction of both the Committee and GSA.

Mr. MCCULLOCH. One thing further, I notice, Mr. Griffin, when you were testifying earlier you noted that part B, section 210 of 3139 limited its provisions to the first subcontractor of the contractor. Now, can you tell this committee how far your organization has gone down the line of people who are working either with contractors or subcontractors as material men or otherwise?

Mr. GRIFFIN. Yes, Mr. McCulloch. As I spoke to Mr. Rogers at some length, one of the prime responsibilities for all contracting officers within GSA at the moment is to satisfy themselves that any contractors or subcontractors in the commercial supply side of our programs, down through the second tier subcontractors, are able to perform within the provisions of the Executive order.

Mr. MCCULLOCH. And the constructive suggestion concerning 210 is that it only goes to the first tier?

Mr. GRIFFIN. That is right, sir.

Mr. MCCULLOCH. Do you go below the second tier in assuring for your own satisfaction nondiscriminatory practices?

Mr. GRIFFIN. Only on the construction side, Mr. McCulloch. On the Federal supply side, which is our terminology, it goes to the second tier because the rules and regulations of the President's Committee requires the second tier.

Mr. MCCULLOCH. I am very glad to have your suggestions on this matter because I think they are positive and the title can be easily amended to meet this criticism.

Mr. GRIFFIN. Yes, sir.

Mr. MEADER. Mr. Chairman. Mr. Griffin, just how many people does GSA have devoted to enforcing this Presidential order?

Mr. GRIFFIN. Well, we have a staff, Mr. Meader, which is assigned under the direct supervision of the Administrator, known as the Fair Employment Staff. This is within the spirit of the Executive order.

These people work full time on this program for GSA and they are, so to speak, our experts, headed by Mr. Rosenfeld.

Mr. MEADER. How many are there on that staff?

Mr. GRIFFIN. There are only three full time but we have an official in each regional office as well who works on this program, in addition to other duties. Further, we also have Mr. Gasque, the Director of our Office of Procurement and Economic Policy, who works full time on the development of regulations, Government-wide as well as GSA's internal procurement regulations, spelling out all of the instructions which are required as a result of our own experiences within the spirit of the Executive order and the rules and regulations of the President's Committee.

As far as our compliance machinery is concerned, we have available to us the contracting officers who make sure that the contractors understand all of these provisions and that they are willing to live up to such provisions. For compliance we have our compliance investigators, which is a separate division, who handle all investigative work in GSA, as well as our field inspectors, our field auditors, and so forth, who may be called upon to investigate specific complaints and develop comprehensive reports to the satisfaction of the Administrator and the President's Committee. So that we do have quite a considerable number of people when a complaint needs exhaustive investigation.

Mr. DONOHUE. Would you mind repeating how many complaints you have received, say, in the last year about violations?

Mr. GRIFFIN. I have it broken down, Mr. Donohue, since July of 1961.

Mr. DONOHUE. And how many complaints have you had?

Mr. GRIFFIN. We have had 186 complaints against 59 companies.

Mr. DONOHUE. Now, have those complaints been directed to GSA or have they been directed to the President's Committee?

Mr. GRIFFIN. The President's Committee has assigned to the individual contracting agencies the prime responsibility for compliance under the program, so there could be individual ones which could have been directed to the President's Committee but in the main they have been directed to GSA.

Mr. DONOHUE. They are directed to you, and when they are received by your Agency do you, in turn, refer them to the President's Committee?

Mr. GRIFFIN. It would be the other way around, that they would refer them to us if they referred them, but the investigation, the need to assure compliance, keeping the President's Committee informed at all times of all of our actions and our requirements for action in the program would be GSA's responsibility.

Mr. DONOHUE. Well, you say that approximately 186 complaints were submitted to your Agency. Have you received any from the President's Committee that had been directed to it?

Mr. GRIFFIN. Mr. Rosenfeld?

Mr. ROSENFELD. They have all been received by the President's Committee, Mr. Donohue, and sent from the President's Committee to us.

Mr. DONOHUE. Referring to any records you have or drawing on your experience with this particular problem, can you now tell us if these complaints have been directed to the President's Committee directly or to you directly, or do they come to you indirectly from the President's Committee?

Mr. GRIFFIN. You answer that, Mr. Rosenfeld.

Mr. ROSENFELD. The complaints go into the President's Committee, sir, they are normally on forms which are prescribed by the President's Committee, signed by an individual. The President's Committee then refers those complaints to what is know as the predominant interest agency, in our case we receive those complaints from the President' Committee. Should it come about that an individual complains directly to us, and Mr. Griffin has already covered that, we would visit the President's Committee and proceed with it anyway.

Mr. DONOHUE. In other words, the Commission to whom the complaints are directed will proceed to investigate the merits?

Mr. ROSENFELD. Yes, sir.

Mr. DONOHUE. Now, tell me when investigations to bid are sent out by, GSA, is there a provision in the invitation that no discriminatory practices shall be made?

Mr. GRIFFIN. Yes, sir.

Mr. DONOHUE. And after the contract is awarded, is it a part of the contract that no discrimination shall be practiced?

Mr. GRIFFIN. Absolutely, sir.

Mr. DONOHUE. And having in mind that 186 complaints were registered indirectly with you by the President's Committee, how do you attempt to resolve those complaints or grievances?

Mr. GRIFFIN. Well the first thing we do, Mr. Donohue, obviously would be to investigate them, to make sure there is the basis for the complaints.

Mr. DONOHUE. I assume that. In the course of your investigation if you find that they exist do you attempt then to resolve them?

Mr. GRIFFIN. Right, sir.

Mr. DONOHUE. Now, would you tell the committee, with request to the 186 complaints that have been referred to you, how many of these were you able to resolve?

Mr. GRIFFIN. We have been able to resolve, to the best of my knowledge, all except the 25 which are now current against 10 companies.

Mr. DONOHUE. With reference to the line of inquiry of Mr. Meader, why have not those 25 been resolved?

Mr. GRIFFIN. Well, these are still under investigation or discussion.

Mr. DONOHUE. But on no occasion has any contract been vitiated as a result of these discriminatory practices that have been alleged?

Mr. GRIFFIN. That is correct, sir.

Mr. RODINO. Might I ask this: Then I would assume that on that basis the grievances were all resolved satisfactorily?

Mr. GRIFFIN. Yes, sir, Mr. Rodino.

The CHAIRMAN. Mr. Foley.

Mr. FOLEY. Mr. Griffin, is it not true that other Government contracting departments or agencies have a similar setup to the one you have described that GSA has?

Mr. GRIFFIN. It is required, sir.

Mr. FOLEY. And each contracting department or agency is responsible for policing his contract, is that not so?

Mr. GRIFFIN. That is right, Mr. Foley.

Mr. FOLEY. Would you have any idea as to whether the staffs engaged in this particular activity in other departments than yours are equal to yours?

Mr. GRIFFIN. Well, I would be inclined to doubt it, with the exception of the Department of Defense and with also the possible exception of NASA and AEC, because we are the principal procurement agency for the civilian side of the Government.

The amount of contracting outside of the agencies I have named would not be great, so that as far as procurement activities go I would say they would not need such a full-time staff. However, they are required to pursue the objectives and the spirit of the Executive order to the same extent as we are.

Mr. FOLEY. What percentage of the Government contracts do you handle, would you say?

Mr. GRIFFIN. Well, on the basis of measuring that against total Government-wide procurement, it is relatively small. However, just to give you an idea of the dollar value of GSA's procurement on the Federal supply or commercial supply side, it is in the neighborhood of $1,300 million in annual contracts. On the construction side, public buildings, we are talking about $570 million in contracts, so that, while measured against the Defense Department, it is not necessarily a large segment by any imagination, it is a substantial amount of money.

Mr. DONOHUE. Mr. Griffin, would you tell the committee how many transactions that might involve this are handled by your agency overall?

Mr. GRIFFIN. On the commercial side we are talking about the total of procurement contracts over $10,000—the dollar limitation under the Executive order—we are talking about perhaps 4718 contracts.

Mr. DONOHUE. 4718?

Mr. GRIFFIN. That is the commercial side.

On the public buildings side we are talking about 3500 contracts.

Mr. DONOHUE. That amounts to about 8,000?

Mr. GRIFFIN. That is right, sir.

Mr. DONOHUE. And all of those 8,000 transactions you have only had 186 complaints insofar as your agency?

Mr. GRIFFIN. That is correct, sir.

Mr. DONOHUE. And all but 25 of them have been resolved to the satisfaction of parties concerned?

Mr. GRIFFIN. That is right, Mr. Donohue.

Mr. MEADER. Mr. Griffin, how many companies and how many employees are involved in those 8,000 contracts?

Mr. GRIFFIN. I would have to supply that, Mr. Meader, I do not know.

Mr. MCCULLOCH. Mr. Chairman, I would like to make this comment, and for the purpose of the comment I would start out with granting or assuming that your organization has done an excellent job. That points up the very fact that we are not by this activity getting to the root of the evil. The root of the evil is the discrimination by reason of race and color which prevents capable people entering on training programs and to become members of labor unions that furnish the people to meet your requirements. And until we have solved that basic problem we have only skirted the

edges of the fundamental problem which is the discrimination of people who are seeking employment, and I hope that we will have some testimony from people who are qualified in that field and who do have the statistics during these hearings, Mr. Chairman.

Mr. DONOHUE. Mr. McCulloch, will you yield?

Mr. MCCULLOCH. I yield.

Mr. DONOHUE. Have all of these 186 complaints or grievances been based upon discrimination because of color?

Mr. GRIFFIN. I assume, yes.

Mr. ROSENFELD. Race, color.

Mr. COPENHAVER. Mr. Chairman?

The CHAIRMAN. Mr. Copenhaver.

Mr. COPENHAVER. Mr. Griffin, according to a recent report of the committee there are 38,000 companies with 50 employees or more, which come under the rules and regulations of the President's Committee. Of those could you just estimate approximately how many thousand companies hold GSA contracts?

Mr. GRIFFIN. It is not my understanding that the application of these requirements is limited to companies of 50 employees or more, it is only the requirements for compliance reporting which deals with the 50 employees—on discrimination you could go down to 2, 3, 4, as to application.

Mr. COPENHAVER. I threw that out as an example of the larger concerns which we know are covered and out of those could you estimate approximately how many have contracts with the GSA.

Mr. ROSENFELD. About 450 at this time.

Mr. GRIFFIN. That is of predominant interest. The only way I could do it, Mr. Counsel, would be to develop such information——

Mr. COPENHAVER. Just estimate it. Well, 5,000.

Mr. GRIFFIN. How many companies to the best of your knowledge, Mr. Rosenfeld, are now supplying compliance reports to GSA or have done it during this past year?

Mr. ROSENFELD. Four hundred fifty in round figures, that is concerns involved in supply contracts of $50,000 or more and construction contracts of $100,000 or more.

Mr. COPENHAVER. Of the 189 complaints that you have handled in the past 2 years how many hearings were held?

Mr. GRIFFIN. No formal hearings have been held. All complaints have been satisfactorily settled through informal discussions with company officials.

Mr. COPENHAVER. Of the 189 how many involved taking corrective action?

Mr. GRIFFIN. What do you mean by corrective action? You mean by hiring? You answer that, Mr. Rosenfeld.

Mr. ROSENFELD. In approximately 30 percent of the cases which were settled, those are all the cases settled up to the present time, some type of corrective action was taken. It might be a set nondiscrimination plan on the part of the company where maybe the complaints themselves were not sufficient in merit. All of them would have had some type of action with respect to a definite nondiscrimination plan, the method for disseminating it and the method of carrying out and in some of those cases we have conducted followup service.

Mr. COPENHAVER. And the other 70 percent were dismissed without action being taken.

Mr. GRIFFIN. Less than 70 percent, because the 189 cases includes those currently under investigation.

Mr. COPENHAVER. 70 percent of those which have been completed have been dismissed because no violation was found——

Mr. ROSENFELD. I think that is a fair answer. May I say this, in every one of the cases, in addition to the complaint, whether the complaint has merit or not, the company is surveyed and conferences are held to such an extent that we assure ourselves that the company is in compliance. Furthermore, we do not have the last say on that. We send the case to the President's Committee with our recommendation and in those cases which I told you about the President's Committee has concurred.

Mr. COPENHAVER. Your staff here in Washington has three people.

Mr. ROSENFELD. Yes.

Mr. COPENHAVER. Do you also use your regional people on a part-time basis to assist the Washington staff?

Mr. ROSENFELD. That is right.

Mr. COPENHAVER. You also use your contracting officers. I take it these are the ones directly charged with pursuing the complaint.

Mr. ROSENFELD. If there is a complaint——

Mr. COPENHAVER. Of the 189 complaints these are the ones you used?

Mr. ROSENFELD. No, sir. When those complaints came in from the President's Committee to us, they were not against 189 companies, they were against 56 companies.

Mr. GRIFFIN. 189 individual complaints.

Mr. ROSENFELD. Mr. Griffin mentioned that before.

Mr. COPENHAVER. That is right.

Mr. ROSENFELD. Each one of those complaints was investigated by our field staff because they require factual investigation.

Mr. COPENHAVER. Are these field staffs also the ones who perform the annual compliance report surveys?

Mr. ROSENFELD. If we have to have them, yes.

Mr. COPENHAVER. Does not the Committee require annual compliance reports?

Mr. ROSENFELD. The annual compliance reports you are talking about are the so-called forms 40 and 41 which are now coming in from the companies.

Mr. COPENHAVER. And also used pursuant to 16-page guide which the Committee has put out.

Mr. ROSENFELD. That is correct. That machinery is just getting into motion now, as you probably know, because the last information has just been received.

Mr. COPENHAVER. Has the GSA discovered any discrimination at all through the compliance report.

Mr. ROSENFELD. It is too early to tell that.

Mr. COPENHAVER. Would you agree, Mr. Griffin, that the General Services Administration probably has more contact with Government construction and building than any other agency in Government?

Mr. GRIFFIN. I am not sure about the dollar volume between, say, ours and the Army engineers. Also, the dollar value of some

of the NASA contracts might exceed ours; I am not familiar with those. However, with respect to most other agencies, the answer is, most likely, "Yes."

Mr. COPENHAVER. Has it also come to your attention that, particularly in the construction field, as reported in reports by the Civil Rights Commission and by the Southern Regional Council, that discrimination in labor unions probably is the most substantial in those areas involving construction unions?

Mr. GRIFFIN. This I am not familiar with. As I said earlier, as far as the labor unions are concerned, exclusive jurisdiction over those cases rests with the President's Committee.

Mr. COPENHAVER. Were complaints received by your contracting officers in this area?

The CHAIRMAN. Mr. Rosenfeld may be able to answer that.

Mr. COPENHAVER. Mr. Rosenfeld, would you have any knowledge about that?

Mr. ROSENFELD. I did not hear you, I am sorry.

Mr. COPENHAVER. Are you familiar with the statement frequently made by the Civil Rights Commission and other agencies that the greatest discrimination rests in the construction trade?

Mr. ROSENFELD. I have heard of such statements, but I do not know whether they have been made that strong.

Mr. COPENHAVER. Mr. Griffin, what is the setup in your organization with regard to assuring that discrimination does not occur in the employment of GSA personnel?

Mr. GRIFFIN. We do a great deal. In addition to Mr. Rosenfeld's activities in nondiscrimination in the contracting field, he also is responsible for the internal employment aspects of nondiscrimination. Some of the actions which have been taken in GSA are these: First, there has been circularized to every employee in very good, layman's language, a statement of his rights, how he can bring any problem he has to the attention of the appropriate official in GSA and to whom he will bring such matters when he has a problem.

Second, extensive training is carried on within the Agency so that there will be no misunderstanding by employees that they are entitled to bring to the attention of the appropriate official any grievances, any possibility of grievances, which they have.

New employees are actually instructed in this particular area by the Administrator himself in Washington and by the regional administrator in the field. Mr. Boutin has put this into effect. There are posters and handouts. As far as an educational program is concerned from entrance interviews, from training programs and so forth, I do not think that in GSA there is any possibility of ignorance on this point. It is my understanding that, since this program started, we have had 48 complaints. Of those 48 complaints 13 required corrective action and corrective action was taken.

Mr. COPENHAVER. These were 48 complaints by individuals.

Mr. GRIFFIN. Employees.

Mr. COPENHAVER. By individuals actually employed by the GSA?

Mr. GRIFFIN. That is correct.

Mr. COPENHAVER. Now, how many employees does GSA have?

Mr. GRIFFIN. Approximately 32,000.

Mr. COPENHAVER. Have there been any complaints by individual seeking to gain employment by GSA?

Mr. GRIFFIN. Well, another thing I should point out is that in all fields, particularly professional skills such as architects, and so forth, we have intentionally, in the last year, designed our recruiting program around making efforts to inform minority members of the availability of future possibilities with GSA and visiting colleges which have minority concentrations. Now in answer to the question have we had complaints stemming from any individuals claiming difficulty in becoming employed with GSA, may I ask Mr. Rosenfeld to respond?

Mr. ROSENFELD. I cannot think of a single one.

Mr. COPENHAVER. One more question, Mr. Chairman, if I may.

Mr. GRIFFIN. The answer by Mr. Rosenfeld who is, as you know, up to date on this, is he cannot think of a single such complaint.

Mr. COPENHAVER. Of the 48 were any hearings held?

Mr. GRIFFIN. This is a normal part of the procedure.

Mr. ROSENFELD. Where they request a hearing they are entitled to it. I cannot give you the figure. By the way, you must remember they are followed up by being sent to the President's Committee.

Mr. COPENHAVER. Which reviews your action taken.

Mr. ROSENFELD. That is right.

Mr. COPENHAVER. Finally, on page 2 of your statement, Mr. Griffin, concerning Mr. McCulloch's bill 3139; you state that H.R. 3139 has a somewhat narrower sphere of activity than that embraced within the existing program which permits broader administrative application to new or changing discrimination patterns.

Flexibility in modes of approach to the solution of discrimination problems might be restricted by the rather formalistic provisions of title II of H.R. 3139.

I would like to call to your attention section 203 of H.R. 3139, beginning on page 9, paragraphs 2 and 3. Paragraph 2 says—

to furnish to persons subject to this title such technical assistance as they may request to further their compliance—

Et cetera; subparagraph 3—

to make such technical studies available as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to interested governmental and nongovernmental agencies—

Subparagraph (b):

All departments, agencies, and independent establishments in the executive branch of the Government shall cooperate with the Commission and shall carry out the orders of the Commission.

The Commission has powers to issue rules and regulations, has power to acquire compliance reports, and there are other provisions in this bill.

Now, I am curious what you have in mind by this statement.

Mr. GRIFFIN. Well, I am not an attorney and I will ask Mr. Moody to supplement any comments I have. It would seem to me that it would be helpful if you are going to provide a statutory basis, and as I have said we certainly would not object to it—that the statutory basis should provide a charter setting forth more comprehensive instructions as to what might make up the rules and regulations, somewhat along the lines of the Executive order, thus not giving indis-

criminate latitude to a commission yet to be appointed to make up rules and regulations, the guide lines for which do not have a specificity in the law itself.

Mr. COPENHAVER. So actually you are afraid that the Commission to be established might go too far, in other words, as opposed to being too narrow you are afraid it might be too broad?

Mr. GRIFFIN. I did not say that at all, I would prefer personally that the statute would provide a specific basis for the Commission so that the Commission would be somewhat instructed further than merely providing for rules and regulations. That is the only feeling there.

Mr. COPENHAVER. Mr. Chairman, I have no further questions.

The CHAIRMAN. Mr. Foley?

Mr. FOLEY. Mr. Griffin, is it not true that under the Executive order of March 8, 1961, the President's Committee established by that order, took over the function of the former Committee of Government Employment Policy?

Mr. GRIFFIN. That is correct.

Mr. FOLEY. Now, not only the question of employment within the Government but also the question of nondiscrimination in outside employment under Government contracts are centralized in this one agency?

Mr. GRIFFIN. That is correct, Mr. Foley.

Mr. FOLEY. And the old committee was abolished?

Mr. GRIFFIN. That is right.

The CHAIRMAN. Thank you very much, Mr. Griffin. We thank your colleagues likewise.

Our next witness is Mr. Spottswood W. Robinson, the third Commissioner of the Civil Rights Commission.

First, Mr. Foley has a document to be put in the record.

Mr. FOLEY. At this point, Mr. Chairman, I wish to insert in the record a report of the GSA in reply to our request on the bill H.R. 3139 and H.R. 24.

The CHAIRMAN. We will place in the record a communication received from Elizabeth Keene of the Voter Education Project, 5 Forsyth Street, Atlanta, Ga.

(The documents referred to follows:)

GENERAL SERVICES ADMINISTRATION,
Washington, D.C., May 16, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Your letters of April 22, 1963, requested the views of the General Services Administration on H.R. 24, a bill to protect the right of individuals to be free from discrimination or segregation by reason of race, color, religion, or national origin, and H.R. 3139, a bill to amend the Civil Rights Act of 1957, and for other purposes.

H.R. 24 would provide protection against race violence and lynching, strengthen civil rights statutes, provide for protection of rights to political participation, prohibit discrimination in transportation and public conveyance, prohibit discrimination in employment, establish a National Commission Against Discrimination in Employment, prohibit discrimination in the Armed Forces, provide for elimination of discrimination in educational opportunities, outlaw the poll tax for election of national officers, prohibit discrimination in housing, strengthen civil rights machinery in the Federal Government, and establish a joint congressional Committee on Civil Rights.

H.R. 3139 would make the Civil Rights Commission permanent, strengthen the Civil Rights Act, establish a Commission on Equality of Opportunity in Employ-

ment, provide for Government contract nondiscrimination provisions and related program, provide against discriminatory practices by employment agencies and labor organizations, provide against discrimination in Government employment, provide assistance to States relating to desegregation in public schools, and provide for a presumption of literacy in Federal elections.

As you know, the President in his message to the Congress of February 28, 1963, on civil rights (H. Doc. No. 75) discussed certain specific aspects of contemporary civil rights problems and stressed the corrective steps which can be taken by the executive branch and the remedial measures which can be enacted by the Congress.

Further, the President pointed out in his message that these various corrective steps and remedial measures were proposed on the basis of priority and urgency and do not constitute the final answer to the problems of race discrimination in this country. Within this framework, the General Services Administration would not object to the enactment of suitable legislation which would carry out the general objectives of H.R. 24 and H.R. 3139.

The provisions of these bills which would especially affect the functions of GSA, are those which deal with discrimination under Government contracts.

In this regard, title II of H.R. 3139 would in effect provide a legislative framework for a Government contract nondiscrimination program similar in purpose at least to that presently conducted pursuant to Executive Order No. 10925 of March 6, 1961, and regulations issued thereunder by the President's Committee on Equal Employment Opportunity (ch. 60, title 41, Code of Federal Regulations).

However, such title appears to orient the nondiscrimination program substantially around adjudication of complaints, a somewhat narrower sphere of activity than that embraced within the existing program which permits broader administrative applications to new or changing discrimination patterns. Flexibility in modes of approach to the solution of discrimination problems might be restricted by the rather formalistic provisions of title II of H.R. 3139.

Title II of H.R. 3139 appears to apply only to first tier subcontractors. This would substantially limit its application. Similarly, this title limits rules and regulations to those which would govern the proceedings of the Commission and does not provide for rules relating to the administration of the nondiscrimination provisions.

H.R. 24, title III, would appear to limit application of the nondiscrimination program therein contemplated to prime contracts. In its provisions for administration of a Government contract nondiscrimination program, title III of H.R. 24 is substantially more limited in scope and application than either title II of H.R. 3139 or the present program.

Unlike H.R. 3139 which in section 246 of title II provides for an orderly windup of the existing Government contract nondiscrimination program, no recognition is given by title III of H.R. 24 to the existing program and machinery, its personnel, records, and pending actions.

The reference in section 310 of H.R. 24, title III, to any contract which requires the employment of at least 50 individuals appears questionable, first, because contracts do not generally require any specific number of employees, and, secondly, because it might unduly restrict the application of the program.

It is not anticipated that such legislation would have any appreciable financial effect on GSA.

The General Services Administration strongly supports the concept of a program to assure nondiscrimination in the performance of Government contracts. The existing nondiscrimination machinery based on Executive Order 10925 of March 6, 1961, has proven increasingly effective in achieving the objectives of this program. In its statutory role of prescribing Government-wide procurement policies and regulations GSA has continuously worked with and in support of the President's Committee on Equal Employment Opportunity created by that Executive order. In addition, as a contracting agency GSA has an effective compliance program to promote observance of the requirements of the nondiscrimination clause contained in its contracts.

The Bureau of the Budget has advise that, from the standpoint of the administration's program, there is no objection to the submission of this report to your committee.

Sincerely yours,

BERNARD L. BOUTIN, *Administrator.*

VOTER EDUCATION PROJECT, ATLANTA, GEORGIA

The voter education project released today a chronological listing of 64 acts of violence and intimidation against Negroes in Mississippi since January 1961. Almost all of the incidents are directly related to efforts by Negroes to register to vote.

The last item on the list is the March 27 dispersal by Greenwood policemen and their dogs of Negro registration applicants, and the jailing of registration workers.

"We are sure this is not a complete list," said Wiley A. Branton, director of the voter education project. "It does demonstrate conclusively, however, the pattern of discrimination and violence which exists in Mississippi, and makes constitutional rights virtually inoperative in that State."

The listing, he pointed out, does not include the riot at the University of Mississippi last fall, nor subsequent harassment of James Meredith. "All the world knows that story, as it does the earlier stories of Emmett Till and Mack Parker. This listing, nearly all of which has been compiled from the daily press, shows that what happened at the university should have been expected by anyone familiar with the Mississippi record."

News release 2

Because of the near-fatal gun attack of February 28, 1963, against three voter registration workers, a concerted, saturation registration campaign was announced on March 1, 1963, in LeFlore County, Miss., of which Greenwood is the county seat.

The LeFlore campaign represents the combined efforts of the Mississippi Council of Federated Organizations, the National Association for the Advancement of Colored People, the Student Nonviolent Coordinating Committee, the Southern Christian Leadership Conference, the Congress of Racial Equality, and the local NAACP Youth Council.

The announced objective of the campaign is to get every qualified Negro in LeFlore County registered to vote, if he or she has any desire to do so.

This unprecented concentration of resources in LeFlore County has led, said Branton, to unprecedented results. "For the first time in a Mississippi county, there has been a breakthrough of the fear which has held Negroes back. Since March 1, over 500 have waited determinedly at the Greenwood courthouse, trying to register. Because of the long-drawn-out process in Mississippi, how many will be passed by the registrars is not yet known. Weekly mass meetings are thronged, and LeFlore Negroes are saying emphatically and courageously that they will not wait any longer to be treated as American citizens. And police suppression will not stop them."

News release 3

Branton also noted that the U.S. Department of Agriculture had made a welcome contribution to Negro morale by successfully pressuring the county to resume, on April 1, distribution of Federal surplus food, which had been cut off by the county last fall.

"This was interpreted by the local people," he said, "as an act of support and encouragement by the Federal Government."

"However," he continued, "the Federal Government has done little to protect the peace in LeFlore, or elsewhere in Mississippi. Sixty-eight years ago, in the case of *In re Debs*, the Supreme Court said that the 'entire strength of the Nation may be used to enforce in any part of the land the full and free exercise of all national powers and the security of all rights entrusted by the Constitution to its care.' The peace of the United States is broken and shattered by the lawlessness in Mississippi. The Federal Government has an obligation, which it is not fulfilling, to restore it."

The voter education project is a program of the southern regional council, with offices in Atlanta.

(The material referred to follows:)

CHRONOLOGY OF VIOLENCE AND INTIMIDATION IN MISSISSIPPI SINCE 1961

1961

January 1, Greenville, Washington County: Two young white men rode a motorbike through a residential area and, according to the local police chief, fired a volley of shots into a group of Negroes. George Mayfield, 18, was seriously wounded in both legs; Percy Lee Simmons, 19, was shot in the right leg.

March 30, Jackson, Hinds County: Club-swinging police and 2 police dogs chased more than 100 Negroes from a courthouse where 9 Negro students were convicted for staging a sit-in demonstration. Several were struck by the clubs and at least one person was bitten by the dogs.

May 7, Jackson, Hinds County: Several white youths, riding in an open convertible, lassoed 9-year-old Negro Gloria Laverne Floyd with a wire and dragged her along the street. The girl suffered a deep gash in her head that required three stitches, cheek bruises, a laceration of her right shoulder, and burn marks on her neck. Police made arrests.

August 15, Amite County: Robert Moses, Student Nonviolent Coordinating Committee (SNCC) registration worker, and three Negroes who had tried unsuccessfully to register in Liberty, were driving toward McComb when a county officer stopped them. He asked if Moses was the man "* * * who's been trying to register our niggers." All were taken to court and Moses was arrested for "impeding an officer in the discharge of his duties," fined $50 and spent 2 days in jail.

August 22, Amite County: Robert Moses went to Liberty with three Negroes, who made an unsuccessful attempt to register. A block from the courthouse, Moses was attacked and beaten by Billy Jack Caston, the sheriff's first cousin. Eight stitches were required to close a wound in Moses' head. Caston was acquitted of assault charges by an all white jury before a justice of the peace.

August 26, McComb, Pike County: Hollis Watkins, 20, and Elmer Hayes, 20, SNCC workers, were arrested while staging a sitin at the F. W. Woolworth store and charged with breach of the peace. They spent 30 days in jail.

August 27 and 29, McComb, Pike County: Five Negro students from a local high school were convicted of breach of the peace following a sitin at a variety store and bus terminal. They were sentenced to a $400 fine each and 8 months in jail. One of these students, a girl of 15, was turned over to juvenile authorities, released, subsequently rearrested, and sentenced to 12 months in a State school for delinquents.

August 29, McComb, Pike County: Two Negro leaders were arrested in McComb as an aftermath of the sitin protest march on city hall, charged with contributing to the delinquency of minors. They were Curtis C. Bryant of McComb, an official of the NAACP, and Cordelle Reagan, of SNCC. Each arrest was made on an affidavit signed by Police Chief George Guy, who said he had information that the two "* * * were behind some of this racial trouble."

August 30, McComb, Pike County: SNCC workers Brenda Travis, 16, Robert Talbert, 19, and Isaac Lewis, 20, staged a sitin in the McComb terminal of the Greyhound bus lines. They were arrested on charges of breach of the peace and failure to obey a policeman's order to move on. They spent 30 days in jail.

September 5, Liberty, Amite County: Travis Britt, SNCC registration worker, was attacked and beaten by whites on the courthouse lawn. Britt was accompanied at the time by Robert Moses. Britt said one man hit him more than 20 times. The attackers drove away in a truck.

September 7, Tylertown, Walthall County: John Hardy, SNCC registration worker, took two Negroes to the county courthouse to register. The registrar told them he "* * * wasn't registering voters" that day. When the three turned to leave, Registrar John Q. Wood took a pistol from his desk and struck Hardy over the head from behind. Hardy was arrested and charged with disturbing the peace.

September 13, Jackson, Hinds County: 15 Episcopal ministers (among them 3 Negroes) were arrested for asking to be served at the lunch counter of the Greyhound bus terminal. They were charged with inviting a breach of the peace. They were found not guilty of the charge on May 21, 1962, by County Judge Russell Moore.

September 25, Liberty, Amite County: Herbert Lee, a Negro who had been active in voter registration, was shot and killed by white State Representative

E. H. Hurst in downtown Liberty. No prosecution was undertaken, the authorities explaining that the representative had shot in self-defense.

October 4, McComb, Pike County: The five students who were arrested as a result of the August 29 sitin in McComb returned to school, but were refused admittance. At that, 116 students walked out and paraded downtown to the city hall in protest. Police arrested the entire crowd, but later released all but 19, all of whom were 18 years old or older. They were charged with breach of the peace and contributing to the delinquency of minors and allowed to go free on bail totaling $3,700. At the trial on October 31, Judge Brumfield, finding the students guilty, and sentencing each to a $500 fine and 6 months in jail, said: "Some of you are local residents, some of you are outsiders. Those of you who are local residents are like sheep being led to the slaughter. If you continue to follow the advice of outside agitators, you will be like sheep and be slaughtered."

October 5, McComb, Pike County: Charles Sherrod was arrested on the street, thrown into a police car, and charged with resisting arrest. Cordelle Reagan was also arrested and charged with contributing to the delinquency of a minor. Both were field workers for SNCC.

October 11, McComb, Pike County: Paul Potter, of Philadelphia, a vice president of the National Student Association and Tom Hayden, of Atlanta, both white, were dragged from their car and beaten as they drove alongside a group of Negroes making an antisegregation march. When the two slowed their car for a traffic light, a heavy-set white man opened the door and dragged the driver out and hit him several times. He then walked around to the other side of the car, opened the door and knocked the second man to the street. The incident occurred in the business section of the city.

October 13, McComb, Pike County: Police Officer B. F. Elmore shot and killed a Negro motorist. Police Chief George Guy said that Elmore said he had stopped Eli Brumfield at 4 a.m. for speeding. Brumfield allegedly jumped from his car with a pocketknife in his hand and attacked Elmore. A coroner's jury ruled Elmore fired in self-defense.

October 22, Jackson, Hinds County: Dion Diamond, a SNCC worker, was arrested for "running a stop sign" after being followed all day. In court the next day, the arresting officer told the judge, "He is a freedom rider. Throw the book at him." Diamond was refused legal counsel and fined $168.

November 9, McComb, Pike County: Jerome Smith, 22, Congress of Racial Equality (CORE) fieldman, and four companions, Dorothy Smith, 18, Alice Thompson, 22, Thomas Valentine, 23, and George Raymond, 18, were attacked by a mob of 30 to 40 whites when they sought service at the lunch counter of the Greyhound bus terminal in McComb. Smith, who suffered head injuries when he was slugged with brass knuckles during the attack, said FBI agents were present at the time of the attack, but did "nothing but take notes" while the mob kicked and beat his companions. The victims were rescued from the mob by a Negro truckdriver and Negro cabdrivers.

November 10, Jackson, Hinds County: Jessie Divens, 12-year-old, was arrested for refusing to move to the rear of a city bus. Judge Carl Guernsey released the girl to the custody of the Reverend G. R. Horton, chaplain at Campbell College where she attended classes. Judge Guernsey continued the case until November 17, "with the understanding that the Reverend Mr. Horton and the child come back with a workable plan which would cause the child's mind to be concerned with education rather than social reformation."

November 18, McComb, Pike County: Persons unknown fired a shotgun blast into the bedroom of Dion Diamond and John Hardy at 702 Wall Street. Investigating Officer Frank Williams found shotgun pellets embedded in the window frame.

December 1, McComb, Pike County: Four white men attacked three newsmen on the street, sending one crashing into a plate glass window of a store. The newsmen were Tom Uhrborck and Don Underwood, Life magazine, and Simmons Fentress, Time magazine.

December 2, McComb, Pike County: Police broke up an attempt by white attackers to drag three freedom riders from an automobile at the Greyhound bus terminal. Four men kicked at the locked car and beat upon the windows in an attempt to reach the young Negroes and their driver, Thomas Gaither, field secretary of CORE. The police, who were standing by when the riders arrived aboard a bus from Jackson, pulled the men away from the car, but made no arrests.

December 26, Jackson, Hinds County: Rafford Johnson, Negro, was severely beaten by two law officers after being involved in a minor collision with a car driven by a white woman. Johnson underwent surgery for skull injuries.

1962

February 6, 1962, Clarksdale, Coahoma County: Miss Bessie Turner, 19, a Negro, was walking with a young man down a Clarksdale street when Clarksdale police officers stopped them and accused Miss Turner of having been involved in a theft. Miss Turner said the officers took her to the jail, forced her to unclothe and to lie on her back. She said one of the policemen then beat her between the legs with his belt. A few minutes later, Miss Turner said, the other officer beat her across her naked breasts. Miss Turner filed Federal charges against the officers.

March 15, 1962, Shelby, Bolivar County: Aaron Henry, State president of the NAACP, was convicted in justice of peace court on charges of making perverse advances on a white teenage hitchhiker. Henry stated that the charges were a complete fabrication, and presented an alibi supported by sworn witnesses. The conviction has been appealed. When he later stated in a press conference that the prosecutor and the police chief, who figured in the trial, had conspired to frame him, Henry was sued by the two for defamation. A Mississippi white jury awarded the prosecutor $25,000 and the police chief $15,000.

April 12, 1962, Taylorsville, Smith County: Cpl. Roman Ducksworth, Jr., U.S. Army, a Negro, was shot and killed by Policeman Bill Kelly when, according to an NAACP news release, Duckworth "insisted on his right to sit where he chose on an interstate bus." Policeman Kelly claimed that Ducksworth was drunk and started fighting. No charges were brought against Kelly. Ducksworth was en route from Camp Ritchie, Md., to see his wife who was ill in a Laurel, Miss., hospital.

April, 1962, Lucedale, George County: Mrs. Ernestine Denham Talbert, who lives in George County but teaches in Green County, was notified by the Green County School Board that her teaching contract would not be renewed. Mrs. Talbert had tried in January to register to vote but had been refused.

May 17, 1962, Rankin County: The Negro editor of the Mississippi Free Press said he and a companion were beaten by Rankin County officers and a highway patrolman. Lawrence Hudson, Jr., of Jackson, said the beating occurred after he was stopped en route from Jackson to Forest to check on a rumor that a Negro man had been killed by a white man. He was jailed, refused permission to phone a lawyer, tried the next day on several charges and fined $151.

June 21, 1962, Clarksdale, Coahoma County: A white lawyer from Jackson and four college students were jailed in Clarksdale for 20 hours without outside communication. One of the students was a Negro. William Higgs, the lawyer, and the students were jailed on a Sunday night by county officers and were released the following day, without charges being filed against them.

July 5, 1962, Jackson, Hinds County: Jesse Harris, 20, and Luvaghn Brown, 17, SNCC workers, charged that they were beaten and threatened with death while serving a 30-day sentence in the county jail for contempt of court. The young Negroes had refused to move from a court bench customarily occupied by whites while they were attending the trial of Mrs. Diane Nash Bevel. The young men said that, in the courthouse elevator, a deputy sheriff called Harris "a damned nigger" and beat him about the head with his fist. At the county farm, they were singled out as freedom riders and wore striped uniforms. Both were beaten by guards. Harris was beaten by a guard named "Keith" while other prisoners held him. "Keith" beat him across the back with a length of hose threatening, "Nigger, I'll kill you."

August 16, 1962, Greenwood, Leflore County: Samuel Block, 23, SNCC field secretary, said three white men accosted him in a parking lot and "started beating me with their fists." He said they threatened him and then beat him for about 5 minutes. "There is no use reporting it to local authorities," he said.

August 17, 1962, Greenwood, Leflore County: SNCC workers Samuel Block, Luvaghn Brown, and Lawrence Guyot were forced to flee from the second story window of their voter registration office. They said armed white men invaded the premises intent upon doing them harm.

August 17, 1962, Ruleville, Sunflower County: Mayor Charles Durrough asked Mr. Lenard Davis, a Negro employed by the city, what he knew about the registration school being conducted at a Negro church. Mr. Davis replied that he didn't know anything at all about the school, and did not attend any of the classes. The mayor then told him that he, the mayor, knew what kind of school they were having. The mayor said he knew it (presumably civil rights for the Negro) was coming, but he wasn't going to allow it to be forced on them.

The mayor said that anyone attending the school would be given a one-way ticket out of town, and if that wouldn't do it, they would use whatever they had available. (See entry below for September 3, 1962.)

August 1962, Greenwood, Leflore County: Welton McSwine, Jr., 14-year-old Negro, was arrested by police after a white woman's house had been broken into. When police got the youth to the station, an officer said: "All right, nigger, you know why you are here, and we want to know who broke into that white woman's house." McSwine told them he knew nothing of the incident, saying that he spent all his time in the cottonfield, and suggesting that his mother could corroborate this. McSwine said officers then took him to a cell and beat him, first hitting him in the head with a blackjack; then one of the policemen beat him in the face with his fist while another hit him in the stomach with his club; then the officers made him lie naked on the floor on his side while they beat him with a whip. McSwine was released after intercession of his father's white employer.

August 21, 1962, Liberty, Amite County: Sam Wells and Tommy Weathersby went to the courthouse to register. While they were waiting to get into the registrar's office, they stood on the front porch of the courthouse. Deputy Sheriff Daniel Jones old them, "Get your ——— off the front porch, and don't come back on." Weathersby and Wells got off the porch. A few moments later, rain began, and the two wanted to take shelter in the courthouse, but Deputy Sheriff Jones would not permit it.

August 21, Liberty, Amite County: Dewey Greene, Jr., Mississippi Free Press reporter, was taking pictures of Negroes waiting to register at the courthouse. An unidentified young man working in the office down the hall from the registrar's office snatched Greene's camera away, and refused to return it. Greene was told to leave town by three white men, one of whom was flourishing a length of lead pipe. He left.

August 29, 1962, Clarksdale, Coahoma County: Seven Negroes were arrested after attending a voter registration meeting. David Dennis, CORE field secretary, was charged with "failure to yield right-of-way" after a police officer had forced him to submit to a long harangue of threats and abuse. Samuel Block, John Hodges, J. L. Harris, Richard T. Gray, and Albert Garrer, SNCC fieldworkers, and Dewey Greene, Jr. reporter for the Mississippi Free Press, were forced by Clarksdale police to alight from their car, and were charged with loitering in violation of the city curfew.

August 30, 1962, Indianola, Sunflower County: SNCC workers C. R. McLauren, Albert Garner, J. O. Hodges, Samuel Block, and Robert Moses were arrested by Indianola police on a charge of distributing literature without a permit. The registration workers had been taking leaflets announcing a registration mass meeting door to door in the Negro community. Lafayette Surney, 17, another SNCC worker, was arrested and then released to Rev. James Bevel, of the Southern Christian Leadership Conference (SCLC).

August 31, Indianola, Sunflower County: During the trial of Samuel Block on charges of distributing literature without a permit, the municipal judge informed Block that he could cross-examine the arresting officer. Block asked the officer, "Did you actually see me hand out a leaflet?" The judge turned to the officer and said, "He can ask you anything he wants to, but you don't have to answer." The judge told Lafayette Surney if he was caught in Indianola "agitating" again, he would be sent to the penal farm.

September 3, 1962, Ruleville, Sunflower County: Because of registration activity, two Negro-owned dry cleaning establishments were closed (allegedly for violating city ordinances).

September 3, 1962, Ruleville, Sunflower County: Lenard Davis, 49, sanitation department worker, was told by Mayor Charles M. Durrough, "We're going to let you go. Your wife's been attending that school." (He referred to a registration school conducted by SNCC workers in Ruleville.)

September 3, 1962, Ruleville, Sunflower County: Fred Hicks, 40, who drove field workers to the plantations, was told he could no longer use a bus without a commercial license. Hicks said the bus owner told him that, because Hicks' mother had registered to vote: "We gonna see how tight we can make it—gonna make it just as tight as we can. Gonna be rougher and rougher than you think it is."

September 3, 1962, Ruleville, Sunflower County: Moses and Amzie Moore, a local Negro leader, were walking down the street. A white man in a pickup truck drew up alongside and asked if they were the "folks getting the people

to register." Moses and Moore answered, yes, they were. The man asked if they could come out to his plantation to register people. The two answered, yes, they could come. The man said then, "I've got a shotgun waiting for you, double barrel."

September 3, Ruleville, Sunflower County: A letter from Mayor Durrough notified the Williams Chapel Missionary Baptist Church that tax exemption and free water were being cut off because the property was being used for "purposes other than worship services." The church was a meeting place for voter registration workers.

September 10, Ruleville, Sunflower County: Marylene Burkes, 20, and Vivian Hillet, 19, were severely wounded when an unidentified assailant fired through the window of Miss Hillet's grandparents' home. The grandparents had been active in voter registration work.

October 3, Biloxi, Harrison County: A Negro frame residence and a gasoline station were targets for two "Molotov cocktails" which caused more than $4,000 damage. One of the bombs struck the home of Dr. Gilbert Mason, a Negro physician, who is active in integration efforts. The other crashed through the window of a service station operated by Emmett Clark, a Negro.

October 5, Harmony, Leake County: Night riders fired shotguns into eight Negro homes and a Negro store. An elderly Negro said he was struck in the knee by a squirrel shot while he and his 9-year-old grandson were sleeping. He said he was not seriously hurt. Harmony Negroes had recently petitioned authorities for school desegregation.

October 10, Columbus, Lowndes County: A "Molotov cocktail" was tossed from a speeding car into the home of Dr. James L. Allen of Columbus, vice chairman of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights.

October 29, Clarksdale, Coahoma County: Charles McLaurin, SNCC registration worker, was stopped by police as he was taking a group home from the courthouse. The group had tried to register to vote. The officer asked to see McLaurin's driver's license. McLaurin showed it. The officer asked McLaurin what he was doing there. McLaurin told him he worked in voter registration. Then, accompanied by obscene remarks, the officer said, "Nigger, do you know the way out of town?" McLaurin replied, "Yes." The officer said, with more obscenity, "Nigger. Can't you say 'yes, sir?'" The officer's partner asked the officer what charge should be put on the tickets. The officer said, "Charge the _____ $26 on both charges." "Nigger, you got $52?" McLaurin replied, "No." The officer said, "Then you're going to jail." At the jail, McLaurin learned that the officer was Clarksdale Police Chief Ben Collins. McLaurin was in jail a few minutes when his companions posted bond for him in the amount of $103. They decided to forfeit bond rather than run the risk of a higher fine or incur the legal expense of an appeal.

October 31, Jackson, Hinds County: Thomas E. Johnson, a white minister, and a member of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, saw a group of neighbors dumping garbage on his lawn. Johnson had just returned from taking his car to a safe place because of threats by neighbors to damage it. Johnson sought a peace bond against the man whom he had observed leading the garbage-dumping operations of his neighbors. The man presented 11 witnesses who swore that he had been in their presence at all times on the evening in question. The justice of the peace accepted their testimony and refused the bond. Then the Hinds County Grand Jury indicted Johnson and his wife on perjury charges, because of their testimony at the peace bond hearing.

November 6, 1962, Greenville, Washington County: Two WAF's and two airmen (all white) from the Greenville Air Force Base were fined $55 and given 30-day suspended sentences on charges of creating a disturbance by entering a restaurant and seeking service with two Negro voter registration workers.

December 26, 1962, Clarksdale, Coahoma County: Ivanhoe Donaldson and Benjamin Taylor, students from Detroit, brought a truckload of food, clothing, and medicines for distribution to the Delta's needy families who had been cut off from Federal surplus commodities. (The medicines had been donated by a physician in Louisville, and were consigned to Aaron Henry, a licensed pharmacist.) They were arrested by Clarksdale police and held for "investigation." After police searched the truck on December 27, and found what they described as "a drug used to ease the pain of middle-aged women," Donaldson and Taylor were charged with possession of narcotics and bond was set at $15,000. Bond was later reduced to $1,500.

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January 17, Canton, Madison County: The castrated and mutilated body of Sylvester Maxwell, 24-year-old Negro, was found by his brother-in-law less than 500 yards from the home of a white family. Mississippi NAACP Field Secretary Medger Evers termed the slaying a "probable lynching."

February 2, Greenwood, Leflore County: Willie Peacock, SNCC registration worker, complained to the Justice Department that officials had refused to register him on two occasions, and had rejected his poll tax payment for this year.

February 20, Greenwood, Leflore County: Four Negro businesses on the same street as the SNCC voter registration office were burned to the ground. Mrs. Nancy Brand, a worker in the SNCC office, reported an anonymous telephone call in which a man's voice asked her if she ever came to the office. When she said "Yes," the voice said, "You won't be going down there anymore, that's been taken care of." The burned businesses were Jackson's Garage, George's Cafe, Porter's Pressing Shop, and the Esquire Club. The pressing shop is next door to the SNCC office, and SNCC workers believed the businesses were burned by mistake. Sam Block, SNCC field secretary, was arrested 2 days later for suggesting there was some connection between the burnings and the registration efforts of SNCC. He was charged with circulating statements calculated to create a breach of the peace.

February 28, Greenwood, Leflore County: Three registration workers were attacked with gunfire on U.S. Highway 82 just outside Greenwood. The shots were fired from a 1962 white Buick. The car in which the workers were riding was punctured by 11 bullets. One worker, James Travis of SNCC, was wounded in the neck and shoulder.

March 4, Clarksdale, Coahoma County: The show windows in the Fourth Street Drug Store were smashed, as they have been several times in the past. The proprietor of the store, Aaron Henry, found the damage when he returned from speaking at a mass meeting in Leflore County in connection with the voter registration drive there.

March 6, Greenwood, Leflore County: Samuel Block and three others were fired on from a station wagon which pulled up beside their car as they were parked in front of the SNCC voter registration office. Both front windows were shattered. Police later found the wadding from a shotgun shell buried in the head-liner of Block's car, and several pellets in the wall of the bulding in front of which the car had been parked.

March 12, Greenwood, Leflore County: A 12-year-old Negro girl was attacked by an egg-throwing truckload of white teen-aged boys. The girl suffered facial bruises.

March 20, 1963, Jackson, Hinds County: Three shots were fired through the windshield of a car belonging to Mrs. Mattie Dennis while it was parked in front of the home of Mrs. Dennis' cousin, whom she was visiting. Mrs. Dennis is the wife of David Dennis, CORE field secretary of Mississippi. Both have been active in voter registration.

March 24, 1963 Greenwood, Leflore County: Fire destroyed partially the interior of the voter registration office at 115 East McLaurin Street, making the office unusable and necessitating a search for new headquarters. Witnesses said they saw two white men fleeing the scene shortly before the fire was discovered.

March 26, 1963, Greenwood, Leflore County: A shotgun blast ripped into the home of Dewey Greene, Sr., father of the latest Negro applicant to the University of Mississippi. Another of Mr. Greene's sons and a daughter have been active in the Leflore County registration project. Greenwood police said they were investigating.

March 27, 1963, Greenwood, Leflore County: James Forman, executive secretary of SNCC, Bob Moses, and about 10 other registration workers were arrested and taken from a group en route to the courthouse to register after the police dispersed a group of more than 100 Negroes with the use of police dogs.

The CHAIRMAN. Will you identify the gentlemen at the table with you, Mr. Robinson?

STATEMENT OF BERL I. BERNHARD, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS; ACCOMPANIED BY SPOTTSWOOD W. ROBINSON III, MEMBER OF THE COMMISSION; HOWARD W. ROGERSON, DEPUTY STAFF DIRECTOR; WILLIAM L. TAYLOR, ASSISTANT STAFF DIRECTOR FOR LIAISON AND INFORMATION; AND C. CLYDE FERGUSON, JR., GENERAL COUNSEL

Mr. BERNHARD. At the far end of the table is Commissioner Robinson, dean of Howard University Law School. On my immediate left is Clyde Ferguson, general counsel of the Commission. On my right is Mr. William Taylor, the Assistant Staff Director. And on his right is Mr. Howard W. Rogerson, Deputy Staff Director.

Mr. Chairman and members of the subcommittee, I have already submitted an extensive statement and I will try to summarize the highlights rather than go through it verbatim.

I would say at the outset that the need for legislation to protect the rights of American citizens is terribly clear, and the events of recent days—and I have indicated them—speak more eloquently than I can about such need.

It seems clear to me and, I am sure, to all of you that the Negro citizens all over this Nation are determined to redeem the pledges of equal opportunity contained in our Constitution now and not at some indefinite time in the future.

The CHAIRMAN. I take it you are summarizing your statement?

Mr. BERNHARD. Yes, sir.

The Negro community has indicated, and I think we are aware, that if the Federal Government does not make available instruments to protect their rights, then redress will be had through community action, and this is bound to result in conflict.

The committee, in our opinion, is very wise in scheduling hearings which cover all phases of civil rights and civil rights denials rather than limiting testimony to the consideration of remedies in the voting area or deprivations in any one area.

If there is one thing we have become impressed by over the last few years it is that there is no single, limited approach which is likely to supply the solution to these problems. The fact remains that no voting bill can fully secure such citizenship unless there are people who have sufficient education to understand the proper exercise of the ballot and who are not so dependent that they are vulnerable to reprisals when they attempt to vote.

I would like to turn now for a minute to various segments of the bills.

The CHAIRMAN. Before you do that, I would like to ask you one or two questions along the following lines.

You have heard a great deal about the so-called Black Muslim movement. We have had quite a bit of their activities up in New York. We hear that efforts are being made for them to converge on Washington.

As I understand it—and you correct me if I am wrong—this group has a religious basis and is Mohammedan in nature; secondly, that they believe in segregation, contrary to the advice of, for example, organizations like the NAACP and other reputable organizations; thirdly, that they believe in a separate State in the Union; and, fourth-

ly, that they seek their aims by peaceful means and by force if necessary.

Now I would like you—if you can—briefly to tell us whether or not the Civil Rights Commission has addressed itself to that movement, and tell us if the Civil Rights Commission has come to any conclusion concerning that movement.

Mr. BERNHARD. Mr. Chairman, the Civil Rights Commission has not conducted a study on that movement.

My own thought comports with all you have stated; that it does believe in segregation, and it is based on Mohammedanism—and that has been held by courts—and they certainly believe in economic boycotts against white business.

It is very hard for me to appraise the movement. While we have some familiarity with it as it comes up in other contexts of our fact-finding, we do not have a study on it, and have no recommendations to make about it.

The CHAIRMAN. Do I understand that these groups are in our prisons and that they seek outward help to reform some of the criminals and then, secondly, convert them to their point of view?

Mr. BERNHARD. I have received this information, particularly regarding Lorton.

The CHAIRMAN. How many Black Muslims are there, if you know?

Mr. BERNHARD. It is quite unclear. At one point I had understood there were upward of 100,000, and I do not know whether this is an accurate figure.

One of the problems is that there is a good deal of decentralization—I guess I could say, in the movement—and that the records that are kept locally just simply are not consistent. I have had reports that there are no more than 20,000 and that there were many more than 100,000. I do not think anybody really knows.

The CHAIRMAN. From where do they get their funds?

Mr. BERNHARD. I am not entirely sure. I understand they get them from tithing as a religious tenet, but I do not know where else they get their funds.

The CHAIRMAN. Have you received any complaints about their activities?

Mr. BERNHARD. I think we have received a few of them—a very few. And we have not, as far as I know, reached any conclusion on these complaints. Mr. Ferguson may be able to enlighten you on that.

Mr. FERGUSON. We have received three complaints from the movement involving claims of deprivation of rights under the first amendment, and those complaints have come to us from California, and two from Missouri. They have been recent.

Mr. BERNHARD. Mr. Chairman, may I make a personal observation on that?

It strikes me that the Muslim movement is a movement that does grow out of futility and restlessness and impatience on the part of the Negro community, and I think it is a symbol of underlying discontent that even reinforces the need up here for legislation, because so long as the masses of the Negroes are dissatisfied there is always the possibility that they could resort to this. So I think it should serve as a warning to all of us that progress needs to be made.

I would like to turn first to the voting section of my comments and to the bills that are before you.

As you know, in the 1961 report of the Commission we found there were reasonable grounds to believe that substantial numbers of Negroes were being denied the right to vote in about 100 counties in 8 Southern States.

There has been considerable progress since that time, but one of the things I must point out is the conviction of the Commission that the basic facts concerning deprivation of the right to vote has not qualitatively changed since 1961, despite diligent efforts by the Department of Justice, resorting to the 1957 and 1960 acts to correct these problems. The 38 lawsuits filed by the Attorney General, I think, attest to this effort and determination.

As you know, the Commission did conclude that these laws which were passed by the Congress in 1957 and 1960 were very useful but they were too limited a means for dealing with the problem of mass disenfranchisement. Underlying this is the problem that judicial proceedings are slow and costly, and they are difficult. They proceed county by county and parish by parish. That is why the Commission recommended in 1959 the establishment of Federal administrative officers called registrars who would be able to register voters after an executive determination that citizens had been denied the right to vote because of their race. And it is why the Commission also determined that literacy tests and other performance examinations have been used extensively to deprive individuals of the right to vote, on arbitrary and unreasonable grounds. We, therefore, recommended to the Congress in 1961 that the completion of six grades of formal education should be considered sufficient to satisfy the requirements of any literacy or educational tests.

The CHAIRMAN. What is meant by performance examination?

Mr. BERNHARD. The type of performance examination is really a form of literacy requirement. Applicants are asked to state an interpretation of the Constitution to a registrar. And they may be, as we found, asked to distinguish between ex post facto laws and bills of attainder.

The CHAIRMAN. Is that a word of art—"performance"?

Mr. BERNHARD. I don't really think it is. I think it is a general term that would cover the situation where, under statutes requiring literacy tests, the registrars are given the discretion to ask an applicant to perform, to reflect his own competence to be a registered voter.

Mr. ROGERS. Mr. Chairman, you have made reference to Federal registrars as recommended in the civil rights report. Do you envision that the Federal registrar would be set up as a separate agent, or under the direction of the Federal court?

Mr. BERNHARD. The registrar concept, as the Commission envisioned it in 1959, was that if a significant number of complaints were received from any voting district, they would be investigated, and if it were found that there was a basis for the allegations and the complaints, and they were found to be true, then the President would appoint someone from that particular voting area to be a Federal registrar who would administer the State qualification laws, and, if he found the individuals qualified, they would be given certificates to vote.

Mr. ROGERS. Well, now, under the present system of most States there is a register of people qualified to vote. Now under your recommendation you would go fuurther and say that if a Federal court should determine that there is this pattern of discrimination, as speci-

fied in the Act we passed in 1960, the Attorney General could go in and get an injunction under the Civil Rights Act that we have heretofore approved.

Mr. BERNHARD. Let me make it clear, Mr. Rogers—I apparently have not—that the Commission recommendation would not have resorted to judicial proceedings at all; it would have been administrative, and the only time there would be an avenue of appeal would be after the Federal registrar had found individuals to be qualified; but the entire procedure would be established administratively and not under the pattern, practice and procedures of the 1960 law. There would be no judicial determination originally.

Mr. ROGERS. In your recommendation of Federal registrars?

Mr. BERNHARD. That is correct.

Mr. ROGERS. Well, then, who does make the determination administratively as to when a Federal registrar should become effective?

Mr. BERNHARD. The recommendation was rather open ended. It was at the time indicated that the President should, after an initial investigation, ask the Commission on Civil Rights or some other agency duly established to perform this function, and they, in turn, would make the findings administratively and report to the President.

Mr. ROGERS. And once the administrative findings are made, then it would be up to the President to appoint the registrars?

Mr. BERNHARD. That is correct.

Mr. ROGERS. And then those registrars would have the right to register those who in their opinion were qualified to vote?

Mr. BERNHARD. That is correct.

Mr. ROGERS. And then on election day they could go to the polling-place and say "Look, I have been qualified to vote according to the President's registrar who is down here to see that I had the qualifications." And then suppose that the election judges refuse him the right to vote. What action could he take then?

Mr. BERNHARD. At this point you would have to go in and get a court order enforcing the determination of that registrar.

Mr. ROGERS. Would that be sufficient, because he would not know until election day?

Mr. BERNHARD. Well, there are provisions. The Commission did not design an actual bill on this, although some were introduced along this line. But the idea was there could be the same procedures that are set up already in the 1960 act where they can impound the ballots pending a determination of the matter by court suit.

Mr. ROGERS. Well, what I am trying to find out, Is there an election method that has been proposed that we could enact now, and what is that method as you have outlined because there are a lot of pitfalls between the time the man is qualified to vote until he gets up there and gives his permission to mark his X or pull the lever in the voting machine.

Mi. BERNHARD. That is true.

It is not pending now, but there was a bill introduced in 1960 which covered the voting registrar proposal.

Mr. FOLEY. That was S. 2783 by Senator Javits, was it not?

Mr. BERNHARD. That is correct.

Mr. KASTENMEIER. It is also very similar to the Hennings amendment in the Senate and the amendment I introduced in the House.

It was narrowly defeated on the House floor after three votes, perhaps the gentleman will recall.

Mr. DONOHUE. Is not the provision in the 1960 act far more effective where once the pattern is established, some representative of the Department of Justice goes in and asks for an injunction?

Mr. BERNHARD. Well, the problem with——

Mr. DONOHUE. Having in mind, as you say, that if the local registrar disagrees with the Federal registrar, it requires court action to make a determination.

Mr. BERNHARD. That is right.

Mr. DONOHUE. On the other hand, injunctive relief is usually granted on an *ex parte* basis.

Mr. BERNHARD. Under the 1960 act one of the problems has been, and it is the reason why the President has asked for additional amendments to the 1960 act, the inordinate delay that takes place between the time an application is made for an injunction and when it is actually issued. They have some cases that have taken 19 months. There is a case filed in July of 1961 where they still don't have a court order.

The CHAIRMAN. By the time they get a court order the election is over.

Mr. BERNHARD. This is the problem. The problem is there are too many avenues of delay at the present time. There are many avenues of appeal. It is very difficult to get the Federal judges to issue an order, and it has been necessary at times to go up to the court of appeals and seek a mandamus. So it has just been slow.

Mr. DONOHUE. Pardon me, Mr. Chairman.

Is not the application made for a temporary injunction?

The CHAIRMAN. Yes, but even the application for the temporary injunction is surrounded by all kinds of dilatory activities on the part of counsel, and it is very difficult.

Mr. DONOHUE. Is it not discretionary with the Federal judge to grant it on an ex parte basis?

The CHAIRMAN. Some judges, I take it, will grant it; some will not.

Mr. BERNHARD. Even though there is a request for a temporary order, this does require a hearing, and the problem there has been that, to my knowledge, no temporary restraining order or temporary injunction has been issued in any voting case since the bill was passed in 1960.

Mr. DONOHUE. Well, in carrying out the thought expressed by Congressman Rogers you have a problem, say, in the Southern States where the local registrars will not qualify certain people for the voting privilege. Do you think that the appointment of a Federal registrar will change their disposition?

Mr. BERNHARD. Well, whether or not it changes their disposition, it might change the number of Negroes who are in fact qualified, who are put on the registration list.

Mr. DONOHUE. I mean—let us assume that they do not change their disposition——

The CHAIRMAN. Will the gentleman yield?

As I understand it, in a number of bills offered, the Federal registrar replaces the local registrar, and he has full power.

Mr. DONOHUE. That is not the impression I gained from the statements made by——

The CHAIRMAN. That is in the proposed legislation.

Mr. DONOHUE. Do I understand the chairman to mean that if this bill were enacted into law and a Federal registrar was appointed, he would displace the local registrar?

The CHAIRMAN. Yes.

Mr. DONOHUE. Who would take care of the local populace that were not apprised?

The CHAIRMAN. The local registrar.

Mr. DONOHUE. So there would be two registrars?

Mr. FOLEY. That is the provision of the existing law, that if the court finds the pattern of discrimination, it then is authorized by this 1960 act to appoint a Federal registrar who would handle cases of persons claiming discrimination in registration. If there is no complaint of discrimination, the local registrar would take care of those cases.

The CHAIRMAN. The proposed legislation provides the following, that the judicial council of the circuit shall prepare a panel of qualified registrars, and then, when application is made under certain conditions, for example, that if 15 percent or fewer of the qualified voters of a certain class or race are not registered, applications are then made to the court and it appoints a registrar from that panel that has been submitted by the judicial council.

Mr. DONOHUE. We are having considerable difficulty with these Federal judges in granting temporary restraining orders. Would you not be confronted with the same problem if you requested them—the same group of Federal judges—to appoint the registrars?

The CHAIRMAN. I would say as chairman of the Judiciary Committee that if those judges persist in refusing to abide by the statute that was passed—deliberately do so—we have a method by which we can crack their knuckles. We can bring them before this committee, or we can bring impeachment proceedings.

Mr. DONOHUE. Why do we not use our prerogative or power to make it mandatory for them to issue the temporary restraining order on an ex parte hearing?

The CHAIRMAN. Under the present situation I think there is something in the nature of discretion as to whether they can or cannot grant the temporary restraining order. Under the legislation proposed there would be very little discretion.

Mr. ROGERS. May I make this query, Mr. Chairman.

Suppose that the registrar is appointed under your bill, and on election day a man who is registered by the Federal registrar presents himself to the election polls, and the clerks and the judges there say, "Well, brother, we are not going to let you have a ballot"?

The CHAIRMAN. It is up to the court. Then the court can make orders on application requiring that the registrar or whoever the election officials are to give the ballot to him and then refusal would constitute contempt of the judicial order.

Mr. ROGERS. Would your bill go far enough to say that when the Federal registrar has been appointed and he registers someone, then every election judge, every person conducting the election shall recognize this, and if they do not recognize it they have committed a

crime subject to punishment; and if they do give them the ballots, that they are going to count them? Can we cover all that?

The CHAIRMAN. It is not covered in the bill, but I do not know whether that is necessary. The court itself has the right to do certain things in pursuance of previous orders of the judiciary, and I do not see how we can spell out all of those details in legislation.

Mr. FOLEY. Mr. Chairman, in your bill on page 5 it says this:

> The Attorney General shall cause to be transmitted receipted copies of any order declaring a person qualified to vote to an appropriate election officer. The refusal by any such officer with notice of such order to permit any person so qualified to vote at an appropriate election shall constitute contempt of court.

That answers that.

The CHAIRMAN. That would be contempt of court if he refuses him the ballot.

Mr. ROGERS. Thank you, sir.

Mr. COPENHAVER. May I ask a question?

The CHAIRMAN. Yes.

Mr. COPENHAVER. Mr. Bernhard, is it not correct that under the proposed temporary referee provision there still is a large chance of delay before that could be utilized? As I read it, the temporary referee comes after the Attorney General has obtained an order from the court under section E of 1971, but prior to the time that the court finds a pattern of practice, and that therefore a long period of delay would still occur, a long period of delay until the time that the court issued its initial order.

Mr. FOLEY. Under the provisions of the Attorney General's plan the court has to hear the application within 10 days. And, besides that, there was a further provision that all of these cases must be given expedition.

Mr. COPENHAVER. Not getting to the question of expedition, Mr. Counsel, the requirement to hear the complaint within 10 days only goes to the other group who are seeking to come within the pattern-of-practice provision. But it does not go to the original request for the order of the court. As I understand it, there is a requirement for a hearing and there is a requirement as I see it that the Attorney General bears the burden of proving that there is less than 15 percent of those qualified under State law to vote, which would be a very difficult fact to prove.

Mr. BERNHARD. In terms of your factual statement about the law, I believe it is accurate. The application, once the Attorney General files it, must be heard by the Federal Government within 10 days. There is no restriction or limitation as to when the Federal district judge must in fact issue the order.

One of the problems here, of course, is that it is not clear that any procedure could be devised which would overcome all delay, and I am not sure that the Congress can remedy this because a district judge must be left some discretion when he exercises his judicial responsibilities.

Of course, through mandamus proceedings right now a judge can act, but the problem arises, it seems to me, when the Congress attempts to tell a judge when he must rule on a particular matter.

Mr. COPENHAVER. Do you know, sir, the average period of delay that has been occurring between the issuance of the initial order and then the finding of a pattern of practice?

Mr. BERNHARD. This would be under the 1960 act?

Mr. COPENHAVER. Yes. Do you know roughly how long it has been taking?

Mr. BERNHARD. I don't have any actual figures. As I have indicated, I know of cases that have taken over 19 months, and I know of some still pending after a year and a half.

Mr. COPENHAVER. Under existing law there is a provision that the court may permit individuals to vote provisionally. However, there seems to be in that law the proviso that the person must be otherwise qualified under State law, and this seems to be a hooker that could slow down the use of the provisional voting requirement.

Mr. BERNHARD. Let me try to spell out what the problem may be here.

Under the proposal that is before this committee there is a requirement that after an application is made by the Attorney General the individual who is alleging that he has been discriminated against must come back again to attempt to register and if he is then found unqualified, then the rest of the provisions take effect. And what concerns some of the members of our Commission is that this may be another avenue of delay. But, even more important, it may result in some intimidation of witnesses who are afraid to come back.

The CHAIRMAN. Is it not true also that we have to be careful in drafting legislation that we do not encroach upon the judicial powers of the judiciary? We cannot go too far; we have to leave some discretion in the judiciary. Otherwise we are arming ourselves with a sea of troubles.

Mr. BERNHARD. These are article III courts, constitutional courts, and they must be given a wide area of discretion, and this is one of the problems we are a little concerned about in the proposal on the 15-percent section of the law that is before the committee.

The CHAIRMAN. So we cannot spell this out in infinite detail. Some discretion must be left to the courts on these matters. We put as many safeguards as we reasonably can in the bill, and particularly that expedition provision is most helpful here, and the chief judge of the circuit can go outside of the district and can bring a judge in if need be. That is about as far as we can go on this.

Mr. BERNHARD. That is true.

In total perspective, the Commission's position on the bill that is before the committee, in the voting area, is that it will perform some service in terms of expediting these procedures. It does not cover the problem of mass disenfranchisement. That would have been covered under the chairman's bill of last year dealing with sixth grade literacy. But, as the Commission sees it, while it may not overcome all problems of delay, it is a step forward, and therefore the Commission supports this voting bill, recognizing its limitations.

I would like to turn, if I might, to the proposals dealing with extension of the Commission on Civil Rights.

Mr. Chairman, before I proceed I would like to just go back and point out one thing which is of concern to the Commission.

H.R. 5455 requires that six grades of education be in an accredited school in order to establish the rebuttal presumption of literacy. I would just point out that today in the State of Mississippi 357 of the 642 State-supported Negro elementary schools are not accredited.

Thus, if the proposed legislation is even to accomplish the limited objective that I have directed my comments to, namely, easing the Government's burden of proof while not covering the problem of mass disenfranchisement, it is the opinion of the Commission that the requirement of accrediation in section 2(b) should be eliminated.

Mr. FOLEY. That raises another problem. Accreditation is a State function. In other words, New York doesn't have to recognize New Jersey or Connecticut schools, and Mississippi could change its State education law very easily and knock it into a cocked hat. Do you follow me on that?

Mr. BERNHARD. Precisely.

Mr. FOLEY. Here's the other facet of it. You may have a man or woman educated abroad in probably one of the finest schools, and that school is not accredited in New York or Mississippi. Also, we have the other factor, the English-speaking character of the school. Now many of the European schools, by the time they get at the secondary school, they already speak two languages, but the primary language in that school, say, is French, in France. But some of these proposals require English-speaking schools.

The CHAIRMAN. What do you suggest a substitute would be?

Mr. BERNHARD. I am not sure. It seems to me that if, in fact, the State supports an elementary or secondary public school, that this should be sufficient. If it's sufficient for the State to support that school, it would seem to me that that would be sufficient to raise the rebuttal presumption.

Mr. FOLEY. But then you discriminate against the private school student.

Mr. BERNHARD. I think it might be a legitimtae thing to indicate that the private schools would be included as well.

I think the whole problem here is certainly the question of accreditation or approval. If you leave the leverage to the State to determine what will be accredited or approved, it is entirely possible that the State may decide to remove the accreditation.

Mr. FOLEY. So the best thing to do is get away from the word "accreditation."

Mr. MCCULLOCH. I would like to ask the witness whether he thinks there is any test of that sort.

Mr. BERNHARD. Of sixth grade?

Mr. MCCULLOCH. A literacy test of any kind. Is there any need for a test other than the fact that a person is a citizen of a specified age and is of sound mind and not under any legal restraint?

Mr. BERNHARD. The position of the Commission was in 1961 that they would support legislation which would be to the effect that age, residence and nonconfinement at the time of voting would be sufficient to establish a person's right to vote. I think that may answer your question, sir.

Mr. MCCULLOCH. Do you have a personal opinion on that question?

Mr. BERNHARD. Well, it is my opinion that the country is moving away from the stages of illiteracy. I am not sure that education is by itself a proper basis for determining whether a person will cast his ballot wisely or not. But, in any event, we must recognize that now some 90 percent of the Negroes in this country are literate and our country is continually improving on this. I think so long as literacy is used as a basis for abuse against a particular race, so long as it is

involved in the misapplication of qualification laws, I think it is more important that we establish age and residence as criteria for voting.

Mr. FOLEY. How many States use literacy tests now?

Mr. BERNHARD. Seventeen I believe it is.

Mr. MCCULLOCH. I would like the record to show that my State has not had a literacy test for decades. We are rather proud of government, both State and local, in Ohio.

The CHAIRMAN. In Ohio, in other words, you don't require sixth grade or fifth grade or anything?

Mr. MCCULLOCH. No.

The CHAIRMAN. You spoke of what the original recommendation of the Civil Rights Commission was as to these tests. You gave your own opinion. What is the position of the Civil Rights Commission?

Mr. BERNHARD. The Commission has not moved away from its recommendation that either there be universal suffrage or that there be a sixth grade standard of education for conforming with any literacy test a State may devise. This would not involve a rebuttal presumption, and would apply in both Federal and State elections.

As the bill stands before the committee, the Commission feels that, while it is limited to the extent it does look to close the gap in terms of the delay now occurring in all of the lawsuits that are filed, this would be a step forward and therefore to that extent it should be supported.

The CHAIRMAN. Proceed.

Mr. BERNHARD. Turning to the Commission on Civil Rights. That is on page 6.

First of all, the Commission is in basic agreement with what the President said in his civil rights message on February 28.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask the witness a question there.

Does the witness individually or as a spokesman for the Commission think that it would be helpful to give the Civil Rights Commission permanent status?

Mr. BERNHARD. Well, Mr. McCulloch, the Commission feels that that is a matter in the discretion, the judgment of the Congress.

Mr. MCCULLOCH. All right, I understand that.

Mr. BERNHARD. Without meaning to be evasive.

Mr. MCCULLOCH. Do you, as an individual, object to giving the Civil Rights Commission a permanent status?

Mr. BERNHARD. I have questions in my mind as to the need to have the Commission a permanent body with the functions that it now has. At some point it is necessary to stop finding facts and to secure some action.

Mr. MCCULLOCH. Do you think that its functions will ever be completed in 4 years?

Mr. BERNHARD. Well, I think the position of the Commission on this—and it is my position as well—is that a simple extension of the Commission for 2 years would not be a significant contribution to advancing civil rights and equal opportunities; that 4 years it might be a little better in terms of staff. But the feeling is that the 4-year extension with some change in function would be adequate for the Commission to operate effectively. If the Congress sought to give it more, I think this would probably increase the efficiency, but 4 years seems to be adequate in the mind of the Commission.

Mr. McCULLOCH. The members of the Commission then feel that the length of the terms of each member resulting from an extension of only 4 years at this time would give that security and that permanency that it might effectively cope with the problems which have stimulated it up to this time?

Mr. BERNHARD. Well, on the assumption that included within that would be the change of function which would allow it to provide information and function as a clearinghouse, and provide advice and assistance.

I think I should say at this point that there is a strong feeling among our Commissioners that a simple 2-year extension without a change in function would not result in a substantial contribution.

Mr. McCULLOCH. I am glad to hear you say that, and I want to pursue this just a little further. Do you think a 4-year extension of the Civil Rights Commission would give the necessary time to perform the many duties which remain unperformed and, in addition thereto, to go into the field of voting frauds in the North where we have many instances of which many of us are not proud?

Mr. BERNHARD. Well, finishing off my other statement about the 2-year extension with no change, I think I should inform the committee that our Vice Chairman Dean Storey and Father Hesburgh, the president of Notre Dame, and another Commissioner have asked me to state that an extension of 2 years without a change would not be warranted.

To your other question, I think 4 years would probably allow the Commission to function much more effectively, and I think this would be more adequate.

In terms of voting fraud cases I have some misgivings. This is a personal thing. I do not represent the Commission here because it is a matter they have not discussed, but I have some question as to whether voting frauds fit within the Commission's proper jurisdiction. I can see that it may well be elevated to that level, although, I do not believe that the Commission ought to be given this function. But, of course, if it were given the function, I think it could carry it out.

Mr. McCULLOCH. How long has the Commission been in existence now?

Mr. BERNHARD. Five years.

The CHAIRMAN. I should like to read, at this point, a communication sent by Chairman John A. Hannah of the Commission on Civil Rights to the Speaker of the House. This letter is dated March 11, 1963, on behalf of the Commission on Civil Rights.

DEAR SPEAKER: I respectfully transmit herewith copies of a legislative proposal for extending the life of the Commission. The proposed length would, inter alia, extend the Commission for 4 years, authorize it to serve as a national clearinghouse to provide civil rights information and technical assistance to requesting agencies and to permit the Commission to concentrate its activities upon those problems within the scope of its statute which most need attention.

The provisions of the draft bill implement the portion entitled "Extension and Expansion of the Commission on Civil Rights" in President Kennedy's message on civil rights delivered to the Congress on February 28, 1963.

The Bureau of the Budget has advised us that enactment of this draft bill would be in accordance with the program of the President.

I would like to make this comment if I may: If we provide a permanent tenure of the Civil Rights Commission are we not embracing a

counsel of despair in the sense that we feel that the task is more or less hopeless and is going to take endless time before we can achieve the objective of equal rights for all?

Mr. BERNHARD. I find it difficult to disagree with that. When you talk about permanency you talk about a situation which is going on as long as any of us can envisage, and I would hope that, at the pace that progress is now being made and with what I conceive to be the accelerating pace over the next few years, I am not sure that you need a permanent Commission. Our main concern is that it is very difficult to operate on a 2-year basis where you periodically go through a phase-out program, where you have difficulty retaining competent personnel, where you have a training period before people can become objective factfinders. I do think more than 2 years is necessary.

I would stand behind, of course, what the Chairman has written.

Mr. MCCULLOCH. Mr. Chairman, I would like to comment on your question.

The suggestion contained in the bill introduced by some 30 or 40 Members of the House with respect to making the Commission permanent is not one of a conclusion of despair, but it is a conclusion that we are not going to solve this problem in 4 years. I respectfully submit we have been struggling with it for 100 years, and only in the last decade has there been any appreciable progress made.

And I noted the very careful language of the President to which the witness has referred when he says—

And that the life of the Commission be extended for a term of at least 4 years.

Now civil rights in my opinion, Mr. Chairman, have very many facets, and one of the civil rights which is just as fundamental as that a Negro may vote and have his vote counted is that any citizen of the United States may vote and have his vote honestly counted. That condition of voter fraud, tempered by some years in public service, is going to continue for more than 4 years, in my opinion, and it may be very necessary to have a central Federal authority looking over the shoulders of those who are consciously seeing that votes that may be cast are not honestly counted.

And let me say this further, Mr. Chairman, because I feel so strongly about this: if our representative Government is to fall it will fall ultimately by reason, among others, of the contamination of the elective franchise.

Mr. BERNHARD. Mr. Chairman, may I respond in part to that?

I don't mean to give you an impression that the Commission or I have come to the conclusion that this problem is going to vanish in the next few years. I see the possibilities for a more difficult and explosive situation than we have already faced. But the thing that I mean to convey is that, and this may be a peculiar statement for someone coming from the executive branch to make, I think there is a certain element of health in having the functions of any particular agency reviewed periodically by the Congress to determine whether it is still warranted.

Mr. MCCULLOCH. I certainly agree with that statement because we are so prone to give life to some bureaucracy and then fail to bring it to an end when we should. But we still retain that power, and if the Civil Rights Commission, because it is in such an emotional field, would need to be ended, I think that that objection to make it permanent could quickly be used, and effectively.

The CHAIRMAN. The only trouble is when we set up an agency, that agency tends to become swollen with power and to try to develop more and more, spread itself out, mushroom into a larger and ever larger agency. Human nature being what it is, I do not think that members of the Civil Rights Commission would be any different than anybody else. We could readily set this up for 4 years, and 4 years hence renew the duration of the Commission if necessary.

Of course, I agree with the general principles that you very eloquently expressed, but I do not think they are needed to bolster the contention that the Commission should or must be permanent.

Mr. KASTENMEIER. Do I understand that your position basically is that in terms of priority, which is most important, it is the scope of activity which is most important to you; if you have permanent status you may not be able to come back and get a change in scope of activity as you see the situation changing and perhaps see new activities necessary on the part of the Commission in future years. Is that correct?

Mr. BERNHARD. The real issue as the Commission sees it is the change in function. It is concerned about the 2-year problem. But 4 years or beyond is not as much of a concern as whether or not it is capable of doing more than simple factfinding.

I think if the Commission were given this responsibility now, namely, to act as a clearinghouse, to provide information and advice, it may very well be that 4 years from now or 5 years from now, whatever the time period is, you then could review whether this is still the appropriate function.

The one thing that the Commission has come to believe is that this is such a swiftly changing area, it is so volatile, that to pin any ultimate permanent responsibility on the Commission is not the wise thing to do. But something certainly is needed more than factfinding at this point in our history.

Mr. MCCULLOCH. Mr. Chairman, one further question and I shall not take any more time of the committee.

I would like to ask Commissioner Robinson what his feeling is about giving the Commission permanent life.

Mr. ROBINSON. Mr. McCulloch, it so happens that my view coincides with the view that Mr. Bernhard has expressed. I agree with Mr. Bernhard's statement that it is, of course, more important to amplify, in the fashion that has been recommended by the administration bill, the jurisdiction of the Commission than it is to consider merely the matter of an extension of the life of the Commission.

As Mr. Bernhard has pointed out, in the limited period of time, less than 2 years that I have been a member of the Commission, I have seen the problems that have been created. An extension of the period from 2 to 4 or 5 years will, of course, alleviate that problem.

Mr. MCCULLOCH. Will it solve the problem?

Mr. ROBINSON. I do not feel that it would. I have to concur with the expressions which have been made, that this is a field in which conditions are changing, and while I do not have a real feeling that we will have the civil rights problems of this Nation solved in either 4 or 5 years, yet it is wise to limit the life of the Commission to a period that would enable a review of the activities of the Commission, with congressional determination as to whether a further extension would serve a useful function.

The more important thing in my judgment, which is a judgment concurred in by other members of the Commission, is an amplification of the powers of the Commission because, as Mr. Bernhard has so aptly stated, there comes a point at which there is some question as to the usefulness of simply a factfinding authority in this field.

Mr. McCULLOCH. Thank you.

The CHAIRMAN. Proceed, Mr. Bernhard.

Mr. LINDSAY. Mr. Chairman.

The CHAIRMAN. Mr. Lindsay.

Mr. LINDSAY. I must say I am both encouraged and surprised to hear your comment that 2 years is not enough but that 4 years is sufficient.

As I view this problem, this is going to be a rising crescendo going up for decades in this country, and for all the excellent work the Commission has done we are barely scratching the surface. This problem isn't going to be solved in 4 years; it isn't going to be solved in 24 years or in 44 years. We are going to have increasing tensions and explosions all through the United States, and here is where you come in.

I was interested in your comment that you are an employee of the executive branch. Are you in fact part and parcel of the executive branch so that you must take instructions from the Executive, or do you have an independent capacity of some kind?

Mr. BERNHARD. I would say from recent occurrences, if there has been any question about the Commission as an independent agency, it has been made clear although by statute placed in the executive branch, it is an independent agency, has operated in an independent fashion, and I think those of you who are familiar with the operation recognize this.

Mr. LINDSAY. Do you feel free to speak independently or do you regard your position as being one of having to echo the sentiments of the executives or of the Congress, either way?

Mr. BERNHARD. In my own position I feel I am chief administrative officer of the Commission which is an independent agency and, therefore, my judgments are independent and should reflect the opinions of the members of the Commission along with my own.

Mr. LINDSAY. Mr. Robinson, how do you feel about that?

Mr. ROBINSON. I think that all members of the Commission feel that they not only have a privilege but they also have an obligation to exercise their statutory function independently. Certainly that has been my view, and certainly that has been my disposition during the time I have been on the Commission.

Mr. LINDSAY. How much in the last 2 years has the Commission been traveling? How many hearings have you had in various areas where there has been racial tensions for a collection of reasons?

Mr. ROBINSON. They would be in the neighborhood of maybe five.

Mr. BERNHARD. And what we have been doing over these past 2 years has been beefing up our State advisory committees with staff help, and many of them have been holding conferences and meetings with our support, and I think these have been very successful.

As you know, we have had some difficulty in holding one or two hearings because of other conflicts.

Mr. LINDSAY. Is it in fact correct or is it not correct that the Justice Department asked you not to hold hearings in Mississippi?

Mr. BERNHARD. The Justice Department made a request of the Commission that we not hold hearings because of the problems of the Meredith case and then the pending contempt case against the Governor. The Commission felt that this was a reasonable recommendation of the Attorney General and, therefore, did not hold hearings although it did direct me to beef up our investigative operation in the State, which we have done, and we intend to issue a report to the President and the Congress on the State of Mississippi, civil rights problems, Federal programs, voting, voting reprisals and intimidations, problems of official misconduct, sometime in September.

Mr. LINDSAY. Does that mean that every time there is a state of tension because of Meredith or something else that you are going to regard it as your wisest course to stay out of the area instead of moving in?

Mr. BERNHARD. I would think that would not necessarily be a wise course at all. I think each one of these things would have to be determined individually, but I don't think it is the disposition of the Commission to avoid the tense areas.

Maybe Commissioner Robinson would like to respond more explicitly.

Mr. ROBINSON. Quite to the contrary, Mr. Lindsay, the Commission has been deeply concerned about the recent developments in Mississippi, and it did on several occasions schedule hearings that were to have been held in Mississippi which were postponed at the request of the Attorney General and were finally cancelled.

Certainly insofar as my personal vote on the matter in the Commission is concerned, it was not simply because the Attorney General requested it. It was because the Attorney General requested it on the ground that a hearing by the Commission in Mississippi at the time would operate to hamper activities in which the Department of Justice was already engaged in that State.

We felt that the reasons that were given by the Attorney General were sufficiently cogent to justify us in the exercise of our own discretion in the matter not to hold the hearing in Mississippi as we had originally planned.

Mr. LINDSAY. Birmingham is one of the worst areas of tension and has been one of the most difficult and dangerous places for any person to be situated who was looking for the equal protection of the laws.

When was the last time you were in that neighborhood to have an airing of the problem?

Mr. ROBINSON. There has been no hearing of the Commission in Birmingham since I have been on the Commission. My tenure commenced in August of 1961.

Mr. LINDSAY. To what extent had the Commission by on site inspection, if I may use that overused word, apprised itself in detail of facts in Birmingham leading up to this present explosion that the country is now witnessing?

Mr. BERNHARD. We have had over the last few months a minimum of four people in Birmingham particularly looking at problems in the area of administration of justice and, to some extent, the problems and impact of Federal programs and whether or not they are being carried out in a nondiscriminatory manner.

Mr. LINDSAY. In the last 4 months you say.

Mr. BERNHARD. In the last 4 months.

Mr. LINDSAY. Is that underground or overt?

Mr. CELLER. We have been given no power to have a CIA in the Civil Rights Commission.

Mr. LINDSAY. They have power to have a hearing. I am curious to know whether this was a formal examination or whether it was purely an informal visitation.

Mr. BERNHARD. Well, these are hard words. I would put it in the sense of it being formally authorized but not publicized. I would not comment on overt versus covert, but I think it was perfectly well known that we had some people down there.

Mr. LINDSAY. It seems to me that one of the functions that the Commission can perform, is to fulfill the function that the Judiciary Committee of the Senate and House might otherwise be fulfilling, which is to travel and educate itself on the scene about what is happening in the United States. It is a little bit too comfortable here in Washington. And I would think that one of the functions of the Commission is to be on the scene to find out the facts intimately. You cannot discover them thoroughly in Washington. What would be your comment on that?

Mr. BERNHARD. I am in full accord. There is no disagreement there at all.

Well, we have had a limited number of formal hearings in terms of those which are formally authorized and provided for under the act.

We do what I consider to be at time almost excessive traveling. It is one of our major budget items. We organize our staff into the various subject fields, and I would say they are in the field considerably more than they are in Washington. I don't think they have been sitting around in the comfortable area too long, or, if they have, they may have sprained their ankle doing something, but predominantly they have been out of Washington.

Mr. LINDSAY. Do you have any further plans as a Commission in respect to the specific tensions in Alabama and Mississippi?

Mr. BERNHARD. Let me take Mississippi first.

The Commission has determined that, during the present life of the Commission, it will be impossible to hold a formal hearing in Mississippi.

In terms of what the Commission will do in Alabama, we will be having a meeting and I am quite sure that this will be a topic of discussion.

The Commission has, as you know, held a formal hearing in Alabama, and it is an area in which we continue to have investigations and investigative reports. I just don't know whether there will be a formal——

The CHAIRMAN. You have advisory committees, too, that go into various States.

Mr. BERNHARD. We certainly do.

The CHAIRMAN. They can conduct inquiries and gather a great deal of information which is then finally submitted to the Commission itself.

Mr. BERNHARD. I might give you an example of this, and I think it is relevant to the question you asked.

It was felt by the Commission that in Mississippi, where we had a great deal of difficulty in constituting and advisory committee for some time, if the Commission were not to go there—and I might say the advisory committee wanted the Commission to go there; the advisory committee itself should be authorized by the Commission to hold its own open conferences. People could come to the Committee, give it an indication of the problems, and the Committee, in turn, would attempt to do some investigation and issue some reports. We have had staff people assisting them. There have been three open meetings so far. Another one is scheduled. This has also been true in some other States, and, as I say, there has been an increasingly——

The CHAIRMAN. I want to cite this point, this report of the Mississippi advisory committee to your Commission did a remarkable job, and the pamphlet that was published is most revealing and most cogent and indicates a most painstaking inquiry as to conditions in the State of Mississippi. I commend that pamphlet to every member of this committee. It is called A Report On Mississippi—January 1963.

Mr. MCCULLOCH. Mr. Chairman, if the gentleman from New York will yield to a question.

Mr. LINDSAY. I have concluded.

Mr. MCCULLOCH. I would like to ask this question in view of the fact that, in response to a question of our colleague from New York, Mr. Lindsay, that there had been three or four staffmen from the Commission in Birmingham for the last 3 of 4 months.

First of all, would you tell us what kind of work they were doing, and second, what reports they made back to the Commission of what they discovered, and whether or not that was made available to the Department of Justice, and whether or not it was made available to newsmen.

Mr. BERNHARD. First, the staff people that have been in Birmingham were doing investigative work regarding problems of the administration of justice, and they were particularly investigating the handling of protest movements by the police authorities. They were also interested in the impact of Federal programs, and I think these were the two main things they were doing.

The reports they submitted have been made available to us, and, of course, the Commission, to the extent the Justice Department has been interested in them, they have had access to them. They have not been made available to the press. They will go into the final reports that the Commission will issue dealing with both of these areas.

Mr. MCCULLOCH. Mr. Chairman, if it be in accordance with protocol and with proper procedure, I would like to have those reports made available to the committee as a part of these hearings.

The CHAIRMAN. I think that is a good suggestion. We would like to have them.

Mr. BERNHARD. There is no objection to that at all.

The CHAIRMAN. Submit them to us.

(The matter referred to is contained in the committee file.)

Mr. MCCULLOCH. Did the Commission make a recommendation to the executive department of the Government that Federal funds be withheld from any Southern State or any political subdivision of any Southern State by reason of violation or attempted violation of any law or constitutional provision affecting civil rights?

Mr. BERNHARD. Mr. McCulloch, I think that it would be best if one of our Commissioners responded to that.

Dean Robinson.

Mr. ROBINSON. On April 16, 1963, the Commission submitted to the President an interim report with respect to the equal protection of laws in the State of Mississippi. This report contained three recommendations. One was that the President formally reiterate his concern over the Mississippi situation by requesting all persons in that State to join in protecting the rights of U.S. citizens and—in accordance with his duty to take care that the laws be faithfully executed—by directing them to comply with the Constitution and the laws of the United States.

The second recommendation was that the President strengthen his administration's efforts to suppress lawlessness and provide Federal protection to citizens in the exercise of their basic constitutional rights.

There was a third recommendation to which I think the question is specifically referable, that the Congress and the President consider seriously whether legislation is appropriate and desirable to assure that Federal funds contributed by citizens of all States not be made available to any State which continues to refuse to abide by the Constitution and laws of the United States, and, further, that the President explore the legal authority he possesses as Chief Executive to withhold Federal funds from the State of Mississippi until the State of Mississippi demonstrates its compliance with the Constitution and laws of the United States.

I would like to take just a moment to explain this.

Mr. MCCULLOCH. Mr. Chairman, I just want to say that I was particularly interested in this field activity or recommendation, if any, by reason of a penalty that was once visited on the State of Ohio for alleged violation of a rule or regulation promulgated by some official in the executive department.

Ohio was then very unhappy by reason of that penalty which was visited upon the State; remains unhappy by reason of that penalty; was very pleased at the action of the chairman of this committee, which sought to see that Ohio was reimbursed for that penalty visited upon it by executive action.

I am hopeful that if the Commission and if the staff has not become familiar with that case, that they take it out, dig it out and get all of the facts.

Many years ago the needy in Ohio were denied approximately $2 million of Federal funds, more than a fair share thereof which had been contributed by Ohio, by reason of the alleged violation of a rule or regulation by the chief executive of Ohio who was of the same political party of the President. The needy aged did not get that money although this committee favorably reported a bill to the House that Ohio be paid and although the Congress passed that bill well nigh unanimously, Ohio still has not been paid.

I do not like the visitation of such upon any State or any political subdivision thereof unless the law is clear and certain. I expressed that feeling recently to a Cabinet member in another case, and I am very happy to say that the regional threat of such a penalty was not carried out.

I am sorry to belabor that.

The CHAIRMAN. I was very happy to vote for that.

Mr. MCCULLOCH. I want to give you, Mr. Chairman, every appropriate credit for the fairness with which you disposed of your responsibility in that matter.

Mr. ROBINSON. Mr. Chairman, I wonder if I might have just a word of explanation.

It must be stated that press accounts and interpretation of this third recommendation have characterized it as a plea that there be a blanket withdrawal of all Federal funds from the State of Mississippi.

These interpretations are a misunderstanding of the Commission's purpose in making this recommendation. By this recommendation the Commission was seeking remedial, not penal or punitive, action. What the Commission had in mind was that the expenditure of Federal funds be made in a manner which would benefit all citizens without distinction on account of race or color. What it had in mind were safeguards against the use of Federal funds in a way that encourges or permits discrimination.

The report itself states that the Commission's goal is that all citizens in the United States be assured the full enjoyment of the rights guaranteed by the Constitution.

The report further stated that—

the Commission does not want the people of Mississippi, either Negro or white, to lose benefits available to citizens of other States.

And in the Commission's view from the evidence at hand, insistence upon nondiscrimination would not lead a State to reject Federal benefits. As a matter of fact, the experience under existing policies of nondiscrimination indicates that the contrary is true.

Last year there were 11 colleges and universities in the South that agreed to admit qualified Negroes to summer studies that were financed under the National Defense Education Act rather than lose the benefits of the program. And this year several schools in Florida and Texas desegregated their schools rather than lose the funds available under the impacted areas law. And only a few years ago Mississippi herself decided that a veterans hospital that was open to all citizens was preferable to no hospital at all. Experience under the housing and employment orders has been similar.

So I say that there is every reason to believe that if the Federal Government insists upon nondiscrimination in its programs the result will not be the denial of Federal benefits but, rather, their extension, and on an equitable basis.

Mr. MCCULLOCH. Mr. Chairman, I would have no fault to find with that statement, but when there is to be a denial of Federal funds or if there is to be a penalty inflicted for violation of Federal laws, or of the Constitution, then those funds should be denied or the penalty affixed in strict accordance with law and not in accordance with the determination of any individual as an administrative or executive matter. That is my firm conviction. That is one of the ways that we can be sure that we will safely proceed and that we will not proceed in accordance with the wiles and caprices of any given person at any given time when emotions may be running high.

The CHAIRMAN. And beyond that, Commissioner, think of what a kettle of fish you are going to have if you follow the recommendation of your Commission. You would proscribe Mississippi, and I take it

you would proscribe Alabama. You would have to proscribe some other States which discriminate.

What degree would the discriminaton have to be before you issue that proscription: that no Federal funds should be expended in those States? Many of the States deny the right to the Negro to vote. Virginia has proscription, South Carolina has it. Where would this all end? You would probably find yourself in a position where you have seven or eight States that would be subject to that kind of interdiction. It would be mighty serious. Who is going to determine where the line shall be drawn?

As my colleague from Ohio says, it would have to be drawn by some individual, and we are a government of law and not a government of men.

And beyond that also, Congress appropriates funds. Congress must determine how those funds shall be appropriated and the conditions under which the appropriation should be made; not the President, not the executive branch.

Unless Congress acts, I do not see how that recommendation of the Civil Rights Commission can be carried out.

Mr. ROBINSON. Mr. Chairman, I called attention to the fact that this was a recommendation that was submitted in part to the Congress and in part to the President.

Now in each instance what the Commission had in mind, as I have already indicated in answer to Mr. McCulloch, was remedial action, not punishment.

It seems to me, and certainly this was my notion at the time that I subscribed to this recommendation, that the limit of the action that would be taken in this regard, whether by the Congress or by the President, would be such as would be best calculated to make certain that whatever the violations of the Federal Constitution or Federal law might be, they might best be remedied by the use of this measure.

Mr. MCCULLOCH. Could I interrupt the witness right there. I would like to throw this out because it is apparent that a great deal of thought was given to this recommendation and it might be considered more.

You know if that recommendation were implemented in a positive fashion, and you know I use the word "if," are you not going to hurt most those who need those Federal funds which are supplied to those political subdivisions?

Mr. ROBINSON. I think not. Some of the commentators have assumed that certain direct benefits to individuals were included in this recommendation, but actually a careful reading of the Commission's report will demonstrate that the Commisson excluded such programs from its proscription of Federal funds which benefit Mississippi, and included only such fund programs as grants-in-aid to the State——

Mr. MCCULLOCH. What?

Mr. ROBINSON. Grants-in-aid to the State, military and construction contracts, civilian and military payroll, public work projects and the like.

It contains no suggestion, that veterans' benefits, welfare funds, surplus food, unemployment compensation, or other programs for the direct benefit of individuals should be cut off in any circumstances.

Mr. McCULLOCH. And if I can interrupt again, I understood the recommendations that the Commission made, and I cited the example of Ohio as one instance of aid to needy aged which was cut off under such circumstances.

Military contracts, grants-in-aid and construction funds, of course, provide job opportunities for those who have no assets otherwise, and that was one of the reasons that I said that the thing could hurt those most.

Mr. BERNHARD. The only response I would have on that is that what the Commission hoped was that the very people who do not now have access to jobs that are provided under the grants-in-aid fund and the highway construction and the airports and the Hill-Burton construction would be assured the opportunity to get such jobs, and under the military contract. The idea there is not that they be denied, because they are now denied in most places that the Commission was referring to.

Mr. McCULLOCH. You say there are people being denied job opportunities by reason of race where Hill-Burton Act funds are concerned and where public highway funds are concerned in view of the statement that was made here earlier today?

Mr. BERNHARD. That is my information.

Mr. Ferguson would like——

Mr. McCULLOCH. Is that discrimination pronounced and easily provable?

Mr. FERGUSON. In the case of Mississippi there is no doubt whatsoever that there is such discrimination based on race.

Mr. McCULLOCH. Have you been calling that to the attention of the President, the Vice President, his committee on equal job opportunities, and to the segments of the GSA which has responsibility in this field?

Mr. FERGUSON. As a particular example, we can indicate——

Mr. McCULLOCH. Well, have you?

Mr. FERGUSON. Yes, we have.

Mr. McCULLOCH. All right. Now you can give us your specific examples.

Mr. FERGUSON. The example we have involves a shipyard located in southern Mississippi doing completely Federal Government contract work. Out of that particular shipyard we received, through the operations of our State advisory committee, no less than eight complaints in a single month, that month being last January. Those complaints were referred to the President's Committee. There have been investigations, I know, on those, and they are still pending——

Mr. McCULLOCH. How long ago was that?

Mr. FERGUSON. This was in January of this year.

Not only have we had complaints out of that particular Federal contract, but we have had complaints from other Federal contractors. Not only that, but we have had complaints in employment by the Federal Government itself, and those have been referred to the President's Committee. We referred one only recently involving the civil service to the Civil Service Committee.

And I can say generally from our investigations in Mississippi that there is absolutely no question at all but that there is segregation and discrimination in Federal programs, and to a large extent Federal funds have been used not only to exclude Negroes but have also been

used in some instances as retaliation where Negroes have sought to exercise other constitutional rights.

Mr. McCULLOCH. And this discrimination goes on in highway building down there under this great program which has given us this interstate highway program upon which we have spent billions of dollars?

Mr. TAYLOR. There is clear evidence, I think, reflected in the Commission's 1961 report that there is in many areas discrimination in employment created by highway programs, by construction programs generally, and by a number of other Federal grants-in-aid programs.

I would point out that this discrimination is not presently prohibited by the existing executive order on employment, and that the Commission has recommended both to the President and to Congress that the order be amended so that it would prohibit discrimination in employment which is created or assisted by the Federal Government through grants in aid, as well as by contract where there presently is a prohibition.

Mr. McCULLOCH. How long have you been making those recommendations?

Mr. TAYLOR. We made those recommendations in 1961, sir, in our 1961 report.

Mr. McCULLOCH. I am glad to know that.

The CHAIRMAN. Mr. Bernhard, would you like to complete your testimony before we adjourn for the morning? Would you try to summarize as briefly as you can the balance of your statement.

Your statement will be placed in the record, your full statement.

Mr. BERNHARD. In view of that, Mr. Chairman, I do not think it is really necessary for me to comment except to say that the Commission did recommend in 1961 that the Congress enact legislation which would provide financial aid to school districts on a matching basis for the employment of specialists in desegregation problems, and, secondly, there be technical assistance to school districts or citizens to train school personnel and others to prepare for desegregation.

In the President's message it has been indicated that such a bill will be introduced, if it has not been already introduced, and the Commission supports this.

I do not think it is necessary for me to say anything more than I have already said in the area of administration of justice or in the area of Federal grants in aid. It is covered in my statement.

In short, the Commission's position overall is that it stands in support of the legislation on voting, recognizing whatever limitations there may be. It stands for the legislation being offered in regard to any school or district undergoing desegregation.

It feels some agency should be given the authority to act as a clearinghouse to give advice to industry, unions, to private organizations, to the Federal, State and local governments on a voluntary basis when it is requested. Whether the Commission should be the body to do that is a matter on which the Commission does not take a position and feels that is the judgment of the Congress.

Thank you.

The CHAIRMAN. Counsel?

Mr. FOLEY. Mr. Bernhard, coming back to this question of employment discrimination that you referred to, were they contracts where the Government was a contracting party or were they private con-

tracts, or contracts with a State and a private industry in which the Government provided some financial aid? For instance, you referred to the Mississippi——

Mr. FERGUSON. Shipyard.

Mr. FOLEY. What is that? Pascagoula?

Mr. FERGUSON. Yes. It was a direct Government contract.

Mr. FOLEY. Who was the contracting agency?

Mr. FERGUSON. The Navy Department.

Mr. FOLEY. At any time prior to 4 months ago when you had members of your staff in Alabama did the Commission or any of its staff do any work in Alabama at all?

Mr. BERNHARD. Yes. We held formal hearings involving the deprivation of the right to vote, and we were down in Alabama on two different occasions as a commission. It happened to be a time when we subpenaed many records. We were involved in Macon County which is the basis for the Department of Justice suits; in Bullock County. We looked as far as Dallas and Wilcox and Selma Counties in Alabama, where Negroes had not been voting since 1901.

Mr. FOLEY. Did you ever look into the voter problem in Birmingham?

Mr. BERNHARD. We have had a number of complaints from Jefferson County and have looked into these. We have also asked our advisory committee to look into some of these, and the committee has decided it would be appropriate for the Commission to reconsider what its responsibilities are in Birmingham.

The CHAIRMAN. Thank you very much.

(The following statements were submitted for the record:)

TESTIMONY OF BERL I. BERNHARD, STAFF DIRECTOR, U.S. COMMISSION ON CIVIL RIGHTS

Mr. Chairman and members of the subcommittee, I am Berl I. Bernhard, Staff Director of the U.S. Commission on Civil Rights. I appreciate this opportunity to state the Commission's views on pending civil rights legislation.

It is not my purpose to make an extended argument about the need for legislation to protect the constitutional rights of American citizens. The events of recent days and weeks in Oxford, Miss.; Birmingham, Ala.; Washington, D.C.; Chicago, Ill.; and other areas are more eloquent testimony to that need than I could hope to present. It is clear to me, as it must be to you, that Negro citizens all over this Nation are determined to redeem the pledges of equal opportunity contained in our Constitution now—not at some indefinite time in the future. To those who would hear, they are saying that if the Federal Government does not make available instruments for the protection of rights through its legal institutions, then redress will be sought through community action. And though peaceful and proper in concept and intent, that action is bound to result in conflict so long as the processes of the law are not responsive to these immediate needs. It is for this reason that the protests in Birmingham and elsewhere are more persuasive arguments to Congress about the need for legislation than hundreds of phone calls, letters, and telegrams or thousands of pages of testimony.

Thus, these hearings are timely. And it seems to me that the committee was very wise in scheduling sessions covering all of the areas in which the rights of citizens are being denied, rather than limiting itself to a consideration of remedies for voting deprivations or deprivations in any one particular area. For, if our Commission has been impressed with one fact during its 5 years of investigating denials of rights, it is that no single, limited approach is likely to provide a solution for all the denials which must be remedied. The right to vote is the key to full citizenship, but no voting bill can secure fully that right so long as citizens are denied the educational opportunities to exercise the ballot intelligently or are so economically dependent that they are vulnerable to reprisals when they attempt to vote. Equal educational opportunity is crucial, but it will not be attained so long as patterns of enforced segregation in housing result in

segregated schools, and where the will of the Negro child to learn is crippled by knowledge that he does not have a fair chance to compete for jobs.

The Commission believes, then, that comprehensive legislation is necessary if constitutional rights are to be secured. Basing my remarks upon our Commission's past recommendations, I would like to outline the elements of a meaningful package of bills.

I. VOTING

In its 1961 report on voting, our Commission found that there were reasonable grounds to believe that substantial numbers of Negro citizens were being denied the right to vote in about 100 counties in eight Southern States. Although some advances have been made since that time, the Commission is convinced that the basic facts concerning deprivations of the right to vote are not qualitatively different in 1963 from what they were in 1961. This is the case despite a diligent effort by the Department of Justice to enforce the Civil Rights Acts of 1957 and 1960. The 38 lawsuits instituted by the Attorney General under these acts attest to this effort and determination.

Our Commission has concluded that although the 1957 and 1960 laws are useful, they are too limited a means for dealing with the problem of mass disfranchisement. Judicial actions generally proceed county by county, parish by parish. They are time consuming, expensive and difficult.

That is why, in 1959 the Commission recommended the establishment of a system of Federal administrative officers, called registrars, with power to register voters after an Executive determination that citizens had been denied the right to vote because of race. That is also why the Commission, after determining that "literacy tests and other performance examinations have been used extensively to effect arbitrary and unreasonable denials of the right to vote," recommended in 1961 that Congress enact legislation establishing the completion of six grades of formal education as sufficient to satisfy the requirements of any "literacy" or "educational" test.

Title II of H.R. 1768, introduced by Representative Celler, would carry into effect the Commission's recommendation on literacy tests, at least with respect to Federal elections. (With the committee's permission, I would simply like to submit at this point the testimony of Dean Griswold on the substantive and constitutional merits of identical legislation which was pending before the Senate last year.)

Section 2 of H.R. 5455, introduced by Representative Celler on behalf of the administration, also attempts to deal with the abuse of literacy tests, but in terms narrower than the Commission's recommendation or H.R. 1768. It would require that literacy tests be in writing and that a copy of the test and the answers be furnished to applicants. It would also create a rebuttable presumption in judicial proceedings that the completion of six grades in an accredited school is sufficient to establish literacy for the purpose of voting in Federal elections.

The value of this provision is that it would ease the burden of proof which the Government now faces in establishing the qualifications of voters in judicial proceedings. Its limitation (and that of H.R. 3139 which contains a similar provision) lies in the fact that it would still require proof of qualifications on a case-by-case basis, rather than uniformly substituting the objective standard of a sixth-grade education for the oral and written tests so extensively misused as a device for racial disfranchisement. It should be noted too that H.R. 5455 requires that the six grades of education be in an accredited school in order to establish even a rebuttable presumption of literacy. Today in the State of Mississippi, 357 of the 642 State-supported Negro elementary schools are not accredited. Thus, if the proposed legislation is to accomplish even the limited objective of easing the Government's burden of proof, the requirement of accreditation in section 2(b) should be eliminated.

A second objective of H.R. 5455 is to afford speedy relief in suits brought under the 1957 and 1960 Voting Acts. This would be accomplished by requiring Federal district judges, upon a showing by the Attorney General that fewer than 15 percent of the Negroes of voting age in a particular county were registered to vote, to appoint temporary voting referees or himself to hear the applications of persons who allege that they have been discriminated against in attempting to register. The application of the Attorney General would have to be heard within a period of 10 days and orders issued on the application could not be stayed beyond the date of an upcoming election.

The applicability of this provision, as a legal proposition is limited, for even absent congressional authorization, a Federal district judge in the exercise of traditional equity powers can afford temporary relief to persons who have been

denied the right to vote because of race. This relief could include orders permitting them to register and vote pending the outcome of the lawsuit. Thus, the legislation here will in fact apply mainly to those Federal judges who would be reluctant to grant such relief unless they were under congressional direction.

There are further limitations which should be noted. Under section 2(ç), even an applicant who has previously been denied the right to vote must demonstrate that he has again been denied the right after the initiation of the lawsuit. This seems to require a new effort to register and, if this is so, it may curtail substantially the number of applicants who will benefit from the appointment of temporary referees, especially in areas where persons attempting to register are subject to intimidation and reprisal. This difficulty might be alleviated if the requirement of a new registration attempt imposed by section 2(c) were eliminated.

Further, although the time schedule for hearing and deciding applications is set forth in some detail in the legislation, it is not clear that the procedures preclude all possibilities for delay. We do not suggest this can be remedied. A district judge must be left room for the exercise of discretion, or questions of constitutional magnitude about legislative interference in the judicial processes may arise. But it should be understood that as long as possibilities for delay inhere in the procedures for affording temporary relief, the objectives of this legislation may be frustrated.

Thus, H.R. 5455 should be placed in proper perspective. It does not represent an attempt to deal with mass disfranchisement, as would a bill authorizing the appointment of Federal registrars of legislation (H.R. 1768) dealing with the misapplication of literacy tests. It is an attempt in particular situations to expedite proceedings within the existing judicial framework.

While the prospects for achieving this united objective are very difficult to assess, it is hoped that enactment of this legislation will be a step forward in securing the right to vote.

II. COMMISSION ON CIVIL RIGHTS

Turning now to the various proposals to extend the Commission on Civil Rights, the Commission is in strong agreement with the position expressed by the President in his February 28 civil rights message.

The Commission has been in operation for more than 5 years. During this time it has held hearings, investigated complaints, and ascertained the extent of progress regarding constitutional guarantees in all sections of the Nation. These investigations have led to reports on deprivations of the right to vote and on denials of equal protection of the laws in education, employment, housing, and the administration of justice. Currently, in addition to the subjects mentioned, we are preparing reports on the status of equal opportunity in the Armed Forces, on the access of minority groups to hospital facilities constructed under the Hill-Burton Act, on the civil rights of Spanish-speaking Americans, and on the state of constitutional guarantees in Mississippi. The Commission's reports have culminated in a great many recommendations, a number of which have been acted upon by the President and Congress.

Many areas remain to be investigated fully. This will always be the case. But it is appropriate to ask at this juncture whether the demands of history call for more facts or more action. The Commission is satisfied that the facts it has already uncovered and reported about denials of equal protection and voting rights provide an ample basis for considered Federal action.

General investigations may continue to be needed but the major question before Congress is whether the Commission's factfinding role can be redefined in a manner which will permit it to perform a service of maximum benefit to the Nation. In his message, the President said that "As more communities evidence a willingness to face frankly their problems of racial discrimination, there is an increasing need for expert guidance and assistance in devising workable programs for civil rights progress." The need, the President said, is for information about the methods by which these problems have been solved in the past, for a forum to open channels of communication between contending parties, for an agency able to give the kind of advice and assistance which will contribute to peaceful and permanent solutions to racial problems.

The Commission's experience bears out this analysis. Our annual education conferences, held for the purpose of gathering facts, have had the collateral effect of bringing together educators from all parts of the Nation in a calm atmosphere in which they have been able to share their experiences with desegregation and to exchange information and advice. Our 51 advisory com-

mittees, established for the purpose of gathering facts for the Commission, have through their surveys and meetings encouraged solution of civil rights problems on the State and community level.

In these and other ways, the Commission already performs a limited service of providing information and assistance to Government agencies, organizations, and individuals in dealing with civil rights problems. Commisson reports are widely distributed to local officials, educational institutions, and members of the public. The staff answers a large volume of specific requests for information from Congress and the public, and participates in governmental and private meetings on civil rights. And, as the President said in his message, the Commission "has advised the executive branch not only about desirable policy but about administrative techniques needed to make these changes effective." This last point is worthy of special attention. In many areas of Federal programs, the problem has not been the absence of policy so much as difficulties in implementing adequately existing rules and regulations requiring nondiscrimination. In response to requests from the White House and Federal agencies, the Commission within the limits of its existing resources, has attempted to provide advice on the substance and administration of Federal civil rights programs.

The difficulty is that so long as these efforts are necessarily subordinate to the performance of the factfinding and reporting function of the Commission, a function mandated by law, only a very small part of the Commission's resources can be devoted to them.

And the need for assigning to some Federal agency these responsibilities is increasing. In the North demands for governmental action to deal with school segregation, racial housing practices, and employment discrimination are increasing. State and local governments are seeking information and guidance in drafting ordinances and adopting effective policies to deal with these problems. Similar developments are taking place in the Border States and some parts of the South. It is noteworthy that in recent months the city of Richmond, Va., has taken action to establish equal opportunity in municipal employment, and the State of Kentucky, through its Governor, has adopted a comprehensive fair practices code covering many areas of civil rights. At the same time, more employers and unions are turning their attention to the means for developing merit hiring and training programs. And the continuing protest against exclusion of Negro citizens from places of public accommodation suggests the desirability of a forum for representatives of business, civil rights organizations, and Government to seek means for implementing a policy of equal access to such facilities.

In our view, there is a clear Federal interest in all of these matters and need for a Federal agency which can serve as a clearinghouse for information and offer advice and assistance in the solution of civil rights problems.

Such an agency, as the President suggested, should be placed on "a fairly stable and permanent basis." The Commission's operations would be strengthened, made more efficient and more effective if it were granted a longer term. I have found it difficult to recruit, train, and retain personnel in the face of the prospect that the agency will shortly cease to exist. This uncertainty has also made more difficult the process of establishing priorities and planning long-range studies. And the phasing-out and reduction of staff operations required of an agency scheduled to go out of business is a wasteful process if the agency is then extended and must regroup and secure a new staff.

In sum, the Commission believes there is genuine need for an agency to provide information, advice, and assistance to Government agencies and private organizations in the solution of civil rights problems. Such an agency should have sufficient continuity to enable it to perform these services effectively. Whether or not the Commission is the appropriate body to perform these functions is a matter for congressional judgment. One thing at least is clear—the availability of these services would constitute an affirmative and constructive contribution toward attaining the goal of justice and equal opportunity under law.

III. EDUCATION

In its 1961 Report on Education, the Commission concluded that progress in complying with the Supreme Court's decision in the *School Segregation* cases had been very slow. Although a number of important advances have been made since that time, there is still widespread denial of the constitutional right to equal protection in public education. Today, almost 9 years to the day after the Supreme Court's decision, fewer than 1,000 of the more than 3,000 biracial school districts in the South have taken the first step toward desegregation.

Negro students attending school with whites constitute only 7.8 percent of the total Negro school population in the South. And, three States—Alabama, Mississippi, and South Carolina—still maintain policies of total segregation.

Given this situation, the Commission recommended in 1961 that Congress enact legislation making it the duty of every school board which maintains segregated public schools to file a plan for desegregation with a designated Federal agency, and directing the Attorney General to take appropriate action to enforce this obligation. In our view, such legislation is as vitally needed today as it was in 1961. In its absence, few of these 2,000 school districts are likely to take any action until required to do so by litigation, a process which would take many decades. Representative Celler has introduced legislation (H.R. 1766) to require the filing of school desegregation plans, which is pending before another committee of Congress. We mention it here because this committee is considering school desegregation legislation and because we deem H.R. 1766 the single most important piece of legislation in this area.

On the other hand, where school districts are making an effort to comply with constitutional requirements by desegregating their public schools, it would be appropriate and desirable for the Federal Government to provide assistance. Many communities need additional resources to eliminate segregation in their public schools while at the same time assuring the continuing improvement of educational standards. Moreover, as the President said in his civil rights message, the problem has been compounded by the fact that a climate of mistrust in many communities has left school officials with no qualified source to turn to for information and advice. To meet this problem, our Commission recommended in 1961 that Congress enact legislation authorizing (1) financial aid to school districts on a matching basis for the employment of social workers or specialists in desegregation problems or for in-service training programs for teachers or guidance counselors, and (2) technical assistance to school districts or citizens groups to train school personnel or community leaders in techniques useful in solving desegregation problems, including the establishment of home study programs for the academically or culturally handicapped.

At the present time, a number of bills are pending before committees of Congress to accomplish these objectives. Title III of H.R. 3139, introduced by Representative McCulloch, would authorize assistance to State and local education agencies to effectuate school desegration. However, it varies in two major respects from the Commission's proposal. First, while providing grants to help finance costs incurred by local educational agencies in such matters as "pupil placement," the bill does not require a finding either by a court or by the administering agency that the desegregation program meets constitutional requirements. In our view, such a finding must be a prerequisite to the granting of funds if the Federal Government is not to find itself in the position of subsidizing programs which, in the name of desegregation, continue to deny the constitutional rights of Negro children.

Second, H.R. 3139 permits the granting of funds to local educational agencies only if the State consents or if it disowns any responsibility for desegregation of public schools. There have been situations, and they will undoubtedly arise again, in which a State, in an effort to thwart compliance with the Constitution, specifically refuses to consent to the plans of a local school authority for desegregation and continues to assert authority over the local school officials in making decisions on these matters. In such cases, Federal assistance is even more necessary than in situations where the State is cooperating with local desegregation plans.

Thus, without expressing a position on the merits of H.R. 3139 as against similar bills pending in other committees, we would suggest that it be amended as we have indicated so that it can provide meaningful assistance to local communities in dealing with problems of desegregation while at the same time assuring that the assistance will be used to promote rather than deny constitutional rights.

IV. EMPLOYMENT

Various proposals pending before this and other congressional committees would establish a Fair Employment Practices Commission with authority to prevent racial discrimination in employment which affects interstate commerce. Our Commission investigations thus far have been limited to employment created or assisted in some manner by the Federal Government, and we have not taken any position on broader legislation covering employment which is not federally assisted.

In its 1961 Report on Employment, the Commission found that, through grants-in-aid, provided for hospital construction, public airports, schools in impacted areas, highways construction, and public housing, the Federal Government plays a significant role in generating new employment, especially in the construction trades. It is the Commission's view that the same rules of equal opportunity which presently apply to employment under Federal contract should also apply to jobs provided under other kinds of Federal assistance.

Thus, if consideration is given to legislation affording statutory status to the President's Committee on Equal Opportunity in Employment, we would recommend that the jurisdiction of the Committee be broadened to include all employment created or supported by Government contracts and Federal grant funds.

V. ADMINISTRATION OF JUSTICE

In surveying the problem of misconduct by law enforcement officials which deprive persons of Federal rights, the Commission found that enforcement of the criminal Civil Rights Acts has been hampered by the requirement of a finding of "specific intent." It was suggested that a specific statute supplementing section 242 and spelling out the conduct proscribed by the 14th amendment would more effectively protect the constitutional right to security of the person, while at the same time assuring due process of law to law enforcement officials who may be charged under the statute. Section 203 of H.R. 24, sponsored by Representative Dingell, would accomplish this objective by setting out the rights guaranteed against infringement and thereby making the penalties of section 242 applicable to acts which violate the specified rights.

While recommending various measures to improve civil and criminal enforcement of the Civil Rights Acts, the Commission has also suggested that Congress consider enactment of a program of grants-in-aid to assist State and local governments in improving the professional quality of their police forces. The most effective remedies for official violence are those which tend to prevent misconduct rather than those which provide sanctions after the fact. Many States and localities are making significant efforts to devise selection tests and standards, and training programs which will assure police forces of higher professional quality. In our judgment, Federal assistance to these efforts can, in the long run, pay great dividends in reducing the incidence of police misconduct.

VI. FEDERAL GRANTS-IN-AID

In surveying the status of equal protection of the laws in housing, education, and employment, the Commission has made a number of recommendations designed to assure that services and facilities provided with Federal assistance will be available to all persons without distinction as to race or religion. The President has already acted on a number of these proposals, the most prominent example being Executive Order 11063, which established a standard of equal opportunity in housing provided with Federal assistance. In our judgment, the Executive already possesses sufficient authority to assure that federally assisted programs comply with the requirements of the 5th and 14th amendments to the Constitution. Where such authority exists, congressional action in the form of nondiscrimination riders is not a prerequisite to obtaining in advance assurances that Federal funds will be spent for the benefit of all citizens. Thus, we are not certain that bills such as H.R. 5741, sponsored by Representative Ryan, would add substantively to the powers the President possesses to assure equality of opportunity in federally assisted programs. Nevertheless, treated as a resolution or statement of intent, such legislation would add the support of congressional policy to the authority the Executive derives from the Constitution and would remove any argument that executive policies of nondiscrimination are not in conformity with the intent of Congress. Placed in this context, we believe that measures such as H.R. 5741 deserve support in Congress.

CONCLUSION

It has not been possible in this statement to comment upon all of the useful legislative proposals for implementing rights guaranteed by the Constitution. If this committee desires our views on any of the measures not discussed, we would be glad to file a supplemental statement.

Mr. Chairman, the issues we have been discussing are not local or regional, but national. The problems are not those of Negroes, but of Americans. The responsibility does not rest solely with the courts or the President, but with

each of the branches of the Federal Government, with State and local governments, with community organizations and with every citizen. And the need for solutions is too important to our national self-respect and integrity to be impeded by partisanship or other irrelevant considerations.

As the President said in his message, there could be no more meaningful observance of the centennial of the Emancipation Proclamation than civil rights legislation which would make the promise of that document and the guarantees of the Constitution a reality.

STATEMENT OF ERWIN N. GRISWOLD, DEAN, HARVARD LAW SCHOOL, ON BEHALF OF THE U.S. COMMISSION OF CIVIL RIGHTS

Mr. Chairman and members of the committee, I appreciate the opportunity to appear here today to present the views of the Commission on Civil Rights on legislation designed to assure the right to vote free from racial discrimination. Although there are differences in detail, all of the bills pending before this committee are similar to a recommendation adopted unanimously by the Commission in its 1961 Report on Voting. That recommendation reads as follows:

"That Congress enact legislation providing that in all elections in which, under State law, a 'literacy test, an 'understanding' or 'interpretation' test, or an 'educational' test is administered to determine the qualifications of electors, it shall be sufficient for qualification that the elector have completed at least six grades of formal education."

All of these measures are aimed at eliminating the use of literacy tests as a device for disfranchising citizens on racial grounds, an objective our Commission wholeheartedly supports.

THE NEED FOR LEGISLATION

Both the propriety and need for congressional action rest upon a finding, well stated in the Mansfield-Dirksen bill, that "many persons have been subjected to arbitrary and unreasonable voting restrictions on account of their race or color" and that "literacy tests and other performance examinations have been used extensively to effect arbitrary and unreasonable denials of the right to vote."

If this finding were unsubstantiated, there would be real basis for questioning the propriety and validity of the proposed legislation. But, unfortunately, both for the Negro citizens who have been victims and for the integrity of our democratic process, there is ample evidence that literacy and similar performance tests have been widely employed as a device for racial disfranchisement.

In a county in one State for example, a Federal district judge found that six Negro applicants (two with masters' degrees, five with bachelors' degrees and one with a year of college training) suffered racial denials of the right to vote on the specious ground that they could not read intelligibly or write sections of the State constitution.

In another State the Commission found that Negro applicants clearly able to read and write have been disqualified for misspellings, mispronunciations or for failing to answer frivolous questions entirely unrelated to literacy or to intelligent exercise of the franchise.

In a third State, where the Commission held hearings, it heard evidence that constitutional interpretation tests have been widely applied to require Negro applicants to answer questions which have long puzzled constitutional scholars.

At the same time, some States have amended their Constitutions to impose more stringent registration qualifications. A 1954 provision in one State requires applicants to demonstrate a "reasonable understanding of the duties and obligations of citizenship under a constitutional form of government," a standard not required of those registered prior to 1954. This provision is a kind of modern day grandfather clause, its greatest impact being felt by the mass of unregistered Negro citizens.

Provisions such as these vest wide discretion in local registrars to determine the qualifications of applicants. And the Commission has received evidence that in many counties white applicants are entirely exempted or subjected only to pro forma tests of their qualifications before being registered.

The Commission found that in at least 129 counties in 10 States, where Negroes constitute a substantial proportion of the population (more than 5 per cent of the population 21 and over), less than 10 percent of those ostensibly eligible are in fact registered to vote. In 23 of these counties in 5 States, indeed, none at all

are registered. Since similarly populated counties in each of the same States have large Negro registration, the inference is unavoidable that some affirmative deterrent is at work in those counties where none are registered.

On the basis of this and other evidence, the Commission found that there were "reasonable grounds to believe that substantial numbers of Negro citizens are, or recently have been, denied the right to vote on grounds of race or color in about 100 counties in 8 Southern States" and that some denials of the right to vote occur by reason of discriminatory application of laws setting qualifications for voters.

If existing laws were sufficient to deal with arbitrary or discriminatory denials of the right to vote, there would be no need for us to meet here today. But the fact is that, despite the notable progress made possible by the Civil Rights Acts of 1957 and 1960, there is no basis for believing that these laws will have any significant effect upon the discriminatory use of qualifications tests within the predictable future. In this connection, it is important to note that most of the cases filed under the 1957 act have been instituted since January 20, 1961, and that, of these 15 suits, only 5 have been even partially tried and only 1 has proceeded to a judgment vindicating the rights of citizens to register and vote. Where the problem lies not merely in isolated misapplications of the qualification laws but in the laws themselves, it is both appropriate and necessary to act directly through legislation.

THE PROPOSED LEGISLATION IS CONSTITUTIONAL

In my opinion and in the opinion of the Commission, the proposed legislation meets the test of constitutionality. I am submitting to the committee a Commission memorandum which rather fully discusses the constitutional argument, but I would like to outline briefly our position.

It is true that under article I, section 2 of the 17th amendment, basic control of qualifications of electors is reserved to the States, subject of course to the power of Congress to protect its own elections. However, neither that State control nor any other power vested in the Government, Federal or State, can be exercised in a manner inconsistent with rights guaranteed by the Constitution to our citizens. Preeminent among these guarantees are the right to equal protection of the laws specified in the 14th amendment and the right to vote free of discrimination on account of race or color specified in the 15th amendment.

To vindicate these constitutional guarantees the Supreme Court has struck down grandfather clauses, the white primary, and various other devices employed to accomplish racial disfranchisement. Even more to the point, the Court in *Davis* v. *Schnell*, 336 U.S. 933, affirming 81 F. Supp. 872 (S.D. Ala. 1949), overturned a provision of State law requiring a citizen to "understand and explain" any article of the Constitution because the law had both a discriminatory purpose and was administered in a discriminatory manner.

The 14th and 15th amendments constitute not merely a direction to the courts to protect the rights of citizens to participate in the electoral process, but a broad grant of authority to Congress to fashion remedies appropriate to that end. Section 2 of the 15th amendment and section 5 of the 14th amendment, taken together with article I, section 8, clause 18 (the "Necessary and Proper" clause) afford Congress wide scope to devise means for achieving the purpose of those amendments. Even if the power of the States to set voter qualifications was unqualified, it could not be exercised to achieve discrimination. The fact that a State has the power to draw political boundaries did not foreclose the Supreme Court in the *Tuskegee* case (*Gomillion* v. *Lightfoot*, 364 U.S. 339 (1960)) from limiting the use of that power to a legitimate, nonracial purpose.

It has been argued, of course, that this legislation is defective because it affects literacy tests which never have been used for racial purposes as well as those which have. But it is clear from the validation of the Fair Labor Standards Act, the National Labor Relations Act, the Federal Power Act, the Corrupt Practices Act and other Federal legislation, that Congress possesses power to enact legislation pursuant to a granted power even though it may affect objects and persons outside the scope of direct Federal control.

If the proposed legislation sought to impair completely the power of the States to require that its citizens meet minimal requirements of literacy in order to vote, a more difficult question might be presented. But these bills would not accomplish such a result. By specifying a sixth-grade education in a public or accredited private school, the legislation would merely substitute an objective means of determining a legitimate qualification for methods which are capable of (and indeed have been put to) discriminatory use.

Thus, the Commission is convinced that its recommendation and the proposed legislation based upon it is constitutional and can be enacted into law without recourse to lengthy procedures and uncertain results involved in seeking to amend the Constitution.

Indeed, in my opinion, it is inappropriate to seek to achieve this result by a constitutional amendment. The Constitution, as it exists today, forbids discrimination on the ground of race, in voting as in all other matters, and it clearly gives Congress the power to enforce these nondiscrimination provisions by appropriate legislation. Thus, the responsibility is on Congress now, and it is my view, shared by the Commission, that Congress should now recognize that fact, accept the responsibility, and enact appropriate legislation to make the already existing provisions of the 14th and 15th amendments effective.

A SIXTH-GRADE EDUCATION IS A REASONABLE TEST OF LITERACY

I am not sure that any test, whether objective or not, can be devised to determine whether a citizen will exercise his vote in an intelligent manner. It may even be that there are illiterate persons in this Nation more capable of judging the candidates and the issues than some who have fully mastered the art of reading and writing. In fact, there are 30 States in this Nation which do not require literacy as a prerequisite for voting, and I would be hard put to say that the quality of the electorate or the government in those States is in any way inferior to that of the 20 States which impose literacy requirements.

But, assuming that literacy is a reasonable albeit inexact measuring rod, the Commission is convinced that any person who has completed six primary grades in public school or in an accredited private school cannot reasonably be denied the right to vote on grounds of illiteracy or lack of sufficient education.

In most of the States, six grades are deemed to be the equivalent of a primary school education. A child who has completed this course ordinarily has mastered the fundamentals of reading and writing and been exposed to basic tutoring in history or civics. Recognizing this, the Bureau of the Census has deemed completion of 5 years of primary schooling the functional test of literacy, and in a 1960 report, says, "It was assumed in the survey that all persons with 6 or more years of formal education were literate." It was on this basis that the Commission decided that as an objective standard, the sixth grade test would serve well.

I should emphasize that the passage of this legislation will not necessarily solve the problem of racial disfranchisement. In 1959, the Census Bureau reported that 23.5 percent of nonwhites 25 years of age or more were functionally illiterate (had completed less than 5 years of school), compared to 6.4 percent of whites. Based upon Commission investigations, it may well be that many of the nonwhites in this category have been denied the right to vote not because they were in fact illiterate but because of the color of their skin. I am sure that many of these persons, despite formal lack of schooling, are able to meet the standards of a fairly administered literacy test. Nevertheless, the pending legislation would eliminate the worst abuses that have taken place under State law. At the same time, we should continue efforts to eliminate illiteracy itself.

DIFFERENCES BETWEEN THE COMMISSION'S RECOMMENDATION AND S. 2750

In one significant respect, the Mansfield-Dirksen bill differs both from the Commission's recommendation on literacy tests and from S. 480 sponsored by Senator Javits. While S. 2750 applies only to Federal elections, the Commission's proposal contemplated that the objective standard of a sixth grade education would apply to Federal and State elections alike.

It is true that article 1, section 4, vests in Congress the power to regulate the times, places, and manner of holding Federal elections and that this, along with article 1, section 2, may constitute additional support for the passage of legislation to protect the integrity of the Federal electoral process. But basic support for the proposed legislation rests on the 14th and 15th amendments and on the power of Congress under these amendments to assure that no device, ingenious or ingenuous, will be employed to deny citizens the right to vote on racial grounds.

These amendments were designed to secure the right to vote free from discrimination in State as well as Federal elections. The major difference between the reach of congressional power to deal with Federal and State elections is that the former may be protected against incursions by individuals as well as persons acting under color of law. But that distinction is of no importance here, since the reform sought would run only against governmental, not individual action. All

of the people making decisions about registration are State officials acting under color of State law.

Congress, as a matter of political judgment, may choose to go only halfway and limit its action at this time to Federal elections. This approach, however, may create some administrative difficulties. As Attorney General Rogers pointed out in 1960, in many States, Federal, and State elections are held at the same time and the candidates appear on the same voting machine or paper ballots. Moreover, certain legal problems, for example whether electors for President and Vice President are State or Federal officers, would have to be solved if States continued to apply subjective literacy tests to their own elections after legislation affecting Federal elections was passed.

In the opinion of the Civil Rights Commission, racial discrimination is constitutionally as well as morally objectionable whether it is applied to State or Federal elections. The Commission would, however, regard a measure limited to Federal elections as a significant reform, if that is all that Congress chooses to do at this time.

THE PENDING LEGISLATION WOULD BE AN IMPORTANT THOUGH LIMITED REFORM

It is important, I think, to keep the potential gain to be derived from the proposed legislation in proper perspective. It will not be a panacea for all civil rights deprivations, even in the field of registration and voting.

Earlier I noted that measures establishing a six-grade standard for literacy will not affect discriminatory denials of the right to vote against literate individuals who lack the requisite formal education. These persons will still be compelled to rely upon lawsuits to secure their rights. Additionally, we must recognize that, based on long experience from the past, bills such as these will be a test of ingenuity rather than a complete remedy. These proposals can only restrict, not eliminate, the opportunities available for evasive or dilatory tactics.

Finally, it should be recognized that the right to vote may be impaired indirectly by inadequate educational opportunity or by economic dependence stemming from lack of equal employment opportunity.

These are other areas of discrimination with which these bills, appropriately enough, do not undertake to deal. The bills involve only a step in dealing with the whole problem. But they would be an important, useful and significant step in the right direction. They would help to eliminate one of the most flagrant abuses of constitutional rights, and they would be a clear recognition of the responsibility of Congress in this area. For these reasons the Commission favors the passage of the pending legislation.

The CHAIRMAN. We will adjourn until 2:30.

(Whereupon, at 12:40 p.m., the committee recessed until 2:30 p.m., the same day.)

AFTER RECESS

(The committee reconvened at 2:30 p.m., Hon. Emanuel Celler, chairman of the committee, presiding.)

The CHAIRMAN. The committee will come to order.

Our first witness this afternoon is Mr. Hobart Taylor, Executive Vice Chairman of the President's Committee on Equal Employment Opportunity. Mr. Dingell, do you wish to introduce the witness?

Mr. DINGELL. I am going to introduce my old friend, if it please the committee.

The CHAIRMAN. Yes. I recognize the gentleman from Michigan.

Mr. DINGELL. It is a distinct privilege and pleasure to appear, most briefly, before the committee to introduce a distinguished friend of mine of long standing, one with whom I started out the practice of law back home in Michigan.

He is a most competent and skilled attorney and dedicated public servant, Hobart Taylor, Executive Vice Chairman of the President's Committee on Equal Employment Opportunity, and, Mr. Chairman, his ability and integrity are of the highest and I am sure his contribution on this matter before the committee will be most helpful, and

I commend him in what he has to say most highly to this distinguished body.

The CHAIRMAN. Mr. Brooks.

Mr. BROOKS. Mr. Chairman, I want to say certainly, if I might, in my own behalf, and possibly in behalf of that of the committee, we welcome you before the committee and I want to say, Mr. Chairman, that Hobart Taylor, Jr., is a member of a couple of pioneer Texas families, went to school in Houston, graduated from Prairie View College in 1939 and got an M.A. from Howard University here and later got his law degree in Michigan and was editor of the Law Review in Michigan, in the practice of law in Detroit; and associated there with Congressman Dingell and served with the Chief Justice of the Michigan Supreme Court. He was later corporation counsel in Detroit.

In 1961, after a profitable law practice, he came down and served as special assistant to the Vice President, Lyndon Johnson. He was subsequently appointed by President Kennedy to be Executive Vice Chairman of the President's Equal Opportunities Committee.

I know the committee, Mr. Chairman, would be especially interested in his testimony and of course we welcome him here.

The CHAIRMAN. I will put in the record at this point the Order of the President, dated March 8, 1961, establishing the President's Committee on Equal Employment Opportunity.

(The information follows:)

[No. 10925—March 8, 1961, 26 F.R. 1977]

ESTABLISHING THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

Whereas discrimination because of race, creed, color, or national origin is contrary to the Constitutional principles and policies of the United States; and

Whereas it is the plain and positive obligation of the United States Government to promote and ensure equal opportunity for all qualified persons, without regard to race, creed, color, or national origin, employed or seeking employment with the Federal Government and on government contracts; and

Whereas it is the policy of the executive branch of the Government to encourage by positive measures equal opportunity for all qualified persons within the Government; and

Whereas it is in the general interest and welfare of the United States to promote its economy, security, and national defense through the most efficient and effective utilization of all available manpower; and

Whereas a review and analysis of existing Executive orders, practices, and government agency procedures relating to government employment and compliance with existing non-discrimination contract provisions reveal an urgent need for expansion and strengthening of efforts to promote full equality of employment opportunity; and

Whereas a single governmental committee should be charged with responsibility for accomplishing these objectives:

Now, therefore, by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

PART I—ESTABLISHMENT OF THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

Section 101. There is hereby established the President's Committee on Equal Employment Opportunity.

Sec. 102. The Committee shall be composed as follows:

(a) The Vice President of the United States, who is hereby designated Chairman of the Committee and who shall preside at meetings of the Committee.

(b) The Secretary of Labor, who is hereby designated Vice Chairman of the Committee and who shall act as Chairman in the absence of the Chairman. The

Vice Chairman shall have general supervision and direction of the work of the Committee and of the execution and implementation of the policies and purposes of this order.

(c) The Chairman of the Atomic Energy Commission, the Secretary of Commerce, the Attorney General, the Secretary of Defense, the Secretaries of the Army, Navy and Air Force, the Administrator of General Services, the Chairman of the Civil Service Commission, and the Administrator of the National Aeronautics and Space Administration. Each such member may designate an alternate to represent him in his absence.

(d) Such other members as the President may from time to time appoint.

(e) An Executive Vice Chariman, designated by the President, who shall be ex officio a member of the Committee. The Executive Vice Chairman shall assist the Chairman, the Vice Chairman and the Committtee. Between meetings of the Committee he shall be primarily responsible for carrying out the functions of the Committee and may act for the Committee pursuant to its rules, delegations, and other directives. Final action in individual cases or classes of cases may be taken and final orders may be entered on behalf of the Committee by the Executive Vice Chairman when the Committee so authorizes.

Sec. 103. The Committee shall met upon the call of the Chairman and at such other times as may be provided by its rules and regulations. It shall (a) consider and adopt rules and regulations to govern its proceedings; (b) provide generally for the procedures and policies to implement this order; (c) consider reports as to progress under this order; (d) consider and act, where necessary or appropriate, upon matters which may be presented to it by any of its members; and (e) make such reports to the President as he may require or the Committee shall deem appropriate. Such reports shall be made at least once annually and shall include specific references to the actions taken and results achieved by each department and agency. The Chairman may appoint subcommittees to make special studies on a continuing basis.

PART II—NONDISCRIMINATION IN GOVERNMENT EMPLOYMENT

Section 201. The President's Committee on Equal Employment Opportunity established by this order is directed immediately to scrutinize and study employment practices of the Government of the United States, and to consider and recommend additional affirmative steps which should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Government.

Sec. 202. All executive departments and agencies are directed to initiate forthwith studies of current government employment practices within their responsibility. The studies shall be in such form as the Committee may prescribe and shall include statistics on current employment patterns, a review of current procedures, and the recommendation of positive measures for the elimination of any discrimination, direct or indirect, which now exists. Reports and recommendations shall be submitted to the Executive Vice Chairman of the Committee no later than sixty days from the effective date of this order, and the Committee, after considering such reports and recommendations, shall report to the President on the current situation and recommend positive measures to accomplish the objectives of this order.

Sec. 203. The policy expressed in Executive Order No. 10590 of January 18, 1955 (20 F.R. 409), with respect to the exclusion and prohibition of discrimination against any employee or applicant for employment in the Federal Government because of race, color, religion, or national origin is hereby reaffirmed.

Sec. 204. The President's Committee on Government Employment Policy, established by Executive Order No. 10590 of January 18, 1955 (20 F.R. 409), as amended by Executive Order No. 10722 of August 5, 1957 (22 F.R. 6287), is hereby abolished, and the powers, functions, and duties of that Committee are hereby transferred to, and henceforth shall be vested in and exercised by, the President's Committee on Equal Employment Opportunity in addition to the powers conferred by this order.

PART III—OBLIGATIONS OF GOVERNMENT CONTRACTORS AND SUBCONTRACTORS

SUBPART A—CONTRACTORS' AGREEMENTS

Section 301. Except in contracts exempted in accordance with section 303 of this order, all government contracting agencies shall include in every government contract hereafter entered into the following provisions:

"In connection with the performance of work under this contract, the contractor agrees as follows:

"(1) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

"(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.

"(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

"(4) The contractor will comply with all provisions of Executive Order No. 10925 of March 6, 1961, and of the rules, regulations, and relevant orders of the President's Committee on Equal Employment Opportunity created thereby.

"(5) The contractor will furnish all information and reports required by Executive Order No. 10925 of March 6, 1961, and by the rules, regulations, and orders of the said Committee, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Committee for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

"(6) In the event of the contractor's non-compliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled in whole or in part and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 10925 of March 6, 1961, and such other sanctions may be imposed and remedies invoked as provided in the said Executive order or by rule, regulation, or order of the President's Committee on Equal Employment Opportunity, or as otherwise provided by law.

"(7) The contractor will include the provisions of the foregoing paragraphs (1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the President's Committee on Equal Employment Opportunity issued pursuant to section 303 of Executive Order No. 10925 of March 6, 1961, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

SEC. 302. (a) Each contractor having a contract containing the provisions prescribed in section 301 shall file, and shall cause each of its subcontractors to file, Compliance Reports with the contracting agency, which will be subject to review by the Committee upon its request. Compliance Reports shall be filed within such times and shall contain such information as to the practices, policies, programs, and employment statistics of the contractor and each subcontractor, and shall be in such form as the Committee may prescribe.

(b) Bidders or prospective contractors or subcontractors may be required to state whether they have participated in any previous contract subject to the provisions of this order, and in that event to submit, on behalf of themselves and their proposed subcontractors, Compliance Reports prior to or as an initial part of their bid or negotiation of a contract.

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or other rep-

resentative of workers, the Compliance Report shall include such information as to the labor union's or other representative's practices and policies affecting compliance as the Committee may prescribe: *Provided*, that to the extent such information is within the exclusive possession of a labor union or other workers' representative and the labor union or representative shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Committee may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent of any labor union or other workers' representative with which the bidder or prospective contractor deals, together with supporting information, to the effect that the said labor union's or representative's practices and policies do not discriminate on the grounds of race, color, creed, or national origin, and that the labor union or representative either will affirmatively cooperate, within the limits of his legal and contractual authority in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union or representative shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement.

Sec. 303. The Committee may, when it deems that special circumstances in the national interest so require, exempt a contracting agency from the requirement of including the provisions of section 301 of this order in any specific contract, subcontract, or purchase order. The Committee may, by rule or regulation, also exempt certain classes of contracts, subcontracts, or purchase orders (a) where work is to be or has been performed outside the United States and no recruitment of workers within the limits of the United States is involved; (b) for standard commercial supplies or raw materials; or (c) involving less than specified amounts of money or specified numbers of workers.

SUBPART B—LABOR UNIONS AND REPRESENTATIVES OF WORKERS

Sec. 304. The Committee shall use its best efforts, directly and through contracting agencies, contractors, state and local officials and public and private agencies, and all other available instrumentalities, to cause any labor union, recruiting agency or other representative of workers who is or may be engaged in work under government contracts to cooperate with, and to comply in the implementation of, the purposes of this order.

Sec. 305. The Committee may, to effectuate the purposes of section 304 of this order, hold hearings, public or private, with respect to the practices and policies of any such labor organization. It shall from time to time submit special reports to the president concerning discriminatory practices and policies of any such labor organization, and may recommend remedial action if, in its judgment, such action is necessary or appropriate. It may also notify any Federal, state, or local agency of its conclusions and recommendations with respect to any such labor organization which in its judgment has failed to cooperate with the Committee, contracting agencies, contractors, or subcontractors in carrying out the purposes of this order.

SUBPART C—POWERS AND DUTIES OF THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY AND OF CONTRACTING AGENCIES

Sec. 306. The Committee shall adopt such rules and regulations and issue such orders as it deems necessary and appropriate to achieve the purposes of this order, including the purposes of Part II hereof relating to discrimination in government employment.

Sec. 307. Each contracting agency shall be primarily responsible for obtaining compliance with the rules, regulations, and orders of the Committee with respect to contracts entered into by such agency or its contractors, or affecting its own employment practices. All contracting agencies shall comply with the Committee's rules in discharging their primary responsibility for securing compliance with the provisions of contracts and otherwise with the terms of this Executive order and of the rules, regulations, and orders of the Committee pursuant hereto. They are directed to cooperate with the Committee, and to fur-

nish the Committee such information and assistance as it may require in the performance of its functions under this order. They are further directed to appoint or designate, from among the agency's personnel, compliance officers. It shall be the duty of such officers to seek compliance with the objectives of this order by conference, conciliation, mediation, or persuasion.

Sec. 308. The Committee is authorized to delegate to any officer, agency, or employee in the executive branch of the Government any function of the Committee under this order, except the authority to promulgate rules and regulations of a general nature.

Sec. 309. (a) The Committee may itself investigate the employment practices of any government contractor or subcontractor, or initiate such investigation by the appropriate contracting agency or through the Secretary of Labor, to determine whether or not the contractual provisions specified in section 301 of this order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Committee, and the investigating agency shall report to the Committee any action taken or recommended.

(b) The Committee may receive and cause to be investigated complaints by employees or prospective employees of a government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in section 301 of this order. The appropriate contracting agency or the Secretary of Labor, as the case may be, shall report to the Committee what action has been taken or is recommended with regard to such complaints.

Sec. 310. (a) The Committee, or any agency or officer of the United States designated by rule, regulation, or order of the Committee, may hold such hearings, public or private, as the Committee may deem advisable for compliance, enforcement, or educational purposes.

(b) The Committee may hold, or cause to be held, hearings in accordance with subsection (a) of this section prior to imposing, ordering, or recommending the imposition of penalties and sanctions under this order, except that no order for debarment of any contractor from further government contracts shall be made without a hearing.

Sec. 311. The Committee shall encourage the furtherance of an educational program by employer, labor, civic, educational, religious, and other non-governmental groups in order to eliminate or reduce the basic causes of discrimination in employment on the ground of race, creed, color, or national origin.

SUBPART D—SANCTIONS AND PENALTIES

Sec. 312. In accordance with such rules, regulations or orders as the Committee may issue or adopt, the Committee or the appropriate contracting agency may:

(a) Publish, or cause to be published, the names of contractors or unions which it has concluded have complied or have failed to comply with the provisions of this order or of the rules, regulations, and orders of the Committee.

(b) Recommended to the Department of Justice that, in cases where there is substantial or material violation or the threat of substantial or material violation of the contractual provisions set forth in section 301 of this order, appropriate preceedings be brought to enforce those provisions, including the enjoining, within the limitations of applicable law, of organizations, individuals or groups who prevent directly or indirectly, or seek to prevent directly or indirectly, compliance with the aforesaid provisions.

(c) Recommend to the Department of Justice that criminal proceedings be brought for the furnishing of false information to any contracting agency or to the Committee as the case may be.

(d) Terminate, or cause to be terminated, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be terminated absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency.

(e) Provide that any contracting agency shall refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any non-complying contractor, until such contractor has satisfied the Committee that he has established and will carry out personnel and employment policies in compliance with the provisions of this order.

(f) Under rules and regulations prescribed by the Committee, each contracting agency shall make reasonable efforts within a reasonable time limitation to secure compliance with the contract provisions of this order by methods of

conference, conciliation, mediation, and persuasion before proceedings shall be instituted under paragraph (b) of this section, or before a contract shall be terminated in whole or in part under paragraph (d) of this section for failure of a contractor or subcontractor to comply with the contract provisions of this order.

Sec. 313. Any contracting agency taking any action authorized by this section, whether on its own motion, or as directed by the Committee, or under the Committee's rules and regulations, shall promptly notify the Committee of such action or reasons for not acting. Where the Committee itself makes a determination under this section, it shall promptly notify the appropriate contracting agency of the action recommended. The agency shall take such action and shall report the results thereof to the Committee within such time as the Committee shall provide.

Sec. 314. If the Committee shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this order or submits a program for compliance acceptable to the Committee or, if the Committee so authorizes, to the contracting agency.

Sec. 315. Whenever a contracting agency terminates a contract, or whenever a contractor has been debarred from further government contracts, because of noncompliance with the contractor provisions with regard to non-discrimination the Committee, or the contracting agency involved, shall promptly notify the Comptroller General of the United States.

SUBPART E—CERTIFICATES OF MERIT

Sec. 316. The Committe may provide for issuance of a United States Government Certificate of Merit to employers or employee organizations which are or may hereafter be engaged in work under government contracts, if the Committee is satisfied that the personnel and employment practices of the employer, or that the personnel, training, apprenticeship, membership, grievance and representation, upgrading and other practices and policies of the employee organization, conform to the purposes and provisions of this order.

Sec. 317. Any Certificate of Merit may at any time be suspended or revoked by the Committee if the holder thereof, in the judgment of the Committee, has failed to comply with the provisions of this order.

Sec. 318. The Committee may provide for the exemption of any employer or employee organization from any requirement for furnishing information as to compliance if such employer or employee organization has been awarded a Certificate of Merit which has not been suspended or revoked.

PART IV—MISCELLANEOUS

Section 401. Each contracting agency (except the Department of Justice) shall defray such necessary expenses of the Committee as may be authorized by law, including section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C. 691): *Provided*, that no agency shall supply more than fifty percent of the funds necessary to carry out the purposes of this order. The Department of Labor shall provide necessary space and facilities for the Committee. In the case of the Department of Justice, the contribution shall be limited to furnishing legal services.

Sec. 402. This order shall become effective thirty days after its execution. The General Services Administration shall take appropriate action to revise the standard Government contract forms to accord with the provisions of this order and of the rules and regulations of the Committee.

Sec. 403. Executive Order No. 10479 of August 13, 1953 (18 F.R. 4899), together with Executive Orders Nos. 10482 of August 15, 1953 (18 F.R. 4944), and 10733 of October 10, 1957 (22 F.R. 8135), amending that order, and Executive Order No. 10557 of September 3, 1954 (19 F.R. 5655), are hereby revoked, and the Government Contract Committee established by Executive Order No. 10479 is abolished. All records and property of or in the custody of the said Committee are hereby transferred to the President's Committee on Equal Employment Opportunity, which shall wind up the outstanding affairs of the Government Contract Committee.

JOHN F. KENNEDY

THE WHITE HOUSE, *March 6, 1961.*

The CHAIRMAN. We will be glad to hear from you.

STATEMENT OF HOBART TAYLOR, EXECUTIVE VICE CHAIRMAN, PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

Mr. TAYLOR. Thank you very much, Mr. Chairman.

I appreciate the very kind remarks of Congressman Dingell and of Congressman Brooks, and I hope that after getting me started on such a high level that I don't let them all the way down.

I have a brief prepared statement that I wish to read and then I would like to make one or two oral comments, and then I will be prepared to answer any questions which you may have.

I appreciate your having invited me to appear and testify in connection with two bills pending before you—H.R. 24 and H.R. 3139.

While both of these bills contain a number of titles relating to various civil rights matters, I shall address myself only to the matter of employment, since it is this subject which has been the concern of the President's Committee on Equal Employment Opportunity.

I should make clear, too, that the President's Committee, which is composed of 15 public members and 14 Government members, has not had the opportunity to meet and arrive at a collective view with respect to these particular bills or with respect to any particular considerations of policy which they involve.

I am, therefore, unable to speak for the Committee at this time and, accordingly, believe it appropriate to confine my remarks to an explanation of the equal employment opportunity program which is administered by the President's Committee, in the hope that our experience in this area will be of benefit to you as you deliberate upon these particular bills.

The President's Committee on Equal Employment Opportunity was established by President Kennedy's Executive Order 10925 of March 6, 1961, and was charged with the responsibility of promoting and enforcing equal opportunity without regard to race, creed, color, or national origin of those employed or seeking employment with the Federal Government and on Government contracts.

The Committee's activities may largely be described in terms of four basic programs in which it is involved.

One of these is the contract compliance program. As required by the Executive order, work performed for the Federal Government is subject to a contract clause which specifies that the contractor will take affirmative action to insure that applicants are employed and that employees are treated during their employment without discrimination; and that such affirmative action shall include, among other things, employment, upgrading, demotion, transfer, recruitment advertising, compensation, and selection for training.

The contractor also agrees to file such compliance reports as are required by the Committee, and, for purposes of compliance investigation, to permit access to his books and records.

The foregoing requirements may be made applicable not only to the prime contractors, but also to all subcontractors, including those whose subcontracts are several levels removed from the prime contract.

The CHAIRMAN. How far down the line do you go?

Mr. TAYLOR. As a matter of practice we only go down to the second-tier subcontractors. In the construction industry, however, we are preparing to go further because subcontracting goes much further down there at a meaningful level.

The CHAIRMAN. It covers the contractors supplying the material?

Mr. TAYLOR. In the construction industry, "Yes, we will." In manufacturing it would be rare. In manufacturing the answer would be, "Rarely." In the construction industry, "Yes." The reason is that if you take the first two tiers, in general every important contractor in this country will, at sometime or another, arise to that dignity of being a first- or second-tier contractor with the Federal Government, so it is unnecessary to create an extra flow of paper with respect to any particular contract in order to achieve coverage of about 90 percent of the people who do business on Government contracts.

But when you come to the construction industry, here you will have so many subcontractors that do specific things that it is necessary, in order to reach a meaningful group of companies, to go below the second tier.

At the present time the Committee has, for reasons of practicable administration, applied these requirements only to second-tier subcontractors, except in the construction industry where all subcontractors are covered.

The CHAIRMAN. Let me interrupt you. Suppose you have a subcontractor, an electrical contractor, and he uses copper wire which, in turn, has been made by some outfit that proscribes the Negro, what do you do as to that material? Do you just disregard it?

Mr. TAYLOR. I think we would practically disregard it if it went a tier below where our arrangements went, because of the fact that we are not here engaged in punishing particular people. We are engaged in carrying out a national policy which will bring about circumstances and conditions under which industry as a whole achieves this objective.

If we were to change our regulations to reach every small contractor making copper wire, we would become bogged down in paper and unable to reach effectively the copper wire industry as a whole. But if you adopt our present policy, you will pick up that copper wire fellow because he is a follow-the-leader man like all the rest of us are.

So the main thing is to reverse the trend, to get the major people and the policy people and get the vast majority of them firmly set on our policy. Then when we have that, then you begin to pick up other people as we go along.

The CHAIRMAN. I see. All right. Proceed.

Mr. TAYLOR. This is more than simply carrying out a policy. This is bringing about a social change.

Under the Executive order the Committee, as well as the contracting agencies, may impose sanctions which include terminating the contract of a noncomplying contractor, declaring noncomplying contractors ineligible for future Government contracts, and directing agencies not to enter into contracts with bidders who are not evidencing satisfactory compliance with the order. The Committee may also request the Justice Department to seek judicial relief from violations of the nondiscrimination requirements.

Complaints of discrimination against Government contractors are investigated by the contracting agency concerned and the agency's

resolution of the matter is reviewed by the Committee, which may determine that further investigation or corrective action is required.

The CHAIRMAN. This morning we had a colloquy as to complaints. How many complaints, roughly, have you received?

Mr. TAYLOR. I can answer that for you with precision. As of May 1, 1963, we had received 1,738 complaints against contractors, and this was an increase, incidentally, of 173 in that one month of April, because we had a substantial number filed by the NAACP at that time.

The number of complaints that have been resolved are now 1,040. On 644 corrective action was taken, 255 were dismissed for no cause, and 141 were dismissed because there was no Government contract and hence no jurisdiction. The corrective action rate taken was 72 percent of the complaints acted upon.

In the first year, the number of complaints which we received and which we disposed of was greater than that for the 7½ years of the previous committee.

The CHAIRMAN. How do you conduct hearings? Who conducts them?

Mr. TAYLOR. Under the Executive order the primary responsibility for carrying out the program is vested in the contracting agency but we exercise a review power over their actions and also have appellate powers if necessary. So what happens is that the agencies conduct investigations and there is a type of manual which they use and follow this by going out to take the statements from the witnesses, from the complainant and from the company and everybody who is involved.

There are many things which they can find out. They can ascertain whether or not, for instance, nonwhites have ever been employed in this department, whether or not they have ever applied, what are the tests for it, whether there are separate lines of seniority.

The CHAIRMAN. In other words, when you get the complaint, you ask the agency to check on it and if you feel a complaint has not been properly handled or there is an appeal from that decision then you handle it, is that it?

Mr. TAYLOR. Well, we review every case that the agencies handle before we close out a file and that file is brought in and we check it for irregularities.

This does not constitute substituting our judgment for that of the agencies but we make sure there is evidence there to support the conclusion which they reached.

Now, as a matter of fact, the way it is operated does not really amount to an adjudication in the sense that we think about it under usual FEPC procedure, because we have been able, I think, to get the cooperation of industry itself to such an extent that we work, tend to work more cooperatively upon it, and we ask the people at the home office to come and let us look and see what the situation is.

I would say in the vast majority of cases that the finding has been a common finding arrived at between the company and the Government and the companies are helping us to enforce and carry it out.

We have been very fortunate in having very few proceedings that you can call adversary in the true sense. I think that the framework of the common-law trial is not really the soundest way all the time to approach this, though we have to use this from time to time. But there is still a difficulty because of what we are dealing with—attitudes and emotions and the beliefs that have been ingrained in people

over a long period of time, and the conviction on the part of many people that their old customs are right.

So you have a problem here of creating a basis for understanding and this is, I think, the way in which we try to approach it. It doesn't mean we don't carry out our mandatory responsibilities, because we certainly do.

Mr. COPENHAVER. Mr. Taylor, have, in fact, any hearings been conducted by any agencies under the Executive order?

Mr. TAYLOR. There have been many hearings conducted within the Government but where Government contractors are concerned we only take reports. We have only had reports.

In other words, the agency will go out and take the statement of one person and take the statement of the other, and make such investigation as they deem necessary and fitting under the circumstances and we have found that by the time you look at all of the surrounding evidence and what is involved and get a company to bear in mind what we are trying to do together, that we have had very little dispute on the facts.

A hearing has simply not come about. I don't think it would come about, frankly, unless we had a company that objected very strenuously to some personnel action which we took and that company requested a hearing.

Now, there is provision for it but no company has ever taken such a step in the 2 years we have been in operation.

Mr. COPENHAVER. Would not a hearing be mandatory under Executive order if you start to impose sanctions?

Mr. TAYLOR. Hearing and opportunity for a hearing is mandatory. But the company would still have to ask for it.

Mr. COPENHAVER. Therefore am I correct in assuming no sanctions have been imposed by you?

Mr. TAYLOR. I would say the basic sanctions haven't been imposed because you only impose them when they haven't carried out your order, and we haven't had a single case of noncompliance with an order, but we have done things which amounted to a sanction in a way. We found people we thought were not in compliance and asked them to furnish us with certain information and do certain things and they have been slow and there we have issued orders that they were not to get any further contracts until they filed a satisfactory compliance report with us.

The CHAIRMAN. You find that is sufficient warning—that they do not offend any more?

Mr. TAYLOR. Up to this time, that has been true. I wouldn't speak for the indefinite future but, based on the fact that we are making substantial headway even with people who do not do business with the Government and persuading them to file information with us, I think this will help.

The CHAIRMAN. I think that is enough of a sanction when it touches their pocketbook. They will not get any contracts and will not make a profit on the Government. That is enough to straighten them out so that they will not offend any more.

Mr. TAYLOR. This may be the case. But at the same time, you must remember that we have other sanctions resting behind that one. Therefore it may be that the fact that we make evident a preliminary intent to go all the way is sufficient because there are other powers.

I can't say exactly what is the basis of the psychology, but I am saying that our experience to date has been that each time that we have had to go that far, that has been sufficient, and that we have never had a single company that, when directly ordered to do something, has failed to do it.

Mr. COPENHAVER. Are you familiar with the report recently issued by the Southern Regional Council who surveyed 24 out of 52 nationwide corporations which had offered to bring their facilities in Atlanta under the plans for progress procedure of your Committee, and they found, of the 24, only 3 could be said to be diligently attempting to apply a nondiscriminatory program and that many of the others seemed not interested or perhaps even seeking to get around the policy of Executive order?

In fact, one corporation referred to it as the Alliance for Progress. Other recent reports by the Southern Regional Council and the Civil Rights Commission in North Carolina, Altanta, Houston, and Chattanooga, cite case after case of continued discrimination by corporations holding Government contracts, by Federal agencies in those areas, and by labor unions and vocational guidance and training programs.

Mr. TAYLOR. In answer to your specific question, I am familiar with the first report of which you speak. I am not familiar with the others.

Mr. COPENHAVER. Do you wish to comment that there is a great deal of this?

Mr. TAYLOR. You wish me to comment about it?

Mr. COPENHAVER. Yes.

Mr. TAYLOR. First of all, of course, I came in to testify on some other legislation. Now I have here a copy of Mr. McNamara's findings which were developed after we heard about this report, and I don't think that I want to go into the methodology which was used in compiling that report. I understand a great deal of this was gained on the telephone and from whomever happened to answer, and this was in Atlanta and this was not the home office of many of the companies that were involved.

I also want to say, by way of preliminary statement that it should be understood that the thrust of this report was fundamentally aimed at the program called Plans for Progress, which is a program separate from the compliance features of the President's Executive order and which is a voluntary program in which companies are engaged for the purpose of taking affirmative steps above and beyond the Executive order.

These companies were still subject to the compliance features of the order and an investigation which I made showed that at one time or another more than half of the companies in Plans for Progress had been subject to investigation by the Government in their plants and facilities and at the present time 22 of them are being investigated in a regular compliance survey program. This type of survey program had been going on where those companies were concerned a long time.

Any inference from the article to the effect that these companies were not so surveyed and that widespread noncompliance was found because of the fact that these companies were excused from their

obligations under the order was not supported by our subsequent investigation.

This was not true as a matter of governmental procedure and had anyone talked to members of our own compliance staff which at the time was headed by Mr. Feild, who was formerly head of the Michigan FEPC Commission, I am sure they could have been enlightened in that respect.

In any event, that is the implication of it.

Mr. FOLEY. What report?

Mr. TAYLOR. Southern Regional Council report.

Mr. FOLEY. Their report?

Mr. TAYLOR. That is what I am talking about. When we got the report, again with the implication, we sent a man down to find out if there was any basis for an investigation. We decided there was. So we asked the Defense Department, because of the fact that all of the companies involved were companies who were on Defense Department contracts, we asked them to send people down and look into the matter. They did.

Mr. McNamara furnished us with the report of April 26, 1963, which we gave to the papers but which unfortunately did not receive the same notice as other charges.

This is the letter and I think it is an answer to your question. It is addressed to the Vice President by Secretary McNamara:

In accordance with your request I examined the survey made by the military department of discriminatory employment practices in Atlanta. I obtained the following information in response to questions you put to me.

1. Twenty-four plants or offices employing 23,084 employees were surveyed.

Now, you note Mr. McNamara says "plants and offices." And I want to interpose at this point because the implication and inference has been made in the material that we have read that these were 24 companies and this was what 24 companies were doing in that place, but when you examine it you found some of them were sales offices employing few persons. For instance, there was one company which had three employees and this is counted as a company.

Mr. COPENHAVER. The report pointed out this fact, though.

Mr. TAYLOR. I am talking about the overall conclusions which were drawn and I am trying to answer the question. And I am trying to make a record, since this is where we are, that there was one company that had three employees. There was another that had four and then they failed to number the few which had substantial numbers of employees.

Now, I mention that to you so you have some concept of what is involved.

Now, we turn to Mr. McNamara and he states:

Twenty-four plants or offices employing 23,084 employees were surveyed.

2. Firms containing 18,325, or 80 percent of the total number of employees, were complying with their pledges to the President's Committee on Equal Employment Opportunity.

3. Three thousand three hundred additional employees were employed by two companies each of whom were charged with only technical violations such as failure to post equal opportunity notices. These two companies have arranged for the posting of such notices.

4. It is anticipated that the firms employing the remaining 1,308 employees, 7 percent of the total number of employees, will have met the requirements

laid down by the military department within the April 30 deadline established by the President's Committee.

(Signed) ROBERT S. MCNAMARA.

Since that time I received a communication advising me that the remaining 7 percent have so met the requirements and are in order.

Mr. COPENHAVER. Are compliance surveys conducted by the employees of agencies themselves or by your committee?

Mr. TAYLOR. By the agencies themselves. You see, under the Executive order the primary responsibility for carrying out the provisions is placed upon the agency.

Mr. COPENHAVER. Under H.R. 3139 by Congressman McCulloch, the responsibility would be placed primarily upon the newly established Commission. Do you see any advantage in having an investigatory staff of an independent Commission conducting the initial surveys and followup surveys and the handling of the hearings as opposed to the individuals of the agencies themselves, particularly in the area of employment within the Federal departments and agencies?

Mr. TAYLOR. I can see advantages and disadvantages both ways. I feel, however, on the balance, that it is best to build this in as a line responsibility wherever possible. I think there are two sets of considerations that should motivate a person. One is that of economy and, two is that this is after all a set of psychological attitudes and it should permeate people who carry the responsibility and should be a part of their everyday obligations as far as humanly possible.

I feel the remainder of what I have to say on page 3 and the first paragraph of page 4 has already been covered by questions and answers, so I would like to commence reading on the second paragraph of page 4.

I should point out that in resolving individual complaints, the Committee has been concerned with the employers overall practices and has been alert to indications that there may be aspects which are not in consonance with the nondiscrimination policy.

In such instances the complaint procedure has been utilized as the basis for effecting affirmative action programs. Through the use of the specialist staffs which the major contracting agencies now have, it is expected that affirmative action programs will be increasingly accomplished as a result of routine compliance reviews, and that dependence upon individual complaints for this purpose will be considerably lessened.

The value of the foregoing approach has been confirmed by Mr. Theodore W. Kheel, who had been asked by the Vice President to study the structure and opportunities of the President's Committee and whose report was issued in July 1962.

Pointing to a study made by Paul H. Norgren of Princeton University, of State, municipal, and Federal nondiscrimination agencies, Mr. Kheel noted that there was virtually unanimous agreement by experts in the field that pattern-centered activity more than the adjustment of individual complaints is the solution to the problem of discriminatory employment practices, and concluded that the President's Committee should stress this approach in its activities.

A further significant aspect of the contract compliance program is the compliance reporting requirement, pursuant to which the em-

ployers of more than 15 million workers are now regularly furnishing the Committee with statistics as to the race and sex of their employees.

It is anticipated that such reports will be valuable in determining instances where affirmative action programs should be stressed, and for the first time, will provide reliable information as to the utilization of minority group manpower and the impact of Government contracts upon such utilization.

Plans for Progress represents another committee program, under which 104 of the Nation's largest firms, employing more than 5 million workers have pledged themselves to take steps going beyond the requirements of the Executive order, in order to aid in advancing the goals of equal employment opportunity for all.

I might stress that, with two exceptions, such companies are still subject to all of the requirements of the Executive order and its enforcement procedures.

As I indicated these companies are not Government contractors but have reported to us and we expect that their number will increase. And they would not otherwise be subject to the nondiscrimination provisions of the order.

A third Committee program relates to labor unions. While the Committee has no direct control over the practices of unions, it is clear that such practices can be vitally significant to the effectuation of the goals of equal employment opportunity.

In order to accomplish a direct involvement of labor unions in the goals of Executive Order 10925, discussions between the AFL–CIO and the Secretary of Labor led to the development of a union program for fair practices, to which 118 international and national unions and 338 local unions directly affiliated with AFL–CIO became signatory last November 1962.

Under this program the unions have pledged themselves to eliminate any discriminatory practices within their own ranks and have further undertaken to seek to end discriminatory practices by those employers with whom they have collective bargaining agreements.

In addition, these labor organizations have agreed to cooperate with the Committee in achieving the correction of local practices which are not consistent with these purposes.

The CHAIRMAN. Would you say that labor unions have turned the corner with reference to discrimination?

Mr. TAYLOR. I don't think so, sir, not yet. I think that we have had good cooperation from AFL–CIO as a body where we have had to face local union problems. I think that the great majority of the unions are making an effort to get their locals to come into line. I don't think that we have turned the corner on that yet by a long shot and I think it may take us a little time to get it accomplished.

The CHAIRMAN. Your Committee has no jurisdiction over labor unions?

Mr. TAYLOR. Not as such.

The CHAIRMAN. Indirectly.

Mr. TAYLOR. That is right.

The CHAIRMAN. That brings me to the question of whether or not you would favor the enactment of a fair employment practices com-

mission broadly defining some of your powers with reference to labor unions.

Mr. TAYLOR. Of course, I can answer this question as an individual. I cannot speak for the Committee. I can only speak from the personal experience I have had.

I would think that it would be advantageous for the powers that we possess to be statutory and for there to be an extension of these powers to include activities of employee organizations.

Mr. COPENHAVER. Under H.R. 3139, which also covers public employment agencies, do you believe that personally it would be desirable to cover that area?

Mr. TAYLOR. The question of public employment agencies and by that you are referring to the employment service, I think, because that is supported with Federal funds.

Mr. COPENHAVER. In part by Federal funds, yes.

Mr. TAYLOR. Yes. I don't know to what extent legal questions are involved there. There may be some legal questions involved and I wouldn't want to comment upon them for that reason. I would prefer to confine myself, therefore, to the general matters. I should think that, with that exception, that the purposes sought to be achieved by H.R. 3139 would be capable of accomplishment and would be advantageous. I would say that H.R. 24, while we are thinking about it, is broader in its concept because the problem is not only connected with the expenditure of Government funds and H.R. 24 treats it as a general, national problem, and this is perhaps what it is.

I should think, however, that, both with reference to H.R. 139 and H.R. 24, that it might be possible for them to consider the patterns in the activity to a greater extent and with a little more flexibility such as we have at the present time.

I think that unless your Commission is composed of people of very great prestige, and I think we have had some advantages in the way in which we have been set up, you have to, at some stage, get cooperation to fully achieve your objectives and this is perhaps why—and I can give you figures if you like which would show very substantial changes in employment patterns in the United States and yet we have had, even in States in which we have had FEPC for many years, we have been able to make most substantial changes, and I think we were able because we have been able [illegible]ake effective policy; and it is because of the way we have been [illegible]o move and the authority which we have had that has enabled us [illegible] reach the policymakers and I think this is what you have to do if you want to bring it off.

Mr. COPENHAVER. How do you see that you have more power to deal informally prior to adjudication proceedings? Is that what you are relating to?

Mr. TAYLOR. Yes, if you have a program centered completely around the complaint you have limited the scope of your action. You are not able to carry out any national responsibility based on need. You have to be able to initiate action yourself and set policy in a responsible way and deal with responsible persons if you want to get somewhere, that is, in a general way.

Mr. COPENHAVER. In H.R. 3139, the proposed Commission is given subpena authority. Am I correct to state the present Committee does not have true subpena authority?

Mr. TAYLOR. That is correct.

Mr. COPENHAVER. Would that be advantageous for a commission to have in relation to perhaps some recalcitrant contractors?

Mr. TAYLOR. I should think it would be helpful.

Mr. FOLEY. Do you think it is needed now based on your experience?

Mr. TAYLOR. We haven't had an experience in which it became needed. But, as I said, we have developed a fairly peculiar set of relations. I mean we really worked at it and have had the President working at it and we have had the Vice President working at it and giving a lot of their time to it. We had Secretary Goldberg who was very well known and he worked at it pretty hard and made it the first order of business and Secretary Wirtz has done the same thing.

I don't know what would happen if you had a committee that was not composed of men who had exactly the same stature; so I should think a subpena power in general would be a good thing to have.

Mr. LINDSAY. May I say something at this point? I am not sure I understood your comment, a moment ago, Mr. Taylor, that there were legal problems surrounding the creation of a little FEPC that would have power over some of these State employment agencies that are financed in part with Federal funds. What do you mean by legal problems? Either Congress establishes it or doesn't. Do you think it is a good idea that it does, or not?

Mr. TAYLOR. I don't know. What I am trying to say is I don't know what—well, I don't want to get into the legal aspects of it. I am a lawyer but I am not here as a lawyer and I don't want to be in that position.

Mr. LINDSAY. Do you favor FEPC or not?

Mr. TAYLOR. Yes.

Mr. LINDSAY. You do?

Mr. TAYLOR. Yes.

Mr. LINDSAY. Then the counsel was suggesting the creation of a FEPC limited to Government contracting and subcontracting areas and also State employment agencies that are financed in whole or part by Federal funds?

Mr. TAYLOR. I have no objection to the principle which is involved. I support the principle which is involved. I understood that he was asking me for my opinion as to whether or not that should be included and I said that, to my mind, there was no legal question where the other matters were concerned but it was simply a matter of the will of Congress so there I said yes, and as to the other matter I reserved judgment because I understand from other lawyers there might be a question as to what is the meaning of the present laws under which the employment service is constituted and what is the meaning of a congressional appropriation and things of that sort and I don't feel I am in a position to discuss it at this time.

So I wanted to reserve judgment on something I didn't feel qualified to answer about in a clear and definitive way. That was the only reservation I have and it was not to the principle that was involved.

Mr. LINDSAY. Thank you.

The CHAIRMAN. You may proceed.

Mr. TAYLOR. A fourth program administered by the Committee is the achievement of equal employment opportunity within the Federal Government. In the past 2 years the Committee has closed 1,427 cases involving complaints of discrimination, 38.3 percent of which resulted in corrective action.

These figures compare most favorably with the 1,053 complaints handled in approximately 6 years by the previous Committee on Government Employment Policy, which achieved corrective action in only 16 percent of those instances.

In addition, through Committee guidance, and with the assistance of the Civil Service Commission, the capabilities of the various Federal agencies to carry out their responsibilities under the Executive order have been increasingly improved.

Specialized training courses covering departments and agencies which employ more than four-fifths of all Government employees, have been carried out or are well underway.

To assure that such capability is available at the field level, regional training sessions have been held in 14 major cities with large Government employment and annual followup consultations are now being carried out.

In order to pinpoint problem areas and to provide a benchmark from which future progress could be measured, an annual Government-wide survey of minority group employment was undertaken in June 1961, and substantial gains in nonwhite employment in the middle and upper levels have been revealed by the second survey completed a year later.

These, then, are the chief programs through which the President's Committee on Equal Employment Opportunity has been working to achieve the goals of President Kennedy's Executive order.

I believe that our experience has reflected significant strides toward those goals, and while much remains to be accomplished I am fully confident that even more substantial progress can be expected from our continuing effort.

Thank you.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I gather from your record of complaints, you would conclude that there are a great many cases of discrimination in employment with the firms which are covered but for some reason or another complaints have not been made?

Mr. TAYLOR. Yes.

Mr. KASTENMEIER. For instance, in some firms, say in Mississippi and elsewhere the conditions are such that complaints in great numbers could be filed, but for one reason or another just are not?

Mr. TAYLOR. I would want to say yes to your question but then want to elaborate by touching upon the regional aspect of it.

We are shortly going to have an annual report, which, for the first time, will tell the American people what we found out about distribution of the people in the country and where they are employed and the kind of work they do and where the opportunities

are. I am afraid that what we are going to find here is that we are not dealing with a problem that is confined to a region or that is largely centered in one region.

We are going to find that we are dealing with an American habit in this country and that the employment patterns are not greatly dissimilar all over with the exception of one or two localities in the whole United States, not greatly dissimilar regardless of what region you are talking about.

I think the motivation is the same fear of retribution, or reprisal which gives a fellow pause to think in one part of the country, that this same fear gives a fellow pause to think in another part of the country.

We are trying to do something about this. We think we are getting more people to come forward.

We also, because of the kind of relationships we have established, have had very, very frank admissions from industry people that the complaints which we have are only a small amount or a small number of the total cases that could conceivably be involved and many companies are very actively engaged in working to correct this situation and to get ahead of it.

Many vice presidents in charge of industrial relations are spending a tremendous amount of their time on just this problem at this present time.

This is a much larger problem than can be shown from our complaints.

Mr. KASTENMEIER. One of the reasons I asked that question, Mr. Taylor, was that I am aware of the fact that some people who have very strongly opposed discrimination in employment have also been critical of the President's Committee, but I am also aware that the President's Committee has many defenders, people who work with and for the Committee who feel they are doing an excellent job in trying to reconcile this. I am wondering how one can account for this difference of assessment of how well the Committee is doing?

Mr. TAYLOR. I would like your help on that; sir. If there is something specific, we can deal with it, but when a fellow comes up with a roundhouse swing, I don't know how much you can do about that.

I gave you some statistical evidence just a moment ago as to what we had done with the complaints. We issued a release a few days ago on 65 Plans for Progress companies and that didn't seem to get much publicity, but here is what it showed.

It showed that, let us say, at the time this got started they employed 2,419,471 and there was an increase in jobs of 49,994 and their average nonwhite employment prior to that time was 4.1 percent and then they increased 49,994, of which the nonwhite employment increased 11,230, or 22.7 percent.

And these were the biggest companies in America. Here are some of the companies:

American Air Lines; American Bosch; American Can; Bell Laboratories; Bendix; Chesapeake & Potomac; Continental Motors; Curtiss-Wright; Dow Chemical, so forth, and so forth, and that is enough of them to show these are all blue chip companies here.

Among these same companies, they show, if you will look at t percentage of increase, they show a decrease of 0.2 percent in lab generally, but the number of nonwhite laborers decreased by 2 percent, whereas they had increased all the rest of the way alo the line, which showed they upgraded the people and moved the along.

You have here for the nonwhites 40.5 percent of the new servic iobs, 34 percent of the new operatives jobs, 15.9 percent of the ne craftsmen's jobs, 9.9 percent of all the new salaried jobs.

So I don't know exactly how to go about it and it is frustratin to me and I would appreciate it if you could help me find a wa to get this information to the American people and not from tl standpoint of trying to show that our committee has done a goc job, but from the standpoint of motivating those people who nee motivating to try.

They have had a lifetime of being told it was no use and if w can get the word out to them that there is some use and that som thing is being done and that their Government is making an effo and that you men here are trying to figure out how to do a litt better than we are doing now, that would be a great deal of benefi to what we are trying to achieve because we have to qualify th people to hold the kind of positions we want them to hold.

Mr. KASTENMEIER. But you can see that there are innumerabl examples where there are no doubt cases of complaint that can b raised but are not being made?

Mr. TAYLOR. That is right.

Mr. KASTENMEIER. Now, as far as organized labor is concerne in getting rid of these practices, you have not reached the corne on that yet, much less gotten around the corner, but where wou you say you were with respect to the area you are governing, tha is, the Government contractors, et cetera? Do you think you ar well on your way around that corner?

Mr. TAYLOR. Well, you see, when you talk about Government con tracts, you are talking about America, you are talking about th leader or leaders of industry, but when you start thinking about al the jobs in the United States and industry jobs, available jobs, yo are not talking about quite as much as what you think, because am advised that Government procurement is only 15 percent o the gross national product.

Now, there are many contractors that, by and large, that do fairly technical work on Government contracts. We have opened up thos jobs. We have all of the engineers, all the chemists, all of the biologists and all the mathematicians and people who are hired i the skills and they are getting these jobs but here when you have a situation which historically has limited educational opportunitie for the people whom you are trying to advance and who therefor have not produced highly skilled people in these categories and who when there was no necessity for them to do that work, and when a man was able to do it he wasn't given the chance to do it, you hav all of that to consider, so where is it you have to turn your thinkin to. You have to think about commerce. You have to think about the girls in the department stores and you have to think about the young men who can sell minor items and all of these things where we don't have any power, we don't have a way to bring this about.

So we have to go beyond this, if you are going to significantly affect the industry as a whole. The unskilled and semiskilled jobs are disappearing. Secretary Wirtz says that they are disappearing at the rate of 35,000 a week. These are the jobs in industry which people who are not as well trained hold, so we have a serious problem.

We have the problem of the wide little gap between income and productive opportunities here.

So you have a three-pronged effort requiring the opening up of the jobs, requiring the training of people, and then of motivating them to take advantage of the opportunities which we are just trying to open up.

Now I think we are at the corner or a little bit past the corner as far as the Government contractors are concerned. Let me put it like this: We can open up, I think, as many jobs in these skilled categories at the present time as we can get people qualified to fill. There are not as many jobs, let us put it like that. We can open up jobs and they are jobs that need doing and we will not be opening up jobs by virtue of taking them away from somebody else because there are many unfilled jobs in our society and in our economy at the present time. We see the ads every day. But our problem has been that behind the lack of employment opportunities is also the lack of educational opportunities and the lack of opportunities to come in contact with people who are doing things and the fact that a large part of our training is on-the-job training even after you complete your formal education, that if you are not given that initial white-collar job, which is your entry job so that you can learn on the job, you will never make the progressive steps that are necessary in order to achieve the kind of success you expect out of this kind of program.

Mr. FOLEY. Do you coordinate the program with the Department of Labor as far as apprenticeship training is concerned?

Mr. TAYLOR. We have been working toward that. In fact, what we are doing in the District of Columbia and what we intend to do all over is based on that.

Just yesterday morning, I attended a meeting of Secretary Wirtz' Special Committee on Equal Opportunities in Apprenticeship.

Mr. FOLEY. Mr. Chairman, we heard testimony this morning to the effect the Civil Rights Commission has referred some complaints to your people. Can you tell us anything about those complaints?

Mr. TAYLOR. I wouldn't know them specifically. If you gave me the names, I could conceivably recall coming across them.

Mr. FOLEY. Do you recall any of the complaints?

Mr. TAYLOR. The chances are I would have to get the name of the fellow whom the Commission is referring to.

Mr. FOLEY. Would you know anything about the complaint referred to you from the Civil Rights Commission regarding a shipbuilding outfit in Pascagoula, Miss., on a contract with the Navy?

Mr. TAYLOR. I know something about the Ingalls Shipbuilding Co. in Pascagoula.

Mr. FOLEY. Was there anything done by your Committee?

Mr. TAYLOR. Yes, in fact we did a great deal. We had quite a long struggle there, and I am sorry, because, had I known you were interested I would have brought along the report.

I understand there are people working in white-collar positions and Negroes in apprenticeship training in seven or eight trades, I forget exactly how many, leading men, and things of that sort, and they have eliminated segregation in the various facilities there. I can't give you anything specific. If you would like it, I would be glad to send a copy of the report or give you a letter, whatever you want to know about it.

Mr. LINDSAY. Mr. Taylor, our particular problem in the Judiciary Committee is legislation. What are the legislative needs you have?

Mr. TAYLOR. As I said before, I cannot speak for this Committee.

Mr. LINDSAY. Speak for yourself.

Mr. TAYLOR. I think right here you come too close to asking me to speak for the Committee.

Mr. LINDSAY. Well, you are a leader in the field of civil rights and you have a job to do. I want to know whether you have the tools to work with. You are here testifying. What do you want the Judiciary Committee to do to build a body of law that will bring about better results in the field of your work?

Mr. TAYLOR. Well, I am Executive Vice Chairman of a Committee appointed by the President of the United States, sir, and, as such, as I explained here, as far as this committee, I came out of respect to the committee, and I came to help as much as I could.

The Committee has not assembled yet, my Committee has not assembled. It is going to meet, but not on this. We are going to meet in 2 weeks and if you ask me to get an expression from them, I will be glad to.

Mr. LINDSAY. These Judiciary Committee hearings on civil rights have been planned for a long time and what we need is testimony as to what the legislative needs are and I want some expression from you as to whether or not you want the Committee to go ahead and enact FEPC or not, confined or not to Government contracting. You mentioned a moment ago that you had not turned the corner on the labor problem. I happen to think unless somebody does something about altering the practices in the Southern labor locals, you are not going to get anywhere insofar as your factfinding technique is concerned. You are not going to get complaints because they would not give them to you.

Until the tools are found that will empower somebody to get these facts, I think you are going to be going along in a dreamworld, so I am very interested in knowing what your position is on legislative needs.

Mr. TAYLOR. Well, if you accept this as purely a personal opinion and in no way dealing with any responsibility which I may have based on this Committee, I feel that the principle in both pieces of legislation is sound.

I think that H.R. 24 goes a little further and that it is not connected with utilization of Government money and it lays a principle down as a principle.

Mr. LINDSAY. You mean the full FEPC?

Mr. TAYLOR. Yes.

Mr. LINDSAY. Did you recommend this legislation, these advantages of going into FEPC?

Mr. TAYLOR. I think you are now going back to my position in the administration of this Committee, which is a different thing. This is a different thing from my personal opinion and I am really trying to help you all I can, but you are dealing with policy now and I cannot define the path of administration policy.

Mr. LINDSAY. That is becoming more apparent all the time.

Mr. TAYLOR. So I think that to help me out you would want to let me just simply speak here as an individual and this is about as far as I can go.

Obviously, I think we understand there would be some advantages in the fair employment practices legislation. I am for it, very much so. I think that if you are in any way interested in solving a problem that, in addition to these things, there have to be procedures such as those we have been able to employ. This is what I am bringing out. You have to have some procedure for finding a fellow guilty but you have to have another approach to it other than finding him guilty, if you want to bring about this vast change we need.

So this is why I say that I would want to reflect upon the possibilities of broadening the scope of this thing and working out some ways in which you could have advisory groups from industry and advisory groups from labor and give them standing, and things of that sort, in order to help deal with this overall problem, but of course you have to present people with what you might consider to be a business proposition if you want them to get to it, get started on something.

So you do need such legislation as this kind.

Mr. LINDSAY. Thank you.

Mr. COPENHAVER. You indicated that one of the primary problems you encountered would be in the area of promotion.

Mr. TAYLOR. Yes. I said a large number of complaints were in the area of promotion.

Mr. COPENHAVER. Is not promotion more the responsibility of the union, whereas hiring is more the responsibility of the employer?

Mr. TAYLOR. I think it would depend on what kind of business you were in. In some places the union is the effective hirer and that is where there is a hiring hall and things of this sort. There are other businesses in which the employer is the effective party.

Mr. COPENHAVER. You also indicated that only 15 percent of the gross national product was covered by Government procurement?

Mr. TAYLOR. I said I am told that Government procurement represents only 15 percent of the national product. I didn't say it was covered by it. That is an entirely different concept.

Mr. COPENHAVER. Would you have any idea of what percent of the business community in the country has Government contracts?

Mr. TAYLOR. Well, we are told statistically that about 20 million employees are covered by the Executive order.

Mr. COPENHAVER. Beg pardon?

Mr. TAYLOR. We are told that about 20 million employees are covered by the Executive order and that all our reporting requirements will reach 17½ million.

Now, at the present time we have only reached about 8 or 9 million people through our reporting requirements. It will take

another year before we will reach anything, and, if I may finish, because I am trying to answer the question, it will take another year before we can reach anything like full coverage and I don't know whether it is going to show 17½ million or not. It seems to me it is going to show something less.

I understand there are more than 60 million people working in the United States, so that gives you some concept.

Mr. COPENHAVER. You referred earlier to 65 Plans for Progress and you indicated these plans showed increased employment and upgrading of nonwhite employment. You report a geographical breakdown of the various corporations, 65 corporations which you looked into where the increases occurred.

Mr. TAYLOR. This is not gotten up on a geographical basis, but a companywide basis.

Mr. COPENHAVER. You have no geographical breakdown?

Mr. TAYLOR. It is possible to obtain that. I would say we have made geographical investigations of companies and we know, that in terms of clerical occupations and things of that sort, it is more serious in some parts of the country than others, but I want you to understand that it is very serious all over the United States and that the differentials which you may draw are not really important differentials when you consider what the potential population is and what the utilization of people ought to be. You have 60 percent of your people in the country now as white-collar workers and I can show you a study of 3½ million workers and it shows that the nonwhite compose roughly 9 percent of them and only 3 percent of them are white-collar workers. That study represents rather fairly the whole national situation, 10 percent of them in California, 10 percent in New York, and that bears a rough relationship to what each of those States contributes to the gross national product and the total amount of workers in those States—so I point that out to you to indicate to you this is not anything we can handle on a geographical basis.

Now, the next step is this: I have a Committee of very distinguished academicians headed by the head of the Economic Department of Princeton University and a couple of people from Harvard Business School and people from Wayne State, University of Michigan Research Center, and other people of that character upon it.

Those people have been going over the compliance reporting forms for industry and the purpose is to devise and develop a common reporting form to produce the greatest amount of information with the least amount of effort.

I am advised it will be along in a few days and will expect to get it through the Budget Bureau within the next month or two.

We have been trying to get it done for 6 months. It was one of my first efforts when I came in as Executive Vice Chairman. We appear to be close to the point of reaching it.

I would imagine by next year you will be able to have information with regard to the region, with regard to the standard metropolitan area, with regard to States, with regard to everybody, and by occupation and by industry, and by subclassification of industry and for the whole shooting match.

Mr. COPENHAVER. Is it correct that your committee has, under Executive order, the authority to investigate discrimination, whether

based on race, color, religion, national origin, of Federal employees abroad?

Mr. TAYLOR. There is no limitation to the United States.

Mr. COPENHAVER. Should you not conduct investigation of practices abroad not only of nonwhites but of those discriminated against because of religion?

Mr. TAYLOR. I don't recall any cases of this kind coming to us. I don't think we have had any on that basis.

Mr. COPENHAVER. This morning, the Civil Rights Commission mentioned that the existing authority under the Executive order and also H.R. 3139 would not cover grant-in-aid situations, as for instance, in the highway program and under the Hill-Burton Act in which they mentioned a great deal of discrimination exists. Would you believe personally that it would be advantageous to extend the authority to cover that?

Mr. TAYLOR. I haven't really studied it. Obviously, I would think, and when I say I have not made a study that does not mean I don't have a sense of moral imperatives on something of that kind, but when you are trying to tell somebody else to do something, I mean when I have not made an investigation of the pros and cons of the problems involved, I would not want to, but I would say emotionally I would be in favor of it, but I do not think I have a considered judgment on the matter.

Mr. COPENHAVER. In the 9-month report, you indicated that with respect to some of the larger agencies you would like to separate the investigating officers' duties from those of the officers conducting the hearings.

Mr. TAYLOR. The situation there was we found complications in the field in which the same fellow was doing the investigating on the case and was making a finding on the case, also, and we thought that was not too good a procedure, so we asked them not to do that.

Mr. FOLEY. You mean you want to separate the functions of investigating and that of making the findings on those investigations?

Mr. TAYLOR. Yes. However, there may be some smaller agencies, such as, I recall, the Indian Claims Commission where they said they only had about, I have forgotten the exact number, but about 35 or 40 people and Senator Watkins said he would look into it himself and would I trust him to make a finding. So I told him I thought I could.

But insofar as the larger agencies are concerned, we feel that it should not be standard operating procedure, that the same fellow should not investigate and also conduct the hearing.

Mr. COPENHAVER. Mr. Taylor, at the time of the 9-month report, you indicated your Committee had not approved all the rules and regulations of all the agencies. Have you now completed that?

Mr. TAYLOR. Yes.

Mr. COPENHAVER. That is all.

Mr. MATHIAS. Mr. Taylor, several days ago I had the privilege of sitting in the witness chair where you are now sitting and at that time I included as a part of my statement, with particular reference to the desirability of a statutory commission on equal employment opportunities, an excerpt of the Congressional Record which involved a discussion of civil rights provisions on a contract

between the United States of America and the Washington Public Power Supply System and the Portland General Electric Co.

This is, as you may recall, in connection with a public power project in the West.

Now, in that connection, Congressman Saylor, of Pennsylvania, listed in some detail the events which surrounded this transaction and noted that the contracts which finally were executed by the Government provided, and I think perhaps it would be easier for me to quote the provision:

Notwithstanding the provisions of paragraph 6—

And paragraph 6 is the paragraph which provides for cancellation in the event of noncompliance with nondiscrimination clauses.

Notwithstanding the provisions of paragraph 6 hereof, in the event of the supply system's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations, or orders, this agreement will not be canceled in whole or in part so long as such cancellation would impair the security of the revenue bonds issued by the supply system.

Mr. TAYLOR. Is not there something more to it?

Mr. MATHIAS (continuing):

The contracting parties agree that the compliance with this section is of the essence, and in the event of a violation all other remedies, including injunctive relief and specific performance, shall remain available to the United States.

This is the total part of section 8, at least as it appears in the record.

Now, do you know of anything further that should be there?

Mr. TAYLOR. I don't quite understand you. I remember there was something there specifically reserving the rights to get specific performance of the agreement. That is to say, to compel them to carry it out.

Mr. MATHIAS. Let me go back and ask you, No. 1, was your Commission consulted on whether or not there should have been an exemption as provided under the terms of the Executive order?

Mr. TAYLOR. Yes.

Mr. MATHIAS. And did your Commission agree to such an exemption?

Mr. TAYLOR. There was a finding made. I wish I had the file with me. I feel a little reticent in talking about something of this sort which is so far removed from the matter at hand.

Mr. MATHIAS. I do not want to take advantage of the witness in this respect, but I do feel this way about it.

Mr. TAYLOR. Well, I would like to answer it, but I would really prefer to have everything with me when I answer it so that I can give you an answer that would be a solid and substantial answer.

Mr. MATHIAS. Mr. Chairman, if the witness would prefer, I could propound several questions and perhaps at his convenience, his early convenience, he can then supply the committee with the answers.

Mr. TAYLOR. Yes.

Mr. MATHIAS. I think we would like to know whether the Commission was consulted, what the Commission's reply was when the suggestion was made that there should be an exemption, if the Commission advised against granting an exemption in this case and on what grounds.

In addition, if the Commission refused to approve the exemption, then what was the Commission's position with regard to the Executive action which was finally taken which would appear to amount to an exemption? Finally, I should think it would be of great value to the committee in pursuing the legislation which is before it to know if action of this sort, which would appear to be an evasion of the intent of the Executive order, does not strengthen the case for the need for a statutory commission.

Mr. RODINO. You will provide that?

Mr. TAYLOR. Yes.

Mr. RODINO. Do you have anything further?

Mr. TAYLOR. No.

Mr. RODINO. Mr. Taylor's statement will be included in the record.

(The statement referred to follows:)

THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY,

Washington, D.C., July 10, 1963.

Hon. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN CELLER: During the course of my testimony before the Civil Rights Committee of the House Judiciary on May 16, 1963, Congressman Mathias asked certain questions with reference to the action of the President's Committee on Equal Employment Opportunity in granting an exemption to the Department of the Interior and to the Atomic Energy Commission in connection with an agreement entered into by these agencies with the Washington Public Power Supply System, a public corporation of the State of Washington, for the utilization of excess steam energy arising from the operation of the Hanford reactor. For purposes of simplicity, I will attempt to restate these queries as follows:

1. Was the Committee consulted in connection with the taking of this action?

The Committee itself was not consulted, but there was consultation with the offices of the Chairman and Vice Chairman of the Committee. The authority for my action may be found in section 60–1.3(b)(1) of the rules and regulations of the Committee. In conformity with the provisions of section 60–1.3(b)(9), this action was reported to the full Committee at its next meeting. At no time did the Committee advise against granting this exemption nor has there been any subsequent objection to it.

2. Does not action of this sort, which would appear to be an evasion of the intent of the Executive order, strengthen the case for the need of a statutory commission?

This question is in part speculative and answer to it requires the expression of opinion rather than the giving of information. As to that portion of the question, which may be responded to on a factual basis, I would state that the action does not in any manner appear to be an evasion of the intent of the Executive order. The Executive order, in terms provided for the granting of exemptions, and so it is clear that it contemplated that such an action could be taken under proper circumstances. In connection with the particular matter at hand, I acted as my letter of January 14, 1963, indicates, upon the opinions expressed by Secretary Udall and by Commissioner Seaborg after they had carefully examined into the facts and circumstances of the matter. This letter was forwarded to Congressman Mathias under date of June 20, 1963, and another copy is appended hereto for the benefit of the committee. It should also be noted that Washington Public Power Supply System was expected to employ less than 50 persons and that the remedy of specific performance was made applicable to this system in connection with its employment of individuals. It should further be noted that this authority was at all times subject to the operation of the fair employment practices law of the State of Washington and that the antidiscrimination clause was fully applicable to all other instrumentalities, public or private, which might be engaged in the construction or the administration of the project.

As has been pointed out in the past, the Interior Department and the Atomic Energy Commission made their request on the basis that such an action was essential if the bonds, the receipts of which would finance this greatly needed public project, were to be sold at a price that would make construction feasible. It is my belief that the other questions contained in Congressman Mathias' queries are answered by my answer to the first question.

Very sincerely yours,

HOBART TAYLOR, Jr.,
Executive Vice Chairman

JANUARY 14, 1963.

HON. STEWART L. UDALL,
Secretary of the Interior,
Washington, D.C.

DEAR MR. SECRETARY: This will refer to your letter of January 2, 1963, relating to certain problems which have been encountered in connection with arrangements now being made for the construction and operation of generating facilities at the Hanford new production reactor, and the disposition of electrical energy produced by such facilities.

In your letter you have requested approval for certain exchange agreements which will be concluded between the Bonneville Power Administration, the Washington Public Power Supply System (WPPSS) and various public and private utility organizations to contain a modification of the standard nondiscrimination clause prescribed for Government contracts by Executive Order 10925. A similar request has also been received from the Atomic Energy Commission with respect to a related contract and two leases which the Commission will enter into with WPPSS. A proposed modification, which would impose a limitation upon the Government's right to cancel these contracts in the event of noncompliance with the requirements of the Executive order, would be in the form of an added paragraph (8) to the standard clause and reads as follows:

"Notwithstanding the provisions of paragraph (6) hereof, in the event of the Supply System's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract will not be canceled in whole or in part so long as such cancellation would impair the security of the revenue bonds issued by the Supply System. The contracting parties agree that compliance with this article is of the essence and in the event of a violation all other remedies, including injunctive relief and specific performance, shall remain available to the United States."

In making this request, you have stated that the retention of the cancellation provision without modification would place the success of this project in jeopardy because of the effect on the sale of some $130 million in revenue bonds by WPPSS to finance the project, and because of the effect upon prospective participation by public and private utility organizations of the Pacific Northwest. Both the sale of the bonds and 100 percent subscription for the output of the generating facilities are stated to be essential to the success of the project.

With respect to the effect of the cancellation provision upon the sale of revenue bonds, you have pointed out that the bondholders' security will be based upon the exchange agreement, and that their possible cancellation by the Government because of the WPPSS's noncompliance with its obligations under the Executive order would subject the bondholders to a potential loss of their security which they would be powerless to prevent. You advised that for these reasons three major prospective bidders for the revenue bonds, Halsey Stuart & Co., John Nuveen & Co. and Smith, Barney & Co., have advised you that retention of the cancellation provision would make bidding and sale of the bonds extremely difficult, if not impossible; and that your best estimate of the effect of the provision, based upon advice from bond counsel, financial consultants, bonding houses and independent appraisal, is that the bonds will not be marketable or that a substantial increase in the interest rate will result if the cancellation right is retained in its present form.

The further impact of cancellation, you have indicated, would be upon participating utility companies which would thereby lose their firm source of power supply. You state that the spokesman for the private utilities has indicated that they were not willing to rely upon a source of power which would be subject to such an eventuality, for this would necessitate their having

to secure additional standby sources of supply and would thus undermine the entire basis for their participation. Similar views have been expressed at meetings with the public organizations which might otherwise be expected to participate.

As an indication of the important national interest involved in the successful completion and operation of this project, you have stated that continuous use of the Hanford reactor for electric power generation will assure its availability for rapid conversion to plutonium production and thus improve the national defense posture. The financial return to the AEC in payment for steam energy is expected to be substantial and may exceed $155 million. Moreover, it is anticipated that the project will increase the firm energy supply of the Pacific Northwest by 850,000 kilowatts, making it the world's largest atomic power generating facility.

As a further factor to be considered in assessing the desirability of approving a modification, you have pointed out that WPPSS itself will employ less than 50 persons. The actual construction of the power facilities will be accomplished by contractors who would be subject to all of the enforcement remedies of the standard nondiscrimination clause, and actual operation of the system is planned to be carried out by a contractor who would similarly be subject to all such remedies. In view of this, and the fact that the WPPSS will also be subject to Washington State laws prohibiting discriminatory employment practices, you have urged that the practical benefit offered by unqualified retention of the power of cancellation is far outweighed by the other considerations involved.

In his letter of January 9, 1963, Chairman Seaborg of the Atomic Energy Commission pointed out that the Commission will be entering into a contract and two leases with WPPSS, which will cover the purchase of byproduct steam from the Commission for use by WPPSS in the generating facilities which it will construct on land leased from the Government. Chairman Seaborg shares your concern that the problem raised by the cancellation clause may adversely affect the feasibility of the project and feels that, since Washington State law prohibits discrimination in employment, modification of the cancellation right would not in this instance do harm to the basic objectives of the policy established by the Executive order, particularly in view of the fact that it would apply only to a single contractor employing a limited number of persons.

We have also had the benefit of the views of Mr. Frank Morris, Assistant to the Secretary of the Treasury for Debt Management. It is his personal opinion (but not an official opinion of the Treasury Department) that inclusion of the cancellation provision without modification would cause difficulty for the underwriters and might result in some additional interest cost to the issuer. Although he does not believe that such additional interest would be substantial, he indicated that the exact amount could not be predicted. He stated that his opinion was based upon his own experience and upon his consultation with certain representatives of leading New York financial institutions, particularly Mr. Delmond K. Pfeffer of the First National City Bank. He indicated, however, that others with whom he had spoken were more concerned about the effect of the cancellation provision and that Mr. John Milhau, vice president in charge of investments at Chase Manhattan Bank had expressed the belief that the cancellation would, in fact, render the bonds unmarketable.

It appears from the foregoing that expert opinion upon this subject is not unanimous, but that there exists, in fact, the possibility that the inclusion of the cancellation clause in the proposed contract, without qualification, might seriously hamper or endanger the success of the project. I have read with great care the facts and conclusions appearing in the communications from you and from Commissioner Seaborg and have reached the determination that, in the absence of specific evidence to the contrary, it is my duty and obligation to give great weight to the opinions expressed by those bearing the primary responsibility for the successful consummation of this project, the importance of which is clear. I also deem it important to note that WPPSS is expected to employ less than 50 persons, and that all other instrumentalities engaged in the construction or operation of the system are subject to all enforcement remedies of the standard nondiscrimination clause.

Under section 303 of Executive Order 10925, this Committee is empowered to exempt a contracting agency from the requirement of including the provisions of section 301 of the order in any specific contract when it deems that special circumstances in the national interest so require. The Committee, by section

60-1.3(b) of the rules and regulations issued pursuant to the order, has delegated this authority to its Executive Vice Chairman. The Committee's Special Counsel has advised that under the above provisions the Executive Vice Chairman is authorized to approve the partial exemption requested here.

Pursuant to such authority I have carefully considered the foregoing information, and in reliance upon the considerations and representations set forth in your letter of January 2, 1963, and Commissioner Seaborg's letter of January 9, 1963, I find that special circumstances in the national interest require that, in connection with the proposed agreements with WPPSS, a partial exemption be granted to the Department of Interior, and the AEC, and that such exemption may properly be effected through the addition, for the purpose of these agreements only, of a paragraph (8) to the standard clause as set forth in the second paragraph of this letter; approval for such modification and partial exemption being hereby granted.

Sincerely yours,

HOBART TAYLOR, Jr.,
Executive Vice Chairman.

STATEMENT BY HOBART TAYLOR, JR., EXECUTIVE VICE CHAIRMAN, PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY

Mr. Chairman and members of the subcommittee, I appreciate your having invited me to appear and testify in connection with two bills pending before you: H.R. 24 and H.R. 3139. While both of these bills contain a number of titles relating to various civil rights matters, I shall address myself only to the matter of employment, since it is this subject which has been the concern of the President's Committee on Equal Employment Opportunity.

I should make clear, too, that the President's Committee, which is composed of 15 public members and 14 Government members, has not had the opportunity to meet and arrive at a collective view with respect to these particular bills or with respect to any particular considerations of policy which they involve. I am, therefore, unable to speak for the Committee at this time and, accordingly, believe it appropriate to confine my remarks to an explanation of the equal employment opportunity program which is administered by the President's Committee, in the hope that our experience in this area will be of benefit to you as you deliberate upon these particular bills.

The President's Committee on Equal Employment Opportunity was established by President Kennedy's Executive Order 10925 of March 6, 1961, and was charged with the responsibility or promoting and enforcing equal opportunity without regard to race, creed, color, or national origin of those employed or seeking employment with the Federal Government and on Government contracts.

The Committee's activities may largely be described in terms of four basic programs in which it is involved. One of these is the contract compliance program. As required by the Executive order, work performed for the Federal Government is subject to a contract clause which specifies that the contractor will take affirmative action to insure that applicants are employed and that employees are treated during their employment without discrimination; and that such affirmative action shall include, among other things, employment, upgrading, demotion, transfer, recruitment advertising, compensation, and selection for training. The contractor also agrees to file such compliance reports as are required by the Committee, and, for purposes of compliance investigation, to permit access to his books and records. The foregoing requirements may be made applicable not only to the prime contractors, but also to all subcontractors, including those whose subcontracts are several levels removed from the prime contract. At the present time the Committee has, for reasons of practicable administration, applied these requirements only to second-tier subcontractors, except in the construction industry where all subcontractors are covered.

Under the Executive order the Committee, as well as the contracting agencies, may impose sanctions which include terminating the contract of a noncomplying contractor, declaring noncomplying contractors ineligible for future Government contracts, and directing agencies not to enter into contracts with bidders who are not evidencing satisfactory compliance with the order. The Committee may also request the Justice Department to seek judicial relief from violations of nondiscrimination requirements.

Complaints of discrimination against Government contractors are investigated by the contracting agency concerned and the agency's resolution of the matter is reviewed by the Committee, which may determine that further investigation or corrective action is required. One problem immediately apparent at the outset was the fact that under the program administered by the previous Committee on Government Contracts, complain investigations had been carried out by agency personnel whose main duties were concerned with matters other than the nondiscrimination policy, and who were, accordingly, unlikely to have an opportunity to develop knowledge or insight into the problems encountered in this area, or into effective techniques for achieving equal employment opportunity. In response to this situation, the chief contracting agencies, for the past year and a half have been building up a staff of competent, experienced individuals who will be devoting full time to compliance activities.

The complaint resolution record achieved under this program in the past 2 years has, I believe, been an impressive one. During this period 849 complaints of discrimination have been investigated, 72 percent of which have resulted in findings of discrimination and the achievement of corrective action. These figures, I might add, contrast with 1,042 complaints handled in 7½ years by the previous Committee on Government Contracts, only 20 percent of which were resolved in favor of complainants.

I should point out that in resolving individual complaints, the Committee has been concerned with the employers overall practices and has been alert to indications that there may be aspects which are not in consonance with the nondiscrimination policy. In such instances the complaint procedure has been utilized as the basis for effecting affirmative action programs. Through the use of the specialist staffs which the major contracting agencies now have, it is expected that affirmative action programs will be increasingly accomplished as a result of routine compliance reviews, and that dependence upon individual complaints for this purpose will be considerably lessened.

The value of the foregoing approach has been confirmed by Mr. Theodore W. Kheel, who had been asked by the Vice President to study the structure and opportunities of the President's Committee and whose report was issued in July 1962. Pointing to a study made by Paul H. Norgren of Princeton University, of State, municipal, and Federal nondiscrimination agencies, Mr. Kheel noted that there was virtually unanimous agreement by experts in the field that pattern-centered activity more than the adjustment of individual complaints is the solution to the problem of discriminatory employment practices, and concluded that the President's Committee should stress this approach in its activities.

A further significant aspect of the contract compliance program is the compliance reporting requirement, pursuant to which the employers of more than 15 million workers are now regularly furnishing the Committee with statistics as to the race and sex of their employees. It is anticipated that such reports will be valuable in determining instances where affirmative action programs should be stressed, and for the first time, will provide reliable information as to the utilization of minority group manpower and the impact of Government contracts upon such utilization.

Plans for Progress represents another Committee program, under which 104 of the Nation's largest firms, employing more than 5 million workers, have pledged themselves to take steps going beyond the requirements of the Executive order, in order to aid in advancing the goals of equal employment opportunity for all. I might stress that, with two exceptions, such companies are still subject to all of the requirements of the Executive order and its enforcement procedures. The two exceptions are not Government contractors and would, therefore, not otherwise be subject to nondiscrimination requirements of the Executive order.

A third Committee program relates to labor unions. While the Committee has no direct control over the practices of unions, it is clear that such practices can be vitally significant to the effectuation of the goals of equal employment opportunity. In order to accomplish a direct involvement of labor unions in the goals of Executive Order 10925, discussions between the AFL–CIO and the Secretary of Labor led to the development of a union program for fair practices, to which 118 international and national unions and 338 local unions directly affiliated with AFL–CIO became signatory last November 1962. Under this program the unions have pledged themselves to

eliminate any discriminatory practices within their own ranks and have further undertaken to seek to end discriminatory practices by those employers with whom they have collective bargaining agreements. In addition, these labor organizations have agreed to cooperate with the Committee in achieving the correction of local practices which are not consistent with these purposes.

A fourth program administered by the Committee is the achievement of equal employment opportunity within the Federal Government. In the past 2 years the Committee has closed 1,427 cases involving complaints of discrimination, 88.3 percent of which resulted in corrective action. These figures compare most favorably with the 1,053 complaints handled in approximately 6 years by the previous Committee on Government Employment Policy, which achieved corrective action in only 16 percent of those instances.

In addition, through Committee guidance, and with the assistance of the Civil Service Commission, the capabilities of the various Federal agencies to carry out their responsibilities under the Executive order have been increasingly improved. Specialized training courses covering departments and agencies which employ more than four-fifths of all Government employees, have been carried out or are well underway. To assure that such capability is available at the field level, regional training sessions have been held in 14 major cities with large Government employment and annual followup consultations are now being carried out.

In order to pinpoint problem areas and to provide a benchmark from which future progress could be measured, an annual Government-wide survey of minority group employment was undertaken in June 1961, and substantial gains in nonwhite employment in the middle and upper levels have been revealed by the second survey completed a year later.

These, then, are the chief programs through which the President's Committee on Equal Employment Opportunity has been working to achieve the goals of President Kennedy's Executive order. I believe that our experience has reflected significant strides toward those goals, and while much remains to be accomplished I am fully confident that even more substantial progress can be expected from our continuing effort.

Mr. RODINO. The next committee hearings will be held on Wednesday, May 22.

The civil rights hearings will continue on Thursday, May 23, and Friday, May 24.

The committee will now adjourn.

(Whereupon, at 4:05 p.m. the committee adjourned, to reconvene on Wednesday, May 22, 1963.)

CIVIL RIGHTS

THURSDAY, MAY 23, 1963

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

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

Present: Representatives Celler, Rodino, Rogers, Toll, Kastenmeier, McCulloch, Lindsay, and Mathias.

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The subcommittee will come to order.

Our first witness is Mr. Edmond F. Rovner, civic affairs director, International Union of Electrical Workers, AFL–CIO.

STATEMENT OF EDMOND F. ROVNER, CIVIC AFFAIRS DIRECTOR, INTERNATIONAL UNION OF ELECTRICAL WORKERS, AFL–CIO

Mr. ROVNER. My name is Edmond F. Rovner. I am the civic affairs director of the International Union of Electrical, Radio, and Machine Workers, AFL–CIO, on whose behalf I appear before you today. Let me, at the outset, thank you for the opportunity to appear and to present the views of my union.

IUE–AFL–CIO represents more than 425,000 workers in the electrical manufacturing industry in the United States and Canada. Our members range geographically in the United States from Maine to California; from major metropolitan centers such as Los Angeles, Chicago, Philadelphia, Boston, and New York to semirural communities such as Zion, Ill.; Latrobe, Pa.; and Greeneville, Tenn. They come from such varied ethnic origins as Central Europe, Ireland, Italy, the American Negroes, Puerto Rico, Mexican-Americans, and virtually every group which has contributed to the citizenry of this Nation.

It is symptomatic of our times that there are now pending before this committee more than seven dozen different legislative proposals in the field of civil rights. It is both symptomatic of the general mood of the Nation and it is symptomatic of our failure fully to redeem the pledge of individual freedom which is both the promise and the genius of our Nation.

In 1947, President Truman's Committee on Civil Rights, on which IUE President James B. Carey served, issued its report, "To Secure These Rights." The introduction to that report could as well

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have been written in 1963 as in 1947. The introduction concludes with this statement:

> Our American heritage of freedom and equality has given us prestige among the nations of the world and a strong feeling of national pride at home. There is much reason for that pride.
>
> But pride is no substitute for steady and honest performance, and the record shows that at varying times in American history the gulf between ideals and practice has been wide. * * * We have learned much that has shocked us, and much that has made us feel ashamed. But we have seen nothing to shake our conviction that the civil rights of the American people—all of them—can be strengthened quickly and effectively by the normal processes of democratic, constitutional government. That strengthening, we believe, will make our daily life more and more consonant with the spirit of the American heritage of freedom. But it will require as much courage, as much imagination, as much perseverance as anything which we have ever done together.

Following the receipt of this report, President Truman sent a special message to the Congress on February 1, 1948, seeking implementation of that report. Among other recommendations for legislation which he made more than 15 years ago included the establishment of a permanent Commission on Civil Rights, strengthening existing civil rights statutes, protecting "more adequately the right to vote," establishment of an Equal Employment Opportunity Commission, and prohibiting discrimination in interstate transportation facilities. This was more than 15 years ago and those long-overdue goals—the continued existence of which stood as an indictment against us a decade and a half ago—are still not realized.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt at this point, if I may.

Mr. Rovner, do you as an individual, and do you as the spokesman for your organization, the AFL–CIO, International Union of Electrical, Radio & Machine Workers, believe now that the Civil Rights Commission should be given a permanent status?

Mr. ROVNER. Yes, sir. I will deal with that later in the testimony.

Mr. McCULLOCH. I am sorry, I haven't had your statement until 3 minutes ago.

Mr. ROVNER. I will get to that point, sir.

IUE–AFL–CIO, which was formed as the product of a revolt against the Communist domination of industrial unionism in the electrical manufacturing industry, took time in November 1949 as it struggled against those who wanted to kill it at birth, to adopt "the real progressive pledge, the IUE–CIO will be in there fighting with its might and main in the hope of achieving the following liberal program which was adopted by the CIO." That program included enactment of the recommendation of the President's Committee on Civil Rights including the prohibition against "undemocratic restrictions on the right to vote" and other items. At every ensuing convention of my organization, and there have been 10 of them, we have renewed our demand that America meet its obligations and redeem its pledge.

Mr. McCULLOCH. Mr. Chairman, another interruption.

Could you give us a line or two explanation of the phrase "undemocratic restrictions on the right to vote"?

Mr. ROVNER. Yes, sir. We believe there have been two main types of restrictions on the right to vote. First, there is the restric-

tion on the right to vote. There has been the systematic disenfranchisement of Negroes in the South through a variety of devices such as the discriminatory application of literacy tests. In addition, we believe that there should be a change in the law even where the tests are not discriminatorily applied, but where the tests are themselves, we believe, inherently undemocratic in that there is a requirement of literacy in English. We believe that this, too, is an infringement on the right to vote.

Mr. McCULLOCH. You would approve, then, generally, in that statement the broad, liberal aspects of the Ohio voting laws, which have no such provision or condition precedent to voting.

Mr. ROVNER. I am not personally very familiar with the Ohio laws, but if they have no restrictions and no requirement of literacy and English, my organization and myself——

Mr. McCULLOCH. We have no restrictions whatsoever on the right to vote in Ohio, except that one be 21 years of age, of sound mind and memory, and under no legal restraints.

Mr. ROVNER. Yes, sir.

Mr. McCULLOCH. And probably in half the precincts in my State in the rural territory, we do not even have any provisions for registration. At the risk of bragging, again, about the State of Ohio, we have not had any election scandal in a quarter of a century or more.

By the way, in addition to those conditions which you describe as covered by the phrase which I quoted, do you and does your organization believe, too, that of equal importance is the necessity of having one's vote counted in accordance with the way one votes when one follows the law.

Mr. ROVNER. Yes. Yes; we believe that not only——

Mr. McCULLOCH. In other words, vote frauds are equally bad, if not worse, than the legal provisions that make it difficult to vote.

Mr. ROVNER. Yes. We believe that the frauds in counting as well as the frauds that are sometimes perpetrated by malapportionment and gerrymandering of districts are all reprehensible and all inconsistent with our system of government. The malapportionment and gerrymandering is the second type of restriction on the right to equality in voting. We have taken positions against all of them.

As trade unionists IUE takes pride in our own achievements in helping to eliminate discrimination against minority groups in those segments of our industry where IUE has secured collective bargaining rights. IUE takes a measure of gratification from State and municipal laws which have been enacted, frequently with our assistance, to fight the war against discrimination. We take a degree of consolation from the fruits of nonviolent private action which have opened lunch counters to all people in many cities. However, the pride, the gratification and the consolation are as nothing when contrasted to the frustration and bitterness—and we use these words deliberately—in the field of congressional action as contrasted to the needs.

I do not seek here today to discuss in any detail the specifics of the various proposals now pending before this committee. Moreover, we find it demeaning when we are asked which of the rights of citizens we seek to protect now because it is implicit in such a sug-

gestion that some may be defended but only at the price of leaving others undefended.

Women and children are assaulted by police dogs and are crushed beneath the blows of those wearing the uniform of a State of the United States. There is no question in our minds but that those acting under the color of law in the State of Alabama used their "official status" to deny Americans their civil rights. Obviously, the role of the Federal Government to protect its citizens in the free exercise of the right peacefully to assemble must be strengthened. The effort may lie as well in administrative determinations as in the enactment of new legislation. We applaud the fact that the President of the United States has been willing to put the force of its Federal marshals and its militia on the side of the protection of its citizens.

In the field of school integration, 9 years have passed since the U.S. Supreme Court said that segregation by race is inconsistent with the Constitution of the United States. The Supreme Court called for an end to segregation "with all deliberate speed." Nonetheless, 9 years later, there are more than 2,000 school districts in the United States irresolutely opposed to integration. The failure to enact part III of the civil rights bill in 1957, which would allow the U.S. Justice Department to initiate and undertake suits, is largely responsible for our bitter heritage.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt again. I think it would serve a useful purpose if the record at this point showed that part III of the civil rights bill in 1957 had the approval of this subcommittee, of this full committee, and ,as I recall, passed the House of Representatives.

Mr. ROVNER. Yes, sir.

Mr. McCULLOCH. And the House continued to do its very best to see that this remained in the legislation when it was in consideration in the Senate.

Mr. ROVNER. Let me make the point, as a matter of fact—and thank you for adding to this—as a general rule, it can be said that the difficulty in enacting congressional legislation has not been the fault of this committee, either the subcommittee or the full committee, nor, by and large, of the House of Representatives.

Mr. KASTENMEIER. Mr. Chairman, I think the record is unhappily not quite so complete concerning our committee.

In 1960, we did not include any part III or title III. It might have been included but it was not in the House bill. I, for one, certainly hope that this year we will include it.

Mr. McCULLOCH. Mr. Chairman, by way of confession, I think the record should show that the matter was studied at great length. As I recall, the chairman offered an amendment on the floor, and it was finally decided that we should get what we could get in the Civil Rights Act of 1960, which, if I might say so, with proper modesty, was one of the best civil rights enactments in a decade if not in the century.

The CHAIRMAN. Without the support of the able minority leader of this committee, we could not have gotten it through.

Mr. ROVNER. Quite frequently what has occurred, it appears to us, is that the threat of the filibuster in the Senate has been a deter-

rent and has forced compromises before the event of the filibuster. This is why I say that quite frequently we have seen that it is in the Senate that the civil rights efforts have gone to their death. Sometimes the shadow of the filibuster guillotine has been cast across the House of Representatives in advance.

The riots in Oxford, Miss., when James Meredith asked for no more than to hear the lectures of professors paid, in part, by his tax money and to sit in classrooms built and maintained, in part, by his and other Negroes' tax money are the responsibility of those who helped kill part III. We call not only for part III, but for technical aid to school districts as they undertake the task of desegregation.

In the field of voting rights, the need is no less critical. How much more documentation is needed to demonstrate the systematic denial of the right of Negroes to vote because they are Negroes? How much more documentation is needed to demonstrate that those of Puerto Rican origin and who may be completely fluent in Spanish, able to speak English, and regular readers of Spanish-language newspapers, are denied the right to vote?

The evil in the literacy tests takes two forms:

1. Tests that are intrinsically unfair; and

2. Discriminatory application of tests that might be reasonable.

It is ironic that a person who is physically unable to read because he is blind can vote in New York while a person who is literate in Spanish and fluent in spoken English is denied that same right.

IUE calls for full protection of the right to vote including the appointment of Federal registrars, the irrebuttable presumption that a person who has completed six grades of school is sufficiently literate to meet any voting eligibility test based on literacy and a prohibition against requiring literacy in English as a prerequisite to the right to vote.

Here I would like to point out paradoxically, that in 1925, one organization which was anxious to restrict the right to vote, suggested a literacy test of 4 years of public school as being the test which would keep the rolls pure. It is interesting that the organization was the Ku Klux Klan. In the October 15, 1925, edition of the American Standard, which was the publication of the Klan, they urged 4 years of school as conclusive and being adequate. It is interesting now that there are many people who claim that 6 years is inadequate. They have gone beyond the Klan in this sense—those who are racially more zealous than the Ku Klux Klan.

Mr. COPENHAVER. Are you suggesting that perhaps there should be no grade requirement?

Mr. ROVNER. I would think, sir, that there should be no grade requirement. But, at a minimum, some of these tests are, in the nature of things, left to the States; no State should be permitted to require any test beyond the completion of 6 years.

Mr. COPENHAVER. Certainly in Federal elections there is no legal complication, is there?

Mr. ROVNER. I see none. My organization has not taken a position on this precise question. My own personal inclination would be against any grade requirement test.

Mr. ROGERS. The objective of the legislation is that, having obtained a sixth grade education, there is a presumption that they are literate enough to vote.

Mr. ROVNER. Yes, I want to make that very clear. We would not require six grades in order to vote.

Mr. COPENHAVER. I said the removal of any grade requirement, so far as the presumption is involved. In other words, the total abolition of literacy tests in Federal elections.

Mr. ROGERS. Let's get this straight. As I now understand, the proposal is that, if you have gone through the sixth grade, the presumption is that you have enough understanding to exercise the franchise of voting. Once it is demonstrated you have passed the sixth grade, then you qualify. That doesn't mean that one who may never have gone to school, but who is amply qualified and who has an understanding that will meet all standards would be disqualified because he had not gone to the sixth grade.

Mr. ROVNER. As I understand your question, there is no inconsistency between the positions taken.

Mr. COPENHAVER. They are not inconsistent, but my only point is that in the South, as I view it, it has been the segregated policy which has denied the Negro a proper education to even meet the sixth grade requirements, and therefore, it is sort of a built-in discrimination, even with the sixth grade presumption.

Mr. ROVNER. The sixth grade presumption we see only as a protection, not as an endorsement of a requirement of such tests.

Mr. COPENHAVER. But you know, as well as I know, with any type of a test still operating down there, you can finnagle and you can juggle. It only creates a presumption. You could still give the tests.

Mr. ROVNER. As I say, my organization has not taken a position on this. Since I am here in a representative capacity, I am reluctant to go beyond what it has taken a position on. I think it is consistent with the positions they have taken to say that they would favor the optimum law, which would be one that would eliminate the literacy test. But my organization has not considered that point as yet.

The right freely to travel between the States is actually guaranteed to most of our citizens by the Constitution and our system of government, but only theoretically guaranteed to others. In 1941 the Supreme Court of the United States unanimously declared invalid a California statute prohibiting anyone from knowingly bringing into the State a nonresident indigent person, because the right to free travel cannot be abridged. Nonetheless, mobs, in and out of policemen's garb, bodily assault Negroes and whites for exercising that right and the facilities which are obviously necessary for reasonable exercise of that right are denied to minority groups. We support legislation which will make it unlawful for anyone to deny transportation facilities, including motel, hotel, and eating places to interstate travelers because of race, religion, or national origin.

The CHAIRMAN. Before you leave that, I want to make clear that a sixth grade education is not the only criterion of literacy. Literacy may be developed in other ways. A person may have never gone to

school. He may have been incapacitated and couldn't go to school, and teachers may come to the home of such a person. Teaching may be had in that way without any formal school education. So it doesn't mean that the only way of testing literacy is to have completed formal sixth grade schooling. You can have the equivalent thereof, in other words.

Mr. ROVNER. Yes, sir. I am certainly familiar with that. Frequently, the person who has received private tutoring because of some physical incapacity has, in fact, received year for year, a better education, a more complete education, than those who have been able to go to the general public school in the community. I certainly agree with you that it is the equivalent of a sixth grade education that we are talking about, and not the formal certificate.

If I recall correctly, Abraham Lincoln never got a certificate for 6 years of schooling. I think we can conclusively presume that he was literate, judging from the man's own record.

The right freely to travel between the States, as I said before, is only theoretically guaranteed to members of minority groups in various areas.

Mr. MCCULLOCH. Mr. Chairman, I should like to comment that last week we had the Vice Chairman of the ICC testifying before this subcommittee, and as I recall his testimony it was that substantially all discrimination in the field of interstate travel and with respect to terminals thereof was ended.

Do you think that that statement is in substantial accordance with facts, and would you want to leave us with the impression that there had not been tremendous and effective strides made in preventing discrimination in travel in interstate commerce?

Mr. ROVNER. No, I don't mean to imply that there have not been strides forward. Obviously, there is the whole collection of administrative determinations and their implementation in the vehicles themselves, in the trains and the buses, and, to a large extent, in the terminals—the airline terminals, the bus terminals. The experience of the freedom riders 2 years ago indicates that mob violence can deny, what in form is guaranteed to these travelers by law.

Mr. MCCULLOCH. But aren't you of the opinion that there has been substantial progress in the last 2 years in this field against the discrimination, and that there is materially less discrimination in that period, particularly in the field that we are discussing?

Mr. ROVNER. I think there has been progress, sir, but I may tell you of our own experience when we sought to hold an integrated union meeting in the South that we have not reached even close to our goal.

Mr. FOLEY. In a hotel?

Mr. ROVNER. In a hotel. In a motel, in one case, adjacent to a transportation facility, which would be the normal place that an interstate traveler might stop, would probably stop.

Mr. MCCULLOCH. If I might interrupt again, was that hotel and that motel a part of the facilities directly used under contract by the interstate carrier in its business?

Mr. ROVNER. In some cases they do have contracts with the carriers on these packaged tour arrangements.

Mr. FOLEY. But was that the case in your particular unfortunate experience which you have just mentioned?

Mr. ROVNER. No, that was not the case, sir. We have very few hotels in the South where we can meet because IUE will not run a segregated conference. But I might point out that in support of the position here that the National Labor Relations Board has found Federal jurisdiction to apply to hotels where the hotels are primarily engaged in interstate commerce, where the bulk of their patrons are those passing through as travelers in interstate commerce, and the existence of Federal jurisdiction was affirmed by the U.S. Supreme Court. Actually, the National Labor Relations Board had taken a policy position against asserting its jurisdiction. The Court found the jurisdiction and ordered the NLRB to exercise it. So there is Federal jurisdiction in the hotels and motels that cater extensively to interstate travelers.

Mr. FOLEY. Even though it isn't exercisable by the Interstate Commerce Commission?

Mr. ROVNER. That is correct. It may be beyond the reach of the Interstate Commerce Commission, but it is not beyond the reach, we believe, of the Federal Government.

The CHAIRMAN. That is the attitude of the National Labor Relations Board.

Mr. ROVNER. And of the Supreme Court.

The CHAIRMAN. Would the National Labor Relations Board attitude be that all those who register in a hotel in the city of Washington would be engaged in interstate commerce? There may be those who live in Washington who are not engaged in interstate commerce. Does the National Labor Relations Board consider all hotels to be in the category of interstate commerce?

Mr. ROVNER. Let me go back to the two stages. At one point the National Labor Relations Board took the flat position it would not assert any jurisdiction over any hotels. This case went to the Supreme Court, this issue went to the Supreme Court. I believe the name of the case was *Hotel Employees* v. *Leedom*. I can furnish you with the citation. The Supreme Court said that this determination by the National Labor Relations Board was arbitrary and capricious, and that what it should do is assert its jurisdiction over that class of hotels, which, by the volume of interstate business, either on a dollar amount or percentage amount—I don't recall the exact formulation that the Labor Board finally adopted—and the National Labor Relations Board did adopt a formula by which it would determine over which hotels it would assert its jurisdiction. I believe many of the resort hotels in Florida were particularly in issue at the time. But there are hotels, for example right near an airport, that are used virtually exclusively by interstate travelers, where the volume of business, both monetarily and percentagewise, may indicate that the motel or hotel really exists solely because of interstate travel. As to Washington, D.C., the Federal Government has plenary jurisdiction.

The CHAIRMAN. What about the Hotel Commodore in New York or the Hotel Biltmore in New York, which are adjacent to the New York Central Railroad terminal?

Mr. ROVNER. I don't know the percentage of their patrons that are interstate travelers. I would assume, from my knowledge of the Commodore Hotel, that it probably is engaged in interstate commerce

and probably does exist—except for the ballroom where they have all the dinners—because of interstate travel.

The CHAIRMAN. Those two hotels are owned by the New York Central Railroad.

Mr. ROVNER. I didn't know that.

The CHAIRMAN. They are practically in the terminal building. Take the Waldorf Astoria, which is not owned by the New York Central, although the land is leased by the operators of the New York Central. Would the Waldorf Astoria be an interstate hotel in that sense?

Mr. ROVNER. If it met certain tests, I would say it probably is. I don't know the specific facts.

The CHAIRMAN. What would have to be done? Would one have to look into the hotel register and see who are registered and from where they have come?

Mr. ROVNER. Yes, that is the way the National Labor Relations Board does.

Mr. COPENHAVER. Do you believe that the Supreme Court decision on Monday concerning the sit-ins can be read broadly enough now to bring in the hotels, motels and eating places which are affected by interstate travelers?

Mr. ROVNER. First, the Supreme Court decisions, of course, are restricted to the States or municipal areas where there are in effect laws requiring segregation or policies enforced by the municipality, the county or the State requiring segregation.

The CHAIRMAN. There these were ordinances which required segregation in restaurants and so forth?

Mr. COPENHAVER. You are saying that you do not believe that the Supreme Court's decisions were broad enough on Monday to encompass the facilities which you describe on page 6 of your statement?

Mr. ROVNER. They might reach them, but I believe if you read the cases and consider the ones on which they ordered rehearing, the Supreme Court did make a distinction between such areas covered by such statutes, and the *Glen Echo* case in Maryland was ordered for rehearing where the segregation was not required by local law or Government policy.

Mr. COPENHAVER. If you say they do not go that far, what existing Federal legislation exists for the Government to insist upon desegregation in facilities you describe in your statement?

Mr. ROVNER. I do not believe there is in existence any legislation. We are here seeking such legislation.

The CHAIRMAN. Congress passed a law some years ago which was struck down by the Supreme Court, as far as private establishments were concerned.

Mr. ROVNER. I am not familiar with the specific situation you are referring to, Mr. Chairman.

The CHAIRMAN. That goes way back. Yesterday it was introduced into the Senate by two distinguished Senators, Senators Dodd and Cooper. I presume the Senators feel that the Supreme Court, having decided the sit-in cases recently might envisage a similar decision with reference to private establishments, even though there were no such ordinance.

The Supreme Court has itself in a rather unusual position. In that southern city there were ordinances, and those sit-ins at the restaurants were violating the ordinance. The Supreme Court said that those ordinances were violative of the Constitution, and, therefore, what the citizens did was legal in spite of the ordinance. Therefore, they could not be molested, as they were. Now suppose you have a situation in a northern State where you have no such ordinance. Would the same principle of law apply where there was no ordinance?

Mr. ROVNER. I would hope so. The Supreme Court has asked for reargument in the *Glen Echo, Md.*, case, because of the absence of such a statute. But there is, again, another distinction. In the Supreme Court cases, the series decided last Monday, they simply said that there the States could not involve themselves to compel segregation. What we are suggesting here is that there be a prohibition against the discrimination. There is a profound difference, I think.

The CHAIRMAN. To carry it further, in this southern city, police had no right to remove these sit-ins, but in a northern city, where there would be no such ordinance, they would indulge in these so-called sit-ins and could be removed by the police.

Mr. ROVNER. This is the question that the Supreme Court, I think, indicated it wanted to hear again next year.

The CHAIRMAN. How is the Supreme Court going to get itself out of that jam?

Mr. ROVNER. I don't know. This is a very difficult issue.

Mr. COPENHAVER. Do you believe it is possible for the Federal Government to take action under the Constitution without the existence of enabling legislation? I am thinking particularly of the Bill of Rights and the 14th amendment.

Mr. ROVNER. I believe that in certain cases it can be done. I believe it has been done under the privileges and immunities clause, for example. I think this has, on occasion, occurred. But I think that the existence of a statute, first of all, does give specific authority. Second, it avoids the great constitutional questions that are posed; and, third, frequently the existence of a statute is, in itself, educational. The passage of one is educational. I am drawing on my own personal experience.

The passage of a public accommodations ordinance in Montgomery County, Md., was, in itself, educational, I think, for many people who had discriminated before. It reflected a will of the community. And I think to that extent, statutes serve more than just the purpose of regulating the conduct by the threat of criminal prosecution.

The CHAIRMAN. Proceed with your statement.

Mr. ROVNER. The term of the U.S. Commission on Civil Rights will expire this year. Obviously the Commission's life must be extended. The suggestion that an indefinite extension of the Civil Rights Commission would indicate a belief that we will not solve the problem of discrimination within a fixed future period is incredibly academic. We would favor making the Commission permanent with a proviso that at such time as we have won the battle for equality of opportunity and rights for all of our citizens that the Commission then be constituted as one of purely historical purpose.

Mr. McCULLOCH. Of course, is it correct to assume that the organization for which the witness speaks would not object to making it permanent without any such provision, because of the uncertainty of when that happy day will arrive, and because of the authority of Congress to discontinue its existence.

Mr. ROVNER. I don't know the depth of feeling and I have not analyzed all the considerations with regard to the argument that has been made that making it permanent would be an indication that we do not ever achieve our goals. For those who sincerely believe this, I think that a proviso might satisfy them if the proviso would say that: at such time as the goals have been achieved, this Commission will then stand as a historical Commission, to record to the word the route we have traveled, to aid other nations and other societies which may have gone the same way, which may be having the same difficulty in traveling this route. I am not wedded to this, by any means. We would favor making the Commission permanent.

If there is a sincere and reasonable belief that there should be some statement to indicate that we ultimately expect to achieve our goals, then I think something of this nature might be inserted consistent with that.

We support the proposals which would broaden the functions of the Civil Rights Commission to include mediation, factfinding and technical assistance. If we can provide money to teach our farmers how best to preserve and enhance the health of their cows, we can provide money and assistance to help enhance human life.

The upheaval now shaking America, both North and South, is a reflection of both an exhaustion of patience with the status quo and a growing belief that the hope for congressional relief is futile. We note that the nonviolent demonstrations are in quest of protection and implementation of the right to nonsegregated schools as well as the right to vote, as well as the right to have public facilities equally available to the whole public, as well as the right freely to travel.

The struggle is as comprehensive as its human existence and no partial answer is possible. We can no more ask a member of a minority whether he would prefer his right to vote; his right to travel; his right to a job; his right to education any more than we can ask any human being to elect between food and water and protection against the cold. We are dealing with the fabric of man.

Unless our Government can meet the legitimate needs and aspirations of its citizens it not only betrays its responsibility but it destroys its claim to confidence of all citizens in its institutional integrity. We call for implementation of all the rights which are involved in the struggle for equality and we call for it now.

The CHAIRMAN. Thank you for a very splendid statement. It is the type of statement I would expect from any union headed by Mr. Carey.

Mr. RODINO. May I just make an observation, Mr. Chairman?

I would also like to commend Mr. Rovner for his excellent presentation. As usual, the position enunciated clearly reaffirms the progressive thinking of your great organization and its adherence to the basic concept and fundamental philosophy that every individual is entitled to not only basic civil rights but human rights.

Mr. ROVNER. Thank you very much.

Mr. MCCULLOCH. Mr. Chairman, I have a couple of questions.

Are there any of your local unions any place in the Nation, North or South, which are segregated?

Mr. ROVNER. No, sir.

Mr. MCCULLOCH. Is there the same chance for admission to membership in every local of your union, then, in the South as in the North?

Mr. ROVNER. Yes, sir. To our knowledge this is true. This is in our constitution, and we have done investigative work and found that. In the constitution of the IUE, in the preamble and in the clause on eligibility, there is a specific prohibition against discrimination.

Mr. MCCULLOCH. Is there an implementation of that constitutional provision in all of your locals?

Mr. ROVNER. Yes, sir. I might mention to you that in Tyler, Tex., which is 100 miles east of Dallas, a local which is predominantly white took to arbitration, at its own cost, a case fighting for upgrading of Negroes to take them out of the janitorial, menial positions, and to put them into skilled jobs. The local claimed that the training which was required had been given to these people while on the job, while working with white workers in the plant. This was an IUE local union in east Texas that took this position.

Mr. MCCULLOCH. Is that kind of activity and that close adherence to your constitution going on in the city of Washington, D.C.?

Mr. ROVNER. Do you mean by our own union?

Mr. MCCULLOCH. Yes, by your own union.

Mr. ROVNER. We have, I believe, only one local. But in our international headquarters, under President Carey, there is this sort of scrupulous attention to the principle that each person be judged by his ability, exclusively.

Mr. MCCULLOCH. In your one local union, if you have one here, and I do not know one way or the other, but I accept your statement, is there a complete freedom from segregation in that local union?

Mr. ROVNER. I believe, sir, you are confusing us with another organization.

Mr. MCCULLOCH. No, I have asked you this question with respect to your union in the city of Washington, D.C. If you have no locals in Washington, D.C., then you just say to me, "We have none and, therefore, we are not discriminating."

Mr. ROVNER. I think we have a local with about 20 members in it in Washington, D.C. I think you are thinking of another organization with a similar name that has a large organization.

Mr. MCCULLOCH. How about your own organization, even though it only has 20 members, in Washington, D.C., the local?

Mr. ROVNER. To my knowledge, it does not discriminate.

Mr. MCCULLOCH. Is that organization accepting as many apprentices from the Negro race in proportion as they are accepting others?

Mr. ROVNER. It has no apprenticeship program, sir. It is the Gichner Iron Works. They are ornamental iron workers. They

don't have an apprenticeship program. As I say, there are only 20 people in the whole local.

Mr. McCULLOCH. Then I pursue it again by way of repetition. You are sure in your own mind that there is no racial discrimination practiced by any of your locals anywhere in this country?

Mr. ROVNER. That is correct, sir.

Mr. McCULLOCH. I think you are to be highly complimented.

Mr. ROVNER. Thank you.

Mr. KASTENMEIER. Mr. Chairman?

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. I would like to ask you about your views on the Commission on Civil Rights. I appreciate your view that you would like a permanent extension. Do you support the Commission's desire for an increase in authority for things they would like to accomplish, such as authority to provide technical assistance, and to act as a national clearinghouse? Are you familiar with what the Civil Rights Commission has asked for?

Mr. ROVNER. Yes. I thought I specifically mentioned that when I said we call for not only making it permanent, but we support the proposals which would broaden the function of the Commission to include mediation, factfinding, and technical assistance.

Mr. KASTENMEIER. I note that while you have expressed disapproval of such things as voting fraud and gerrymandering, you do not include them as matters for the concern of the Civil Rights Commission, is that right?

Mr. ROVNER. I do not think this is in the nature of discrimination against the minority groups. Most frequently this type of discrimination of gerrymandering is not against minority groups. It is most frequently the urban people who may be in a majority but have only a minority of the votes in a State legislature that are involved. I think this is a separate problem. We have come out in support of Chairman Celler's proposal with regard to redistricting in the States, and we have supported this vigorously and have commended him for this proposal. But this is in protection of the majority, whereas the Civil Rights Commission primarily deals with minority groups.

Mr. KASTENMEIER. How would you take care of the voting fraud problem? It is assumed by some that this is a very important problem. How would you take care of that? Would you take care of it at all by a Federal statute?

Mr. ROVNER. I believe that first of all there are State laws in every State and a Federal statute. Secondly, I believe that the House, itself, being the judge of elections, ordered by the Constitution to be the judge of elections of its own Members, would have to establish a procedure within itself for investigation with regard to the outcome of election of its Members. It is a very delicate constitutional point.

Mr. FOLEY. You have criminal statutes on the books today.

Mr. ROVNER. Yes, I mentioned those, but the Congressman asked what beyond this? As I say, I don't know what the constitutional resolution would be with regard to the problem posed by the Constitution which expressly makes the House the ultimate judge of its own Members' elections.

Mr. KASTENMEIER. Thank you.

Mr. FOLEY. Mr. Rovner, are any locals affiliated with your international involved in the Bonneville Power Administration or with the Washington Public Power Supply System, do you know?

Mr. ROVNER. In the State of Washington?

Mr. FOLEY. Yes.

Mr. ROVNER. No, sir, none of ours.

Mr. LINDSAY. Mr. Chairman, I have one question I would like to ask, if I may.

I would like to know whether you would support any Federal legislation that was deemed to be necessary in order to give the Federal Government additional tools to prevent discriminatory practices within unions as well as management?

Mr. ROVNER. Absolutely. IUE testified 2 weeks ago expressly on this point and asked that the equal employment opportunity law, which we support, include coverage of labor unions. We are on record. President Carey testified, I believe, 2 or 3 weeks ago. I would be glad to send you a copy of that testimony, if you like. It was given before Mr. Roosevelt's subcommittee.

Mr. LINDSAY. Finally, the second and last question that I have is: What is your comment with respect to the statement which was made by the Civil Rights Commission to the effect that the only way that we are ever going to cure this problem of discriminatory practices in the various parts of the United States is to deny Federal funds to those communities which persist in discriminatory practices in all walks of life?

Mr. ROVNER. Again I am in the position where my organization has not taken an express position on this point. I believe, sir, that the Commission didn't say that this was the only way that it would be solved. It was one among a variety of solutions offered, a variety of approaches offered, by the Commission. My immediate personal reaction to it was that I am generally sympathetic to the position of the Civil Rights Commission in this area, particularly when you are dealing with Federal funds for use by States and communities, which use them in a discriminatory fashion. This does occur, where money is given to States and the States then use the Federal money and discriminate in the manner in which it is being used. I believe the Government has both power and responsibility to abate the situation.

Beyond this there are various questions. For example, where rents are paid to States, for example, on facilities belonging to States. I think there are a number of problems that come up. But the general approach that we do not give money which will be used in a discriminatory fashion is, I think, the right of any purchaser. He should require no discrimination.

The CHAIRMAN. Are there any further questions?

If not, thank you very much, sir, for your testimony.

Our next witness is Mr. Roy H. Millenson, Washington national representative, the American Jewish Committee.

STATEMENT OF MR. ROY H. MILLENSON, WASHINGTON NATIONAL REPRESENTATIVE, THE AMERICAN JEWISH COMMITTEE

Mr. MILLENSON. Thank you, Mr. Chairman. I have a written statement which I would ask to be included as part of my testimony in order that I will not be obliged to read it all verbatim.

The American Jewish Committee, a national educational and human relations organization with 62 chapters or units and members in over 600 communities in the United States, was organized in 1906 and incorporated by special act of the New York State Legislature in 1911. It is an organization dedicated to human rights and the furthering of better intergroup relations.

I feel that the initiative and the battle for civil rights is being increasingly moved away from Washington. As one devoted very much to the Congress (I was a staff member on this side for 6 years and the other side for 3 years), I do not think that the Congress should let the initiative be taken away from us here. We should again resume, as we did in 1957, after the lapse of some 75 years, the leadership in this area.

The American Jewish Committee is a party to the testimony being submitted by the Civil Rights Leadership Conference. Rather than duplicate that testimony, we should like to lay particular emphasis on two of the proposals pending before this committee where we believe we may make a particular contribution to the record.

With reference to the pending legislation to extend the life of the Commission on Civil Rights, the American Jewish Committee endorses the proposal to make the Commission a permanent agency in the executive branch of the Government.

The 1960 Democratic platform was very clear on this subject. It stated:

> In 1949 the President's Committee on Civil Rights recommended a permanent Commission on Civil Rights. The new Democratic administration will broaden the scope and strengthen the powers of the present Commission and make it permanent.

Mr. Ted Sorenson, the President's assistant, wrote in the Washington Evening Star, using the text of his series of lectures at Columbia University on Presidential decisions:

> Of all these, party platforms and campaign promises are often the least confining—for they are usually worded by both parties with sufficient art to permit some elasticity, if not evasion.

However, I submit, sir, that the Democratic platform on the extension of the Civil Rights Commission is quite clear and not elastic at all.

That the problems which face the Civil Rights Commission will be long with us was most recently recognized by the President when in his message last week to the American Jewish Committee's 56th annual meeting he referred to the fight to "eliminate tensions within and among races and religions" as a "seemingly endless struggle." Further evidence, I submit, that the Commission should be made permanent.

It is encouraging to note that in the bipartisan spirit of support for civil rights goals, there has also been substantial Republican support manifested for giving the Commission permanent status.

The continuing and constructive contributions already made by the Commission need no emphasis in this testimony. The very nature of its studies, findings and recommendations commend the Commission's continuing functioning in an area of concern where, at present rates of progress, resolution of the Nation's racial problems are not in the early offing. Also, the very continued existence of the

Commission offers a forum outside the partisan political arena and outside the emotions of the growing battlefields of racial conflict which presents an opportunity for a studied resolution of the difficulties at hand.

It should be noted, for example, that in Birmingham, one of the demands of the Negro group was that there be something comparable to possibly a Civil Rights Commission in that city where these problems could be discussed.

Despite the decline of overt discriminations and the amelioration of prejudice, group tensions are on the rise in America. In part, this is a manifestation of the rise in the expectations of America's traditionally deprived peoples. The more these Americans taste of freedom and equality, the more they want of these. This is natural and understandable.

Indeed, it would be peculiar and tragic if any people in America would accept less than full equality. Another reason for the dramatic rise in group tensions is the immigration of masses into the decaying central city core. These new immigrants are the least educated, least skilled and the most justifiably angry component of our population.

Attorney General Kennedy put his finger on the situation when he said recently that the tragic events in Birmingham could predictably occur in every great American city, north, south, east, and west.

There lurks potential violence amidst present conflict and past grievance in every American city. No longer are these forces easily suppressed. The angry rebels no longer will wait, and the complacent traditional power structure no longer has the means to stifle their protest.

The American city is not only a center of trade and commerce, but it is becoming the cockpit of community conflict.

We also wish to lend our special endorsement to section 5 of the administration bill which seeks to broaden the scope of the duties of the Commission. A broadened Civil Rights Commission would have an opportunity to deal with the symptoms of bigotry and to get at the root causes of prejudice rather than confining itself to the manifest symptoms of the disease. Such action could do much to reduce intergroup tensions and conflict, especially true in the large metropolitan areas where intergroup friction is becoming an increasingly difficult problem.

The legislation for increasing the scope of the Civil Rights Commission also provides that it act as a clearinghouse. I have personal knowledge of the importance of this aspect, as I happen to be chairman of the National Civil Liberties Clearing House, which is composed of all the groups interested in civil rights and civil liberties. At our last annual conference we had 145 national organizations, including Goverment organizations, Federal and State, in attendance. There is an increasing concern in the communities, in volunteer organizations. There are literally between 500 and 1,000 volunteer organizations dealing as a principal part of their program or as a secondary part of their program with civil rights and racial problems.

More than a decade ago the American Jewish Committee's "Studies in Prejudice," and especially the foundation volume, "The Authoritarian Personality," was the first scientific expose of the real nature of prejudice and the personalities that are its carriers. These studies have

been a major factor in revolutionizing public understanding and public policy with respect to prejudice and discrimination.

The time has now come for the same kind of knowledge to be applied to group tensions and conflicts. Studies already conducted by the Commission have covered a wide range of problems. The Commission is now in a position to pursue its researches in great depth to seek out the very sources of group tensions and conflict so that these conflicts might best be resolved. A broadened Civil Rights Commission could well apply itself to this end.

In addition, the 1960 Republican platform provides another potential for constructive activity by an expanded Civil Rights Commission. That platform states:

> Finally we recognize that civil rights is a responsibility not only of States and localities; it is a national problem and a national responsibility. The Federal Government should take the initiative in promoting intergroup conferences among those who, in their communities, are earnestly seeking solutions of the complex problems of desegregation—to the end that closed channels of communication may be opened, tensions eased, and a cooperative solution of local problems may be sought.

An expanded Civil Rights Commission would indeed offer an opportunity to enhance the work of such groups, which are increasing in number, especially in the South. For example, in the Deep South, we find human relations commissions which have been created by city governments in, among other places:

Coral Gables, Fla.
Daytona Beach, Fla.
Fort Lauderdale, Fla.
Fort Pierce, Fla.
Miami, Fla.
Orlando, Fla.
St. Petersburg, Fla.
Tampa, Fla.
Winter Park, Fla.
Savannah, Ga.
Louisville, Ky.
Charlotte, N.C.
Durham, N.C.
Greensboro, N.C.
High Point, N.C.
Raleigh, N.C.
Winston-Salem, N.C.
Florence, S.C.
Knoxville, Tenn.
Nashville, Tenn.
Oak Ridge, Tenn.
Houston, Tex.
Arlington, Va.
Lynchburg, Va.
Richmond, Va.

And in still more southern cities, unofficial human relations commissions have been established by chambers of commerce, civic associations, and other community groups interested in endeavoring in every constructive way to preserve racial harmony and good community relations and avoid costly disorder.

The American Jewish Committee therefore endorses a permanent Civil Rights Commission, sufficiently broadened in scope so that it might deal adequately and fully with a prime problem which faces our Nation.

This work could best be done not by a Civil Rights Commission which is merely extended for 4 years, but by, I must emphasize, an expanded Civil Rights Commission which should be made a permanent body.

The next measure to which I wish to refer specifically is Federal public accommodations legislation. Bills are pending on this subject both in the Senate and in the House. Such legislation would prohibit

discrimination on account of race, color, religion, or national origin in the furnishing of accommodations and facilities to any person at hotels or motels, the business of which affects interstate commerce.

The need for such Federal legislation has been long recognized. In 1875, the Congress enacted with the Civil Rights Act of 1875 (18 Stat. 335) a Federal public accommodations statute. The first section of that law provided:

> That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, on land or water, theaters, and other places of public amusement, subject only to the conditions and limitations established by law and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

The act further provided that any person who violated the foregoing section—

> by denying to any citizen except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, or privileges in said section enumerated, or by aiding or inciting such denial—

would be liable to criminal and civil penalties in the Federal courts. It also said, however, that the aggrieved person might elect to seek his common law remedy or that provided by State statute in the State courts.

However, in the *Civil Rights* cases of 1883, this statute was declared unconstitutional, the Supreme Court ruling that Federal power under the 14th amendment did not extend to passing or enforcing laws requiring nondiscriminatory conduct of individuals, unless they were exercising some form of State authority. Discriminatory acts by individuals, the Court said were "within the domain of State legislation." The victim of discriminatory conduct on the part of another individual was directed by the Court to resort to the laws of the State for redress. This decision served as an impetus to the passage of State public accommodations laws following the pattern of the first one which had been enacted by Massachusetts in 1865. By the turn of the century there were 18 States with public accommodations laws: viz, California, Colorado, Connecticut, Illinois, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Washington, and Wisconsin.

I used to be a voter in the First District of Colorado; the statute in Colorado was enacted before 1900, showing it was really a pioneer in this area.

Today more than half of our 50 States—31 to be exact—have public accommodations laws. These other States are: Alaska, Idaho, Maine, Maryland, Montana, New Hampshire, New Mexico, North Dakota, Nevada, Oregon, South Dakota, Vermont, and Wyoming. Added to this State list are numerous communities including Washington, D.C., Baltimore, Md., El Paso, Tex., St. Louis, Mo., and Louisville, Ky., all considered southern communities.

The need for a national application of public accommodations legislation is being increasingly recognized. For example, in the last year of the previous administration, recommendation 480 of the 1960 White House Conference on Children and Youth urged—

> that all discriminatory practices be abolished which deny equal opportunity in * * * places of public accommodation, publicly or privately owned.

The 1960 Democratic platform states:

The time has come to assure equal access for all Americans to all areas of community life, including * * * public facilities.

Again, symbolic of the bipartisan approach to civil rights, there has been substantial Republican sponsorship of public accommodations legislation.

The CHAIRMAN. I unfortunately was engaged in conversation when you talked about the Civil Rights Act of 1875. Do you think, in the light of the history since we enacted that statute, that the Supreme Court might change the views it expressed when it struck down that statute of 1875, and now declare it constitutional?

Mr. MILLENSON. As I understand the statute of 1875, and I quoted in my testimony both the operative language of the same statute and from the Supreme Court decision, the present proposals do not exactly parallel the 1875 statute. The 1875 statute stated that all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of accommodations, advantages, and so forth. The present legislation being proposed in the Congress brings in the interstate commerce clause.

The CHAIRMAN. The proposed statute ties all of these accommodations in with interstate commerce.

Mr. MILLENSON. Yes, sir. The first statute of 1875 which was thrown out had no reference to interstate commerce. The Supreme Court said it was unconstitutional because enforcement belonged to the State. Then there followed a series of State statutes, which, of course, only applied to intrastate commerce.

Mr. FOLEY. On that very point, however, and I don't take issue with you on your predicating the statute on the interstate commerce clause, what would be your comments in this situation? Today, most public houses—hotels, motels, what ever, are licensed either locally or on a State level. If they practice discrimination, is it possible that the Court might rule that they are acting under color of law, and the equal protection clause would also come into play?

Mr. MILLENSON. I think I have a peculiar advantage in answering that question. I am not an attorney, so I don't know.

Mr. LINDSAY. May I ask, referring to present legislative proposals, do you have a specific bill in mind that has been introduced?

Mr. MILLENSON. I know there has been a specific bill in the U.S. Senate. I see Mr. Mathias is here. I will mention Senator Beall, of Maryland, was a cosponsor of it. That is, S. 1217, sponsored in the Senate by Senators Beall, Case, Fong, Keating, Kuchel, and Scott. I understand that among the some 50 or so bills pending before this committee there is similar legislation here on this side.

Mr. LINDSAY. If my memory serves me correctly, that bill is limited to motels and hotels in interstate commerce. It doesn't include restaurants, for example. I don't think it includes any public facility—and I say public in the sense that the public has access to them or should have—but it is rather limited to motels on the highway, where they have sleeping accommodations as well as food.

Mr. MILLENSON. The language here is—

* * * hotel, motel, or other public place engaged in furnishing lodging, the business of which affects interstate commerce. * * *

Mr. LINDSAY. The lunch counter wouldn't be included. The highway road stand where people come in and get a snack would not be included in that.

Mr. MILLENSON. No, not under this proposal.

Mr. LINDSAY. All the public eating places on Route 40 would be excluded from that.

Mr. MILLENSON. That is right. Of course, in our State of Maryland, we have enacted a public accommodations statute.

I might say the public accommodations proposal has not, in recent years, been considered a part of the civil rights package being considered here in the Congress, and I submit that the time has come that consideration of this should begin. This is why I endeavored to spread upon the record some of the background, some of the research, in this area.

The CHAIRMAN. I think Mr. Foley, our counsel, put his finger on a very important item. Where these hotels, inns, or motels are licensed, or even where a restaurant is licensed, they are then operated under color of law. Therefore, the State would be involved, because the licensing authority operates under some law passed by the State.

Therefore, that might be an opportunity for one to say that since the State is involved, discrimination in those places thus licensed would be violative of the 14th amendment to the Constitution.

Mr. MILLENSON. As I stated before, not being an attorney I have the disadvantage of not being able to comment intelligently on this. I would say that there are other opportunities, too, for the Federal Government, if it wished, at least administratively, to remedy this, because we have all sorts of Federal officials, including servicemen, traveling, using chits to stay at hotels or motels, travel orders, and eating at restaurants, and to my knowledge there is no Executive order, for example, that has been applied to these individuals that they shouldn't avail themselves of such segregated facilities.

The CHAIRMAN. Thank you very much, sir, and we appreciate your statement. We always welcome statements from the American Jewish Committee.

Mr. MATHIAS. Mr. Chairman, if I might be permitted to ask a question, I would first like to second the chairman's words to the witness whom I have known for many years and who is a distinguished resident of Maryland.

Mr. ROGERS. I thought he was from Denver.

Mr. MILLENSON. I said I used to live in the First District of Colorado.

Mr. MATHIAS. I think it shows the breadth of the witness' interest and experience.

I was interested in a statement that appeared on page 2 of your statement, the fact that you felt there was a rise in group tensions in America which you attributed to the rise in the expectations of traditionally underprivileged peoples. Do you feel that this is a factor in the current problems which are plaguing America from Birmingham right up the coast?

Mr. MILLENSON. Absolutely. I don't see how we can expect otherwise, telling our people every day how great it is to live in America. They are seeing on television the good life, people riding in convertibles up to the best hotels, doing this and doing that. And then tell-

ing a group of individuals that they can't enjoy this good life which we try to sell them every day in our magazines and our newspapers.

Mr. MATHIAS. Do you feel that the political leadership, in which I would include everyone in government, everyone who takes part in public life, has created a particular responsibility for government to act then at this time in view of statements that have been made? For instance, you just quoted statements from the 1960 campaign.

Mr. MILLENSON. I believe this is absolutely so. At the beginning of my testimony, I noted the fact that the initiative in the area of civil rights is being taken away from Washington. These people feel that they have to act themselves, have to go on their own freedom rides, freedom marches, and their own demonstrations. I believe earlier in these hearings someone complained that there seemed to be some lack of interest in what the committee is doing here. I think this is very much of a danger signal. If the Congress doesn't take the initiative, if the initiative is not taken here in Washington, it will be taken elsewhere. These people are just not going to sit at home and wait. They are going to go out. I think they must feel that the Government is in partnership with them. Otherwise, they are going to increasingly go on their own. Organizations which before were considered radical, and I won't name any of them, are now considered quite conservative and quite moderate within the Negro community.

The pace is accelerating geometrically. We can't just let it get out of our hands. We have to have our hands on the wheel, too.

Mr. MATHIAS. To refer to a specific point, within the past month on two occasions civil rights amendments have been proposed to legislative programs which were before the House of Representatives. On those occasions, on both of them, the debate was limited, in one case, to 5 minutes, and in one to 10 minutes, and the amendments were defeated. Do you think this is the kind of thing which builds up this frustration?

Mr. MILLENSON. I most assuredly do. You mentioned debate was limited to 5 and 10 minutes. I think this sort of news espeically builds up frustrations, because the Negroes feel that they lose their fights in the other body because debates go on for 5 or 10 weeks and they can get nowhere and they feel they lose out in this body because debates go on for 5 or 10 minutes and because of that they can get nowhere. It becomes increasingly difficult to maintain the confidence of these people who have tasted their freedoms and now they, understandably, want the full dish.

Mr. MATHIAS. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

That will end the hearing this morning. We will resume tomorrow at 10 o'clock.

(Whereupon, at 11:30 a.m. a recess was taken until 10 a.m. of the following day, Friday, May 24, 1963.)

CIVIL RIGHTS

FRIDAY, MAY 24, 1963

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

The subcommittee met at 10 a.m., pursuant to recess, in room 346, Cannon Building, Hon. Peter W. Rodino, Jr., presiding.

Present: Representatives Rodino, Toll, Kastenmeier, and Cramer.

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

Mr. RODINO. The hearings will now resume, on civil rights, and the first witness will be Mr. Herman Edelsberg, of the Anti-Defamation League of B'nai B'rith.

Mr. Edelsberg.

STATEMENT OF HERMAN EDELSBERG, WASHINGTON REPRESENTATIVE, ANTI-DEFAMATION LEAGUE, B'NAI B'RITH

Mr. EDELSBURG. Thank you, Mr. Chairman.

My name is Herman Edelsberg. I am the Washington representative of the Anti-Defamation League.

We greatly appreciate this opportunity to be heard by the Judiciary Committee.

As we have done so often in the past decade, the Anti-Defamation League of B'nai B'rith again comes before this committee to add its voice to those of the many religious, civic, labor, veterans, and educational groups which have been petitioning Congress to enact legislation to protect every American's civil rights.

I might add, Mr. Chairman, that the fact that we have been here so many times is not the fault of this committee. On the contrary, if the record of the Congress were as good as that of this committee under the chairmanship of Mr. Celler, many of the civil rights proposals now pending before this committee would already be on our statute books.

It is not our purpose in this brief statement to go into any detailed analysis of the provisions of the approximately 100 civil rights proposals before this committee. We intend principally to stress the urgent need for Congress not only to act, but to take initiative to help bring about an orderly compliance with the law of the land and to secure equality of opportunity for those too long denied the fruits of American citizenship.

In the last decade America has made dramatic civil rights gains. This progress has been achieved through court decisions, the actions of the Executive, the campaigns of voluntary organizations, and increasingly through direct action by the Negro citizen.

It should be a matter of concern that Negroes have come to believe that it is futile to come to Congress because Congress does not care enough about the civil rights issue, and are turning to more hazardous but more rewarding ventures—the freedom ride and the sit-in—in an effort to achieve the rights and dignity still denied them.

The all too slow historic march toward full equality of opportunity must, in the name of conscience and good government, be greatly accelerated. To this end Congress must make its overdue contribution.

You know, Mr. Chairman, when this hearing was opened, recently, there were only five observers in the room. I think it would be either naive or rash to conclude that this was a reflection of a lack of interest in the civil rights issue. To me this was proof of the fact that Negroes and others concerned with civil rights had come to despair of what Congress would do for them. They had been here so often in the past, and Congress had not even begun to give them what was required to achieve for them the promise of the equal protection of the law.

Mr. RODINO. At that point, I would like to point out, Mr. Edelsberg, that I was attending a conference in Geneva at the time when the picture of the police dog appeared in the European edition of the New York Times. The reaction among the many representatives of foreign nations there was one that would make any American feel ashamed. It is a blot on our escutcheon.

Mr. EDELSBERG. There is a picture in this morning's Post reprinted from a Moscow paper. It is a four- or five-column newspaper picture of Birmingham police holding a Negro by the throat while other Negroes on the curb look on in terror, and the heading in the Moscow paper is "This Is American-Style Democracy."

Mr. RODINO. I was advised there that the Communists and the Soviets would take advantage of this as a propaganda issue, and it was carried throughout the Iron Curtain countries. It was one of the most formidable pieces of anti-American propaganda.

Mr. EDELSBERG. Of course, Mr. Chairman, I know you will agree that there are much better reasons for passing civil rights bills than the kind of image we generate in foreign countries.

We are the ones who created the standard of what human dignity and human equality require, and we are our own most severe and urgent critics of the need to narrow the gap between the American promise and the American actuality.

I think if we remember that aspect of our situation, we will do better by our own traditions, and indeed, incidentally, by our image abroad.

The movement for equal opportunity indeed can no longer be called a march dictated by the white man's tempo—it is more like a prairie fire spreading from community to community. Each day new cities, Birmingham, Greenwood, Cambridge, Md., in the Eastern Shore, Orange and Englewood, N.J., Raleigh, Durham, and Greensboro, the District of Columbia, make the headlines with mass antisegregation protests and demonstrations.

The time for Congress to take action to promote the orderly process of desegregation is running short. The real choice before Congress is whether it will merely stand by and let the struggle for constitutional rights be fought out in the streets by the Bull Connors and the victims of illegality—or whether it will legislate what justice and the Constitution require.

Now, it is a melancholy fact, but the sociologists insist it is a fact, that in all institutions, even in the best of them, even in religions institutions, there is a kind of amoral principle operating. We are reluctant to give a man what is his due unless he fights for it and insists that it is his due, and he has the power to make it stick.

Maybe the time has come when the Negroes are showing they have the power to command respect for what the Constitution promised them almost a hundred years ago. Maybe they can now make a reality of the promise of the 14th amendment passed in 1868.

Nine years have now passed since the Supreme Court declared public school segregation to be unconstitutional; but today token desegregation is all that has been achieved in the South.

You may have seen figures suggesting a higher rate of desegregation, but the fact that in the 11 former Confederate States less than one-half of 1 percent—let me repeat that, Mr. Chairman—today in the 11 formerly Confederate States, less than one-half of 1 percent of the Negroes attend public schools with whites.

More than 2,000 school districts remain wholly segregated. At the rate of which school desegregation has been proceeding, it will be 200 years after the Emancipation Proclamation before school desegregation is fully achieved.

The process of school desegregation, as the Commission on Civil Rights in its 1961 "Report on Education" found, "is slow indeed." It is slow because the financial burden—the cost of bringing a desegregation suit to an ultimate decision has been estimated as high as $30,000—of enforcing the constitutional right to a desegregated education has been left exclusively to the individual parents and children and the voluntary organizations.

The Civil Rights Commission in its 1961 report concluded that if school desegregation was to proceed in keeping with the Supreme Court's command of "all deliberate speed," congressional action was required.

It unanimously recommended that Congress pass legislation to require every local school board operating a racially segregated school to file a plan for school desegregation within 6 months after the adoption of such legislation.

The Attorney General would be authorized to take appropriate action against a school board which failed to adopt a desegregation plan.

The Commission's proposal which was subsequently embodied in legislation introduced by the chairman of this committee and reintroduced by him this year (H.R. 1766) is, we submit, a useful remedy, long overdue.

It is a source of regret to us that the administration has to date not yet thrown its support behind this proposal, but has merely recommended a program of Federal technical and financial assistance to aid school districts in the process of desegregating.

I should say I am heartened by the report in this morning's newspaper that the Attorney General and the administration are giving serious consideration to amplifying the civil rights proposals they have made to the Congress to include a version of the part III that would give the administration authority, greater authority, to proceed with school desegregation suits.

Mr. RODINO. Incidentally, I am glad you called our attention to that. I was going to do so if you had not.

I think it might be appropriate at this time to mention that the Attorney General, who was due to testify here next Wednesday, on May 29, will be coming here instead on June 12.

Mr. EDELSBERG. Mr. Chairman, essential as such technical assistance may be in encouraging compliance with the law of the land and helping to facilitate an orderly and peaceful transition from a segregated to an integrated school system, it fails to deal with the community which persists in defying the plain mandate of the Constitution—and there are still 2,000 of them.

The Celler bill relies in the first instance on local action, and leaves to the local school board the discretion to adopt a plan best suited to local needs so long as it is consistent with the mandate of the Supreme Court.

It also makes available the resources of the Federal Government to communities seeking to comply with the law and needing such assistance.

Only where local school boards refuse to carry out their constitutional obligation would the Attorney General be authorized to step in and bring a civil suit.

I still think that is the best formula to provide for a just and orderly compliance with the desegregation decision.

The prime virtue of the Celler bill is that it recognizes that where violations are systematic and wholesale, the remedy cannot, in good conscience, be haphazard and retail. It acknowledges also that the financial burden of enforcing constitutional rights should not be left exclusively to individual citizens and voluntary organizations, but that the Federal Government has a moral responsibility to vindicate the basic right to equality in education.

As we approach the hard-core areas for desegregation, it is surely preferable to have the prime responsibility lodged in the chief law officer of our Government. He will have the information, finances, and means of securing cooperation from local officials that can promise a greater chance of success, and the avoidance of violence.

We are glad, too, to note that H.R. 3139 introduced by Congressman McCulloch and other Republican members of this committee also provides for the Attorney General the authority to initiate suits in behalf of children denied admission to any public school on account of race or color.

As Congressman Lindsay put it:

> It is not healthy in this country to require the local residents of a community to carry the burden and the hazards of commencing litigation in the school areas, with the United States only free to come in as amicus curiae. * * * We do not think it is a good idea either to require organizations, such as the NAACP, to have to take the lead here, either. This is a Government responsibility.

The Federal Government has a responsibility not merely to protect the constitutional right of all children to a nonsegregated education,

but it has a responsibility to protect civil rights generally against official deprivations and nullification.

In 1957 the House of Representatives recognized this obligation when by a better than 2 to 1 majority it approved legislation—the so-called part III—which would have given the Attorney General the same power to initiate court suits to protect all civil rights which other parts of the 1957 legislation gave him with respect to voting rights.

The Senate, however, deleted this general authority. Striking down this authority has denied the Executive a basic legal weapon to secure the equal protection of the laws for all Americans, regardless of race or color, and has encouraged defiance of the law by casting doubt on the determination of the Federal Government to enforce the law.

Mr. Chairman, as I read the publications of the White Citizens Councils and the segregationist organizations in the South, I see the reiteration of a theme, time and time again. They pretend that the decision in Brown against the Board of Education is not the law of the land. It was just the decision of nine unconstitutional Supreme Court justices.

And then they say what President Kennedy has been doing and what Eisenhower did in his way a few years ago was just the action of a political-minded President.

They keep pointing to the fact that Congress has never moved to buttress the Supreme Court decision in school desegregation.

And I think you would be cutting the ground out from under this hard core segregationist proviolent group if Congress added its force to the Supreme Court and to the executive, in support of school desegregation.

By giving the executive this basic authority, the Congress can make clear its determination to deal promptly and effectively with mob violence or official defiance of the law.

There are other areas where legislative action on civil rights is necessary. Despite the vigor with which the Department of Justice has acted to enforce the civil rights acts of 1957 and 1960, a substantial number of Negro citizens are still being denied access to the ballot box through the discriminatory application of literacy tests and other arbitrary and unlawful practices.

To curb such abuses, the administration's proposed legislation to make completion of a sixth grade education presumptive evidence of an applicant's literacy qualifications would be useful.

Because of the long time which elapses between the institution of a voting rights suit and the final decree—sometimes several elections go by before the ultimate decision comes down—we also support the administration's proposal that under certain conditions temporary voting referees be appointed while such voting rights suits are still pending.

In the area of employment, it is time that the President's Committee on Equal Employment Opportunity was given statutory authority and its powers over recalcitrant employers and labor unions operating under Government contracts enlarged and expanded.

It is time, too, that the Commission on Civil Rights was placed on a more permanent footing and its functions expanded. Extending its existence for at least an additional 4 years would make for

a more efficient operation, make possible longer range planning, ar eliminate the need for the Commission's coming to Congress ever 2 years for its continued existence.

Mr. RODINO. Mr. Edelsberg, you qualify by saying "at least a additional 4 years." You do not see any need for a permanent Cor mission, do you, to clarify that point?

Mr. EDELSBERG. I do not see any need for a permanent Commission As a matter of fact, I have a kind of idealistic hope that we wi have this problem well in hand, say, in 10 years. But I do see th need for something more than the biennial trek to the Congress an the pretense that this is a real issue.

You know, over on the Senate side, Senator Ervin's Constitutiona Rights Subcommittee has been hearing for days the sole questior of whether or not the life of this Civil Rights Commission should b extended. That is an artificial issue, and I do not think it even shoulc be heard every 2 years.

It is hard to recruit top staff and keep them, if you give them only the promise of a 2-year term. Four years makes more sense. He is serving like a Presidential appointee.

Mr. RODINO. Mr. Cramer?

Mr. CRAMER. If 4 years make more sense, why would not 6 or 8 years make even more sense, or 10 years?

Mr. EDELSBERG. Six or eight years would be perfectly agreeable to me, and perfectly reasonable. There is a great spread between 8 years and permanence.

Mr. CRAMER. Well, of course, the Congress can terminate the activities of the Commission at any time it wishes, once it has accomplished its function.

Mr. EDELSBERG. And every year the Commission has to come back to the Congress for a review of its operation, when it asks for its budget.

Mr. RODINO. Of course, we are hopeful that after 4 years there may not be a need for such a commission. However, if the need is indicated at that time, I am sure that the Congress then will consider taking this sort of action.

Mr. COPENHAVER. Mr. Edelsberg, without regard to either administration, you mention giving them an additional term of 4 years, which would put them on a kind of Presidential appointee basis. But I ask: Is that good? Because we have a supposedly independent commission, here, whichever administration may be in power, and maybe it is better not to have it tied so closely to a reappointment period, so closely tied to each administration.

Mr. EDELSBERG. I did not mean to leave that impression, Counsel. My purpose was to suggest that we can get people to come to Washington to serve for 4 years under Presidential appointments. It makes sense to say, "Let the Commission have a 4-year term." It would have a fair basis for asking people to leave their jobs to come to work for them.

But I certainly would oppose any suggestion that the Commission become a branch of the executive, or merely a branch of the Congress. I like its independent status.

The Commission that has to find the facts about civil rights violations should not be the same agency that has to go to the Senate to get judges confirmed or to prepare legislation, and so forth.

Mr. CRAMER. May I ask a question on that Civil Rights Commission?

Are you familiar with the number of bills introduced on the minority side of the aisle? I am now referring to Mr. McCulloch's bill, H.R. 3139, as it relates to the extension of the life of the Commission. Have you the bill there?

Mr. EDELSBERG. I do not have the bill before me, but I am generally familiar with its provisions.

Mr. CRAMER. Well, it broadens the jurisdiction of the Civil Rights Commission to include investigation of allegations in writing under oath or affirmation that certain citizens of the United States are being denied the right to vote, but also—

are being unlawfully accorded or denied the right to have their vote counted.

Mr. EDELSBERG. Yes.

Mr. CRAMER. Now, that is a protection for everybody, is it not?

Mr. EDELSBERG. Yes, indeed.

Mr. CRAMER. This amendment, offered by myself in the Judiciary Committee 2 years ago, under the civil rights extension, was approved by the full committee. It did not come to the floor of the House, because the Senate tacked this civil rights extension on the Justice Department appropriation bill.

Mr. EDELSBERG. Yes.

Mr. CRAMER. In my opinion, the Senate did so purposely to avoid the very worthwhile and purposeful amendment that would give the Civil Rights Commission the authority to protect the right to vote and to have the vote counted, or to keep those from voting who have no right to vote—not only the minority, but the majority as well.

Would you have any objection to permitting the Civil Rights Commission to protect the rights of the majority as well as the minority, in making sure their votes are counted? The present Civil Rights Act only permits investigation of those who have been denied the right to vote, not those that have not had the vote counted, or votes that are unlawfully cast.

Mr. EDELSBERG. Congressman Cramer, I would have two qualifications on your proposal. First, we should not be talking about the Commission enforcing anything. It is not an enforcing body.

Mr. CRAMER. I did not mean to imply that it was. It is investigative.

Mr. EDELSBERG. Yes, it is an investigative body.

And, secondly, I would not like to dull the edge of the Commission's prime concern and responsibility that it prevent discrimination on the ground of race or color.

Now, vote stealing is an unfortunate phenomenon in American life, unrelated to questions of race or color.

Mr. CRAMER. But it is not unrelated to the civil rights of the people, the right to vote.

Mr. EDELSBERG. No, it is not unrelated to the civil rights of the people. It is a basic civil right, the right to vote. But the question of tampering with the ballot box for mere political advantage, unrelated to considerations of racial discrimination, is a different kind of question, and I think it could be more appropriately dealt with in some other kind of agency.

Mr. CRAMER. Well, it is a civil right, however.

Mr. EDELSBERG. It is a basic civil right.

Mr. CRAMER. And that is fundamental to our whole government structure, the representative form of government, the right to have your vote counted, and restricting those who are not supposed to vote from doing so.

Mr. EDELSBERG. Yes.

Mr. CRAMER. Where do you think it should be put into effect? If not the Civil Rights Commission, who should do the job of determining what the problem is, and thus what legislation may be needed?

Mr. EDELSBERG. Well, the statute books have at least a dozen statutes dealing with voting matters of one kind or another, from the beginning of the campaign process to the ultimate counting of the votes.

Mr. CRAMER. But which you and I must admit are not adequately effective, or there would be no vote stealing.

Mr. EDELSBERG. I must say I am not an expert in this area, and my judgment is based only on newspaper reports and the hearsay of my friends in politics, who suggest that voting irregularities are still a phenomenon in American public life.

Mr. CRAMER. Well, there are a number of affidavits, in Chicago. There are a number of indictments. There are a number of convictions. I do not see how we can close our eyes to the fact that there is a serious problem here, as well.

Mr. EDELSBERG. I do not pretend for a moment that it is not a serious problem. All I am saying is that in the interest of good housekeeping, in considering the problems of governmental housekeeping, I wonder if you have picked the most desirable agency or even the most desirable means for achieving your purpose.

First of all, the Civil Rights Commission is not an enforcing body. It is just an investigative and factfinding and reporting body.

Second, its main purpose should be to grapple with this stubborn, persistent fact of discrimination in American life, based on race and color. And I should not like to see this purpose blunted by the addition of responsibilities which are not central to this matter.

Mr. CRAMER. I will just say this in reply: No one is suggesting that the Civil Rights Commission is an enforcement agency. And my amendment only gave them power to investigate these matters.

Mr. EDELSBERG. I thought you once used the word "enforcing," and I was speaking to that.

Mr. CRAMER. That is clarified, I hope, on the record, now.

Mr. EDELSBERG. Yes.

Mr. CRAMER. But second, I do not think there is a more deeply ingrained problem in America than vote stealing. It needs a solution. And it involves a civil right.

Mr. EDELSBERG. Yes.

Mr. CRAMER. And unless there is some basis or some vehicle by which, as to this denial of the civil rights of everybody, something is done about it in the way of investigation, then we are going to be constantly left with this denial of civil rights.

Now, if you do not think the Civil Rights Commission is the place to do it, where should it be done?

Mr. EDELSBERG. I think perhaps we ought to increase the appropriation of the Department of Justice. I think perhaps we ought to increase the staff of the Judiciary Committee in the House and the Sen-

ate, or the Rules and Administration Committee in the Senate, that oversees voting irregularities.

I think it is the rules and administration setup that has that responsibility. Is it House Administration? The appropriate committee that is charged with this. I do not want to leave this point, though, Mr. Cramer, without emphasizing this: I think there is nothing more essential to the health and strength of democracy than an honest electoral system. Let there be no quibbling about that.

And I think corruption because of political consideration is as damaging as corruption decause of racial considerations. Let there be no mistake about that.

All I am suggesting is that this Commission was established to deal with racial problems, and I wonder if in housekeeping terms it is the right agency to do the job.

Mr. CRAMER. I would like to suggest to you, as representing the Anti-Defamation League, that perhaps your league would care to make a study of this problem. I think you would find, if you did so, that there is a lot more discrimination even from a racial and religious standpoint as it relates to being denied the right to vote than appears on the surface.

This denial of the right to vote or to have the votes counted or to have the votes properly counted, takes place in many instances in areas where the minorities do live.

So I think that your view is very narrow and what I am trying to determine is how we can get a proper investigation underway to know the facts?

I am convinced that you will find in many of the minority dominated areas, that there is where the vote stealing and vote packing and voting of the graveyard take place to a greater extent than other places. That brings it within the scope.

Mr. EDELSBERG. I have already impeached my qualifications as an expert in the area of voting irregularity. But I do have a skepticism about your suggestion that the irregularities are greater in areas where minorities are numerous than in other areas of the country, because while I have not kept up with this problem, if Lincoln Steffens advised us correctly, this is a universal phenomenon, not limited to race or creed or section of the country.

Mr. RODINO. Well, vote stealing would take place wherever there is a corrupt machine, and it is widespread. It is not targeted in one area of the country alone. And we are quite aware of that.

But nonetheless, I think, Mr. Edelsberg, you have, as you say, impeached your ability to testify as an expert in that area.

Mr. CRAMER. I just would say, as I stated before, that maybe the Anti-Defamation League could become experts in this field, and I think it is a group that should.

I would very much appreciate it if they would take an interest in this, make a study of it, and perhaps make some recommendations to Congress.

Mr. EDELSBERG. I will bring this back to my people, Mr. Cramer. It would be an unprecedented area for us, because our concern has been the area of religious and racial discrimination. But as you say, we will give it a whirl.

Mr. CRAMER. Thank you very much.

Mr. EDELSBERG. I would say, Mr. Chairman, that in the area of employment, it is time that the President's Committee on Equal Employment Opportunity was given statutory authority and its powers over recalcitrant employers and labor unions operating under Government contracts enlarged and expanded.

With mounting racial tensions, frustrations, and resentments, with a justifiably militant Negro population, the time for congressional action is now. The protests against segregation policies and demands for an end to inequalities and inequities will continue until equality of opportunity in keeping with the commands of the Constitution is ultimately achieved.

The question is not whether, but how, it will come about. The choice is only between an orderly accommodation to the legitimate grievances of a disadvantaged group of Americans with the aid of their Government, or new crises, new disorders, and racial strife, which will mar race relations for years to come.

By enacting effective civil rights legislation, Congress can help bring about a solution not only in keeping with the American tradition of justice and fair play, but one which will preserve order and faith in due process of law.

Mr. Chairman, I am going to venture an observation that may strike some of you as naive, but I believe it.

I have talked with a great number of southerners, including southern newspaper people over the years. And so many of them have agreed with the suggestion that if after the Supreme Court decision on segregation two leading Members of the Senate, Harry Byrd and Dick Russell, had stood up and said, "Now, this decision runs counter to what we in the South have regarded as constitutional. This decision is going to be offensive to our people. But we are Americans first, before we are southerners, and we ask our people to respect the command of the Supreme Court unless it is changed by law"—the whole history of the Southland in the past decade would have changed.

It would not have been marred by the kind of violence which has cropped up in the past 9 years. And we would be spared the kind of situation in which we have left scars that may plague race relations in the future.

I think the time has come for the Congress to do not only the thing which is politic in this area, but the thing which in the interest of good government will help to bind the wounds.

Thank you, sir.

Mr. RODINO. Thank you very much, Mr. Edelsberg.

Before Mr. Toll questions Mr. Edelsberg or makes any comments, I would merely like to point out that in connection with the question that was developed by my good colleague from Florida, Mr. Cramer, on the denial of voting rights because of frauds, I think it would be well to refer to a statement made in the other body by Senator Church of Idaho. He pointed out the apathy that exists, and the great group of nonvoters that exist in this country. And he pointed out that in 1953 to 1956 the comparable figures were 66⅔ percent and 60 1/10 percent of those voting in presidential elections—a great number of nonvoters.

The President set up the Commission on Registration and Voting Participation for the purpose of determining just why. And I be-

lieve that included in such a study there certainly would be the question of whether or not a great segment of the people is not permitted to vote because of voting methods which deny the people the right to vote.

Mr. EDELSBERG. May I add a comment to that, Mr. Chairman?

I think unquestionably intimidation and voting irregularities are not the whole explanation of the lack of Negro registration and voting in the South. There is the factor of apathy. But the apathy is related to this consideration.

Many a Negro says, "Why should I run the gantlet of intimidation, get registered, and try to vote, if, when I finally get into that ballot booth, I am confronted with two candidates, both of whom believe in white supremacy and a denial of my rights?"

He cannot see the ultimate advantage, the ultimate change, that may come if he votes. So the apathy is not unrelated to a feeling of futility.

Mr. RODINO. Mr. Toll?

Mr. TOLL. Mr. Chairman, I am a member of the Anti-Defamation League of B'nai B'rith.

Mr. EDELSBERG. An honored member, if I may say so, sir.

Mr. TOLL. I want to commend the witness for bringing this testimony to our attention.

Mr. CRAMER. I just want to make one observation with relation to the people who vote, whose votes are improperly counted.

I think, as a matter of fact, there has been a study made of this matter, and according to the Honest Ballot Association, an organization dedicated to the ideal of clean elections, at least 1 million votes were stolen during the presidential election of 1952.

And worse, the experts agree that elections are becoming even more crooked.

Now, I have particular reason for having an interest in the matter, because I have had the privilege of serving on the Select Committee on Campaign Expenditures for two sessions, now, as a ranking Republican, and the evidence that has come before our committee, which serves in the adjournment period, and investigates House elections—I have been utterly amazed and shocked at the extent to which improper ballots are being permitted to be counted, as evidenced in these congressional races. And that is why I feel that there should and must be something done in this field.

The only question is: Is the Civil Rights Commission the place to do it, in that it is a civil right involved, and I think it does involve the rights of minorities, and it is my belief that the amendment to the civil rights legislation was the proper way of doing it, because the Commission is getting much experience now with voting matters.

Mr. COPENHAVER. Mr. Edelsberg, I notice that you refer to the need, in your statement, for statutory authority with regard to equal employment opportunities. And yet I notice that in your statement you concentrate upon school integration as being a primary need.

I just wonder, recognizing the very great need for school integration, whether perhaps job opportunities is the fulcrum point, as opposed to school integration.

Not that everything must not be done as rapidly as possible, but for instance, I was watching this TV program last night on the District of Columbia situation, and I was amazed to hear that 4 out of 10

students in the District of Columbia school system failed to com plete the 12th grade.

It was pointed out that many of the students have a lack of any rea initiative to complete their schooling because of their belief they ar not going to be able to get a decent job.

Is it not possible that the opportunity to obtain decent employmen may truly be the fulcrum point? Because that would create the de sire to demand your rights, of course, and to insist upon your rights to get an education and the desire to obtain a decent education; anc once you obtain a proper job, of course, the fight to properly utiliz the income which you receive from the job and to live in a decen neighborhood, and so forth.

Mr. EDELSBERG. Counsel, in our various civil rights organizations we have over the years pondered the question of priorities. Which are the basic civil rights? Which is the key which opens the door tc all other opportunities?

The Attorney General says it is voting. You suggest it is the economic factor, the chance to earn a livelihood.

We have come to say this, and we say this now almost unanimously: There are no key civil rights.

You find that there is a denial in the field of education. You find that there is a denial in the field of employment. Is it beyond the competence or power of Congress to answer both problems by passing a law to cover each situation?

And then the sociologists tell us, and we have found this to be true, that an improvement in any civil rights field has a beneficial effect on all the others.

If I may reverse the phrase, this is a beneficient cycle. You give a man better job opportunities. He has a greater interest in education for his children. They have a better chance to get better jobs. They have a greater interest in civic affairs and voting. And you have produced the beneficent cycle. You have produced what is one of the great glories of American life. You produce a middle class, with wider horizons, with a more abundant life and a greater stake in good government.

Mr. COPENHAVER. Of course, I agree with you. The reason I raised the question was because you seemed to place total emphasis on school education, with just one sentence as to job equality. That is why I asked you the question.

Mr. EDELSBERG. No, sir. I would say that there are four basic things before this Congress.

Do something about schools, more than the technical and financial proposal originally sent down by the administration. And I hope they will beef it up in the proposals which will be coming before you in June, you said, Mr. Chairman.

Second, you ought to do something about voting rights to make it easier for Negroes to vote without runing a gauntlet of phony literacy tests or intimidation.

Thirdly, you ought to do something about employment.

And fourth, I hope you will do something about public accommodations, which are now a source of great anxiety to the Negro community and a cause of disorders.

I would take either the line proposed by the Republican Senators, Mr. Chairman, in the bill they introduced a little while ago, saying

that any hotel, motel, or place of public accommodation in commerce, may not discriminate on the ground of race.

And I would tack on to that the suggestion in Justice Douglas' concurring opinion in one of the Louisiana sit-in cases, when he said that any restaurant which is licensed by the State is now so involved in State action that it is subject to Federal control, so that the Congress may prohibit discrimination because of race or color.

I think Congress can do this. I think the time has come when Congress should do this.

Mr. RODINO. Mr. Toll, do you have any questions?

Mr. Kastenmeier?

Mr. KASTENMEIER. Just one, Mr. Chairman.

Did I understand you to say earlier that you favor including in duties of the Civil Rights Commission such extraneous matters as voting frauds? Do you favor this?

Mr. EDELSBERG. No, sir. I said to Congressman Cramer that it would dull the basic purpose, the point, of this Commission, which is to grapple with racial and color discriminations, to give it oversight in the field of frauds.

I said fraud in elections was a basic civil rights problem, voting being a civil right, but I did not think the Civil Rights Commission was the place for it.

Mr. RODINO. Thank you very much, Mr. Edelsberg, for your very excellent presentation.

Mr. RODINO. Our next witness is Mr. Carl Shipley, Chairman of the Republican State Committee for the District of Columbia.

STATEMENT OF CARL SHIPLEY, CHAIRMAN, REPUBLICAN STATE COMMITTEE FOR THE DISTRICT OF COLUMBIA

Mr. SHIPLEY. Thank you, Mr. Chairman.

I suppose it is not ordinarily the function of a political party chairman to testify on pending legislation. I assume that my colleague, John Kenney, the Democratic chairman, has testified or will testify.

Mr. RODINO. Did you say his name was John Kennedy?

Mr. SHIPLEY. W. John Kenney, who was formerly in the Truman administration and was an Under Secretary of the Navy.

Mr. RODINO. We have a very noted figure by the name of John Kennedy, who is a Democrat.

Mr. SHIPLEY. Yes, I know. This is the District of Columbia Democratic chairman I am speaking of. I have noticed there are a number of Democratic leaders by that name. Here in the District, where we do not have any other elected representatives, the party chairmen are the only people who have to run for any office. This confronts you with the problem of having amateur politicians here to discuss these legislative proposals.

Mr. RODINO. Well, I read your statement, Mr. Shipley, and I think that you do not qualify as an amateur at all.

Mr. SHIPLEY. If the chairman please, I know there is a tendency in committees of Congress, and perhaps rightfully so, to play down the fact that we really have a two-party system, and that voters are asked to make choices in terms of leadership of our country on the basis of the records or the proposals of those parties.

It is generally understood that President Kennedy would not be the President today had it not been for his highly successful and extremely partisan exploitation of the civil rights issue.

He frequently has it called to his attention that one of his great campaign proposals in September of 1960 was the introduction of comprehensive civil rights legislation as one of his first acts, particularly in the Senate, which, of course, has not occurred as yet.

Very often I think the Republican Party is put in a position of looking like it opposes civil rights legislation.

Last year Senator Dirksen, over in the other body, in working on a bipartisan effort to do something about the literacy test voting requirements, emphasized this point. It was later reproduced in Senate Document No. 158, where Senator Dirksen said that there is the problem of the Democrats making the Republican Party look like it is always the party of opposition in the civil rights area. The difficulty with attempting to place the Republican Party in the position of opposing civil rights is simply a matter of legislative record. He went on to say that he was surprised that the White House should attempt such a political maneuver.

And then he reproduced the voting record, going back many years, to 1933, particularly the votes on antidiscrimination legislation, including the FEPC proposals, the antipoll tax proposals, and the antilynching proposals, which were the civil rights bills that constantly came before the House.

And certainly I must say, as Republican chairman in this area, Mr. Chairman, that many people do overlook the fact that when it comes to these actual votes in Congress on civil rights, the Republican Party has demonstrated its sincerity in providing equal opportunity for the 10 percent of our citizens who are Negroes.

Since 1933, this Senate document points out, there have been 20 major votes in the House on civil rights, and in 9 of these votes the Democrats could not even muster a majority for civil rights, while Republicans voted anywhere from 68 to 100 percent favorably on every single vote.

From 1933 to 1962, there were 26 major votes in the Senate on civil rights, and a majority of the Senate Democrats voted against civil rights issues in every single case, Mr. Chairman, except 2.

Indeed, in two of these cases, not a single Democrat voted favorably, and in two others one lone Democrat joined a majority of Republicans seeking favorable action.

At the same time, in every single Senate vote except one, the majority of Republicans voted in favor of civil rights issues, and in five cases, by 100 percent.

Now, all of that is by way of preface to the fact that I am here to speak up very strongly in favor of H.R. 3139, which is the Republican bill, a Republican Party proposal, which we like to call the Republican Civil Rights Act of 1963.

I am sure that it will be in the Nation's interest for this committee to report favorably on this bill, which was introduced by Congressman McCulloch and many other Republicans, many of whom were on the Judiciary Committee.

Mr. RODINO. When you say that you are supporting this bill, are you stating that you are not in favor of Chairman Celler's bill on civil rights?

Mr. SHIPLEY. Some of Chairman Celler's bills, I think H.R. 5456, and H.R. 5455, are important bills, and would strengthen the activities of the Attorney General in the field of voting, certainly, and I think there are some procedural reforms which are in order with respect to the Civil Rights Commission.

I think Chairman Celler is wrong, as a great Democratic leader and a chairman of this very powerful committee, to only propose a 4-year extension of the life of the Civil Rights Commission. I think this carries a clear implication that he is willing to compromise on other people's rights, and that indeed the administration is willing to compromise on the rights of some of our citizens in the areas of study and investigation and law enforcement, and so on, that the Civil Rights Commission is authorized by Congress to concern itself with. And this invites opposition from people who are opposed.

Mr. FOLEY. On that point, Mr. Shipley, how about H.R. 1768, where you have a broad general type of freedom sponsored by Mr. Celler.

Mr. SHIPLEY. I have not made a study of that bill. I am addressing myself to the life of the Civil Rights Commission.

I think the Republican position is a sound one, that it should be made a permanent agency in the executive branch of the Government; that its power should be broadened, as recommended by Chairman Celler, to include the feature of a national clearinghouse for important information, and that some of the procedural provisions relating to subpenas, and so on, could be improved, and perhaps some of the expenses and per diem paid could be increased for some of the members.

Where I would take issue with Chairman Celler is his proposal that it should be a temporary or limited agency, instead of a permanent agency.

Mr. RODINO. Mr. Shipley, on that point, since our counsel has drawn attention to the chairman's bill, which has a broad title III, I would like to interject here. And mind you, I am one of those supporters of civil rights who is interested in civil rights, and not in partisan advantage.

But I would like to point out this historical fact. In 1957 the House adopted a broad civil rights title III, but nonetheless, the then Chief Executive of the United States, after a conference with a Senator from the other body, dropped any interest or support in title III.

And, as a matter of fact, if you will recall, after the Supreme Court decision on school desegregation, there was never any public statement showing any support on the part of the President of the United States for school desegregation and the Supreme Court's decision.

Now, this is not in any way to question why, but nonetheless merely to cite the record, as you attempted to cite the record, in your statement, in citing Senate Document 158.

I am hopeful that this attempt to try to inject partisanship into a matter that certainly is basically nonpartisan will be completely avoided, and that we will move on all fours squarely and harmoniously. Those of us who are sincere in wanting to guarantee basic civil rights and human rights by uniting, now have an opportunity. We have a President who is saying that we want civil rights, and a

Congress which says this on both sides. I am sure that we can get a good bill.

Mr. SHIPLEY. I agree with the chairman. I was disappointed when President Eisenhower did not fight harder on part III. I think the part III proposal contained in Congressman McCulloch's bill does not go far enough. It should go as far as the original House proposal to which you refer, because even in the present Republican bill, it is limited to school problems, authorizing the Attorney General to take action here, and I agree with the chairman that it should be expanded.

However, I think in all fairness, after all, we have to accept the facts of life. Ours is, as I say, a two-party system of government. This is its great strength. I do not see a thing wrong with the partisan approach. Indeed, I think President Kennedy would be the first to recognize that he was a masterful exponent of the use of civil rights as a partisan issue, and rightfully so. If he has a proposal to make, why shouldn't he?

After all, we select between Democrats and Republicans or vice versa on the basis of proposals and issues. I see nothing wrong with this. Indeed, it always puzzles me a little why anybody gets at all exercised by the fact that this is a partisan issue.

Of course it is. Every issue is a partisan issue. We try to find the common ground through controversial and discussional approach to these things, and we do find the common ground.

And I say we should support Congressman Celler's proposal in H.R. 1768.

Mr. RODINO. I am glad. I mean to saw this, Mr. Shipley, that I hope that partisanship does not go that far, that we sacrifice the bill and the opportunity to adopt a good bill.

Mr. SHIPLEY. I agree with you, Mr. Chairman. I think that the public recognizes—our voters throughout America—that the President has these great voting majorities in Congress of 3 to 1 in the Senate and 2 to 1 in the House.

And certainly as the leader of his party, and as the architect of the legislative program of his party, I would hope he would support the principles of H.R. 3139, and expand his own proposals and those of the spokesmen of the Democratic Party, so that he reaches as far as the Republican proposals, as to which I want to touch just two or three points, here.

Mr. CRAMER. Let me say, Mr. Chairman, that I think it is obvious that title III was deleted in the Senate when it was up in the 1957 civil rights bill, because a majority of the Democrats in the Senate would not go for title III, regardless of what President Eisenhower might have said. It was deleted on the floor of the Senate, which showed a majority of the Democrats voted against it.

This does not reflect what my sentiments may be, one way or another. But I think the record should be clear.

Also, for 2 years, under the Kennedy administration, there were no proposals in the field of civil rights, and the proposals that came up, as embodied in H.R. 5456 and H.R. 5455, do not include any title III, as a matter of the record, regardless of the merits.

So from the standpoint of what the administration may be for, as a Democratic administration, they certainly were not for title III, and, as a matter of fact, now, according to the press, the only discus-

sion that is underway is the question of title III relating to school's integration.

Also, as it relates to the chairman's bill, introduced regardless of the administration position, H.R. 1768, it provided for an extension of the Civil Rights Commission for 2 years, as compared to the 4-year extension in the administration proposal.

I think also that the record should be left open, and I request it be left open, for the purpose of inserting in the record statements made by President Eisenhower relating to the Supreme Court decision and relating to the civil rights matter, in that it is common knowledge that under his administration and on his recommendation the only two major civil rights legislation bills in recent history were enacted, in 1957 and 1960, with his strong support and the strong support of the Attorney General, as compared to the unwillingness to even recommend legislation for 2 years under this administration.

So I think the record should at least reflect what the facts are, which I think speak for themselves, regardless of who might want to read politics into it.

And I say to the gentleman also from the District of Columbia, for whom I have the highest regard, and whom I have known for many years, that he is a very ardent and very capable exponent of the Republican Party and its principles, and I congratulate him on it.

And I, too, feel that in our two-party-system country it is not only right but it is proper, it is to be commended—a party leader coming before the committee and expressing himself on an issue as important as this issue.

I do not think anybody ought to be criticized for doing so. And I would just as soon have a Democrat State chairman for this district or national committeemen or women from all over the country or the national chairman come in and testify. I would be delighted to hear them. And I do not think anybody should be criticized for doing it.

Mr. RODINO. We are happy to have the chairman of the Republican Committee of the District of Columbia come before us to testify, and in accordance with the gentleman's request, I am sure the record will be left open to include those comments and those statements.

I would merely like to point out that the administration position now is open, and we will hear further from the Attorney General when he appears before this committee to testify. We are hopeful that he will come in with the kind of bill that we feel is going to implement this matter.

Mr. SHIPLEY. Of course, events around the country do emphasize the importance that Congress take some additional action.

We live here in the Nation's Capital, the first and only great metropolitan area which has more than a majority of its citizens who are Negroes. And both myself and the Democratic chairman are very close to this situation, by the necessities of politics and indeed by the responsibilities of our political system.

And despite that, I suppose to a greater degree than any place in the United States, we have total desegregation by law and policy, in both the Democratic administration and the Republican administration, this great Negro population of more than 420,000 persons is extremely restless.

Bear in mind, Mr. Chairman, that 48 percent of all our municipal employees are Negroes, that 25 percent of the Federal employees in

the area are Negroes. But they are extremely restless, because they have the lower grade jobs, many times. They feel that they are denied housing opportunities, even though we presumably have a free housing market here. They feel like there is de facto segregation in many of the schools.

We have been desegregated, one of the first, without the slightest difficulty, and yet you find white or Negro schools in almost all instances, and you find this same division in the residential areas of the city.

To what extent these problems are within the reach of Congress and within the reach of Executive action, I simply do not know. But I do know that this great population, 10 percent of our country, is expecting some action from this deliberative body, to establish new areas of policy.

This Republican bill will make the Civil Rights Commission a permanent agency and give it additional authority to investigate denial of voting rights and voting frauds. It will empower the Bureau of the Census to compile valuable statistics which will reveal whether or not any group of persons is being systematically denied the vote because of race or color or national origin, so that the 14th amendment to the Federal Constitution can be implemented by a proportionate reduction in a State's representation in Congress. I think this is the first time, Mr. Chairman, this proposal has even been made in a civil rights bill.

This Republican bill will establish a Commission on Equal Opportunity in Employment, which is another phrase for an FEPC, I suppose. It would be empowered to investigate labor unions as well as employment discrimination in Government contracts.

I think that is too narrow a limitation. I think we should follow Mr. Edelsberg's suggestions that State-licensed activities and indeed any activity in connection with interstate commerce could well be within the reach of Federal jurisdiction for Federal legislation in this area.

The Republican bill would authorize the Attorney General to institute a civil suit in behalf of a citizen who is denied admission to a nondesegregated public school. I think this could be expanded to meet the suggestions of Chairman Celler.

It will authorize the Federal Government to give technical assistance to localities as an aid to desegregating schools.

The spokesman for the Anti-Defamation League has pointed out how really ineffective the court decisions and the implementation have been to date.

The bill will establish a presumption of literacy as a voting qualification in Federal elections for persons having completed six grades of schooling. This was a recommendation of President Kennedy, and it occurs in the Republican platform, and I think has strong bipartisan support.

We assume that applicable portions of the bill will be made effective in the District of Columbia. Here in the Nation's Capital, Mr. Chairman, many of our local labor leaders engage in systematic denial of rights to Negroes solely on the basis of race, and this denial deprives Negroes of an opportunity to get apprenticeship training or skilled or semiskilled jobs.

This in turn leads to school dropouts, lack of job opportunities, lack of employment, and ultimately, in some cases I suppose, to juvenile delinquency and crime.

Of course, the same may be said for racial discrimination in employment, but believe me, in the Nation's Capital, where we are supposed to be the great garden of desegregation, there is far less discrimination in employment opportunities than there is in labor union membership opportunity. In anything but the hod carriers and the laborers union, it is almost impossible for a Negro to get a union card.

Yet, oddly enough, this proposal does not occur in the Democratic platform. It does in the Republican platform. I have never heard the President or any responsible Democratic administration leader urge this. It is in the Republican bill to some extent.

Mr. RODINO. Mr. Shipley, is this not more pronounced in the craft unions? And is this not the smallest segment of unions, the building trades, particularly? And is it not a fact that industrial unions in particular just do not practice this type of discrimination?

Mr. SHIPLEY. Of course, it is a very practical problem. We get complaints from our Negro citizens, who feel very strongly about this, and I suppose the Democratic chairman has the same problem—we have no Congressmen or Senator, so we get all the complaints, from helping somebody out of the Army to helping somebody get a job.

Right now I am confronted with requests to get youngsters coming out of high school jobs. They cannot get into an apprenticeship training program, because they are segregated.

Now, our Democratic Party here in Washington I must say, in all fairness, is dominated by the labor unions. Both of the leaders are CIO men on the CIO payroll. The chairman himself is not, but I am speaking of Joe Rauh, who speaks for Mr. Reuther.

These men will never speak up for legislation in this whole area. They are very able men. I realize the practical political problems involved in this whole area, because the labor leaders honestly do not want integrated labor unions. They say, "Look at the hod carriers. Look at the laborers' union." They say, "As soon as there is a Negro majority, they won't let a white man get a job. We have reverse segregation."

And so it is a very real problem, with too many people looking for too few jobs.

Indeed, I would be hopeful that President Kennedy's youth employment bill or some version of it could be made law here, because we have this terrible problem. We simply cannot absorb these youngsters.

I could not find jobs, and the Democratic chairman could not, if he worked 24 hours a day. So these youngsters hang around street corners. Next thing, they are in gangs. And people say, "What a terrible thing, youth gangs all over town."

We supported the youth bill in principle when Senator Humphrey introduced it in the Senate, not because we thought it was a perfect bill, but because something had to be done. I suppose other areas have this same problem. Even if we get these boys into technical training in school—our economy cannot absorb. them. There are no jobs when they come out. If they learn to be mechanics there is no place

to absorb their skills. So they simply have to be moved into the mainstream in some other way.

The President has suggested a way, not the only one, but certainly a feasible one, that could command a great deal more support than it has at the present time.

Mr. CRAMER. Do you not see any way of handling this problem, be it in the District or other places, through additional Federal assistance, through vocational schools, and related means?

Mr. SHIPLEY. Well, the jobs are not here, Congressman.

Mr. CRAMER. To put these unemployed, and particularly the younger people, into technical training fields, so that they can become permanent, useful citizens and not permanently on the Federal payroll?

Mr. SHIPLEY. Well, there is a great deal of merit in that, and, of course, no thoughtful person would disagree on that point.

Our problem here is simply this, and I suppose it exists everywhere. We have an adult working population of around 341,000 people. About two-thirds of these people are in private employment. But they are nontechnical jobs. Vocational training would not create more than a handful of jobs.

We have 132,000 children in school, 88 percent of whom are Negroes, and they all move out into the labor market, and either they have to work for the city government or the Federal Government or in some of these service industries around town. We cannot absorb these youngsters. Even if they were all Negro job opportunities, we could not absorb them. So vocational training would not meet this problem.

Mr. RODINO. As a matter of fact, it would produce more people who need more employment, and we would have to provide more job opportunities.

Mr. SHIPLEY. It is a phase of the problem, certainly.

Everybody ought to be trained up to his maximum capacity to work, so that he can make the most of his potential as a human being wherever he can fit in. But we see the problem here as a terribly explosive problem, with all these collateral effects. And I am not a Cassandra. I do not look for trouble. I do not like to emotionalize about it, because I think it is a clinical program, based on sober facts.

We must look at it through very hard institutional eyes. What are we going to do with these unemployed people? They are here. They have got to be put in the mainstream in some productive way. But first you have to get them off the streets, organize them so that they have some discipline in their lives. This is what I think possibly the President's bill suggests, some more discipline than they get in private life.

Mr. CRAMER. Let me say on that bill, of course, that it has a lot of problems involved. You are going to employ a thousand people the first year, and maybe 5,000 the second. And that is but a drop in the bucket when it comes to the problem in the District of Columbia, because the District may be entitled to 50 jobs.

Mr. SHIPLEY. Yes, Congressman. If the President's bill were passed in its present form, for the whole United States, it could not solve the problem in the District of Columbia. The bill is much too narrow in its scope and the cost per student may vary from $4,000 to $7,000 a person, much too high.

I do not know how this compares with what it costs us to keep them in jail or on public assistance, apart from the humanitarian aspects of it. This, to me, and I am sure the Democratic chairman shares my view, because we work closely on all of these things that we possibly can—this is the greatest problem confronting us in the Nation's Capital, what we do with these youngsters who are swelling the rolls of juvenile delinquency or potential juvenile delinquency.

It wrings your heart when people come to you and say, "Here's this high grade boy; get him a job," and I cannot get him a job.

In closing, Mr. Chairman, let me just say that we would hope the Republican bill would be extended to every area within proper Federal jurisdiction under our Federal Constitution, including those areas related to interstate commerce.

Our Republican platform restates our historical position, the position of the GOP, in these words, and I will close on them: "Equality under law becomes a reality only when all persons have equal opportunity without distinction of race, religion, color, or national origin, to acquire the essentials of life, housing, education, and employment."

Our platform also provides, as another step toward building a better America, that we will support: "Appropriate legislation to end the discriminatory membership practices of some labor union locals."

I would hope that the Kennedy administration could support the basic features of H.R. 3139, Mr. Chairman, because it will move our country one important step further toward the goal of equal opportunity for all.

I appreciate the opportunity to be here. And I appreciate your courtesy in hearing me out on these important matters.

I do not know whether you recall, but I have had dealings with you over the years, for some of your constituents, and it is always a great pleasure to deal with you, because I know you approach these matters in the interest of our Nation.

I am hopeful this committee can report out a bill which can be the subject of discussion on the floor of the House and perhaps lead to some real effective action, because of the extreme need which exists today for it.

Thank you very much.

Thank you, Mr. Chairman, for being here and participating in the discussion.

Mr. RODINO. Any questions?

Mr. KASTENMEIER. Perhaps I should say, before speaking to the witness, that one of the pleasing things in connection with this session is the enthusiastic words of our friend from Florida on civil rights. This, I think, is extremely worthwhile.

Mr. CRAMER. You did not hear my opening comment, and that was that regardless of what my personal views may be, the record should be set straight.

Mr. KASTENMEIER. Very well. I hope your personal views will be corrected.

Mr. Shipley, I should not really let this occasion go by with respect to what you said concerning labor. I think we all know that organized labor, particularly, has long made a goal of civil rights in its organization. Probably in the District of Columbia this problem is aggravated. But it seems to me that your statement was pretty broad-

brush about all labor unions, or at least was used pretty generally, and I think probably the record does not bear this out.

In fact, you mentioned a number of people, Joe Rauh, Walter Reuther, and others. Actually, these people have a very splendid record of pursuing civil rights within and without organized labor, have they not?

Mr. SHIPLEY. No; they have a very splendid record in talking about civil rights; but I recall so well, because it was a great matter of discussion among our Negro leaders, I guess last year, at the AFL–CIO convention, in Miami, where they kicked A. Philip Randolph out because he wanted to expel locals that practice segregation.

Mr. Reuther or Mr. Meany never have taken the position that they could or should expel a local which practices racial discrimination. This is something that is within their power to do.

Mr. Meany, to my great consternation, or my great interest as a politician, testified over in the Senate not so long ago that he condemned discrimination in locals, but he went on to say, "I have to say that they got this way," and I am quoting him almost verbatim, "by unimpeachably democratic processes."

And then he went on to say that people have a constitutional right to be wrongheaded.

Now, if this is how you get any action in this area, by coming down here as the leader of a great international union and personally condemning it, but taking no action to expel these locals, or indeed provide any rules within the framework of the AFL–CIO, effective rules, to back up Philip Randolph and his efforts in this area, I just think it is all words and window dressing.

I do not think there is any real sincere intention on the part of Mr. Meany or Mr. Reuther to clean up their own organizations on behalf of racial discrimination in locals, and I think the record bears that out.

Mr. Meany is a great, high-minded leader and a great contributor to the strength of our national society. I do not criticize him personally. I simply recognize the facts as they exist, and use his words to state the situation as he describes it.

Mr. RODINO. Mr. Shipley, do you not believe, however, that their strong support of civil rights legislation, and the implementation of these proposals, would correct the very difficulties that exist, notwithstanding any failure on the part of some of these leaders to act?

Mr. SHIPLEY. Yes, sir, I think that Mr. Meany's hands and Mr. Reuther's hands would be tremendously strengthened, and it would relieve them of an almost impossible burden.

After all, they have to be elected within their own organizations, and if a majority of the members of that organization do not want to abolish racial discrimination in the locals, Mr. Meany contributes nothing to the national welfare by going out of business, as the head of the AFL–CIO, by trying to propose things that the body will not accept.

If Congress would enact legislation, as a part of some of these civil rights acts, which would apply not only to employers, but would apply to labor union membership as well, then we would give Mr. Meany and Mr. Reuther the tools of a Federal statute to effectively meet this problem.

Mr. KASTENMEIER. Then it is not a complaint you have against them personally?

Mr. SHIPLEY. Oh, no. They have said many times, and indeed before the Civil Rights Commission, the presidents of the locals have appeared and said, "After all, we are elected. We have to represent the majority view," as you do for your constituents.

Their hands are tied. I think they perhaps do what they can. I am simply saying that we do have this very serious situation, which neither Mr. Reuther nor Mr. Meany can do anything about.

It is certainly not their personal policy, but it is the policy of the AFL–CIO to condone racial discrimination in locals and not take any effective action against it.

And I presume, as Mr. Meany says, it got that way by unimpeachably democratic processes: in other words, a majority view. But legislation would change it.

Mr. KASTENMEIER. They might be asked about these charges Mr. Shipley makes.

Mr. SHIPLEY. These are not charges. This is Mr. Meany's testimony before a Senate Committee on Legislation last year, I think Senator Kefauver's committee. Then Mr. Meany issued a press release that had these statements in it. These are his words.

Mr. RODINO. Of course, the broad position of the AFL–CIO is well known. Its pronouncements each and every year are in support of civil rights, and in support of basic rights for each and every individual.

Mr. SHIPLEY. This is what might be called the civil rights gap. The words are very flowery and very noble, but the implementing acts just simply are not there, and there are practical reasons why not, but something should and could be done in this area.

Mr. KASTENMEIER. I know that in the case of the UAW, and a good many members know this, I believe it was in 1960 they actually had representatives come to Washington and work for civil rights. And nothing more. Nothing that was strictly for labor nor for their organization; just for civil rights alone, and they spent a great deal of effort, on Capitol Hill, lobbying for civil rights.

And I thought, no matter what union it was, it was a splendid act on the part of a great union.

Mr. SHIPLEY. I looked through the President's message on civil rights very carefully, because I thought he might address himself to this problem, because it relates more directly to unemployment than anything else in the civil rights field.

Voting is nice, very important, but after all, we need jobs and housing, these are the things that people really want. Nothing is more important to a low economic group, as the Negroes are in many areas, due to deprivation in other areas.

They have got to get these jobs that involve membership in a union. If they are ever going to move up, they have to get into the craft unions, the electrical workers, and others. And these are where they are systematically denied any benefits of union membership.

For the life of me, I cannot see why the NLRB should not decertify or refuse to give the benefits of the act to a local that practices racial discrimination. It seems to me that would be one way to get at it.

Indeed, we have drafted one bill to meet our situation here, and I am sure we will get bipartisan support on it, if not from the Demo-

cratic leaders, at least from the Democratic voters around here, because the Negro members of the community are very concerned about this problem.

Mr. FOLEY. Mr. Shipley, just one short question.

You have already stated that you favor a broad title III. Now, I would like to have your comment on this. In H.R. 3139, relating to that title III provision, which is section 104 of the bill, there is a provision in there that the complainant before the court must exhaust the remedies available to him under the laws of such State, or, two, the laws of such State do not provide the complainant with a plain, speedy, and efficient remedy.

My question, specifically: In the light of that language, do you favor that provision?

Mr. SHIPLEY. Yes; I think Chairman Celler takes the same position.

Mr. FOLEY. Chairman Celler waives both legal and administrative exhaustion before the U.S. District Court as to jurisdiction. In this, you must exhaust first.

Mr. SHIPLEY. Well, in our party, we are very strong on States rights, States responsibility, and the whole basic Federal-State principle, and it seems to me that it would be better for people to take advantage of their local State courts before they could move into the Federal area.

Now, this has had bipartisan support in the past. I was under the impression that Chairman Celler in one of his several bills pending now makes allowance for an opportunity for State action first, to try to strengthen the Federal system, and not bypass it.

Mr. FOLEY. Mr. Celler's bill, as far as title III is concerned, authorizing the Attorney General to bring the action, specifically waives the exhaustion.

Mr. SHIPLEY. Well, I was thinking of the other bills, actually, of H.R. 5455 or H.R. 5456, which I think do make provision for the use of the State machinery. I may be in error on that, but I was left with that impression.

Mr. FOLEY. But the law today is that in civil rights cases, you do not have to exhaust legal remedies in State courts before the Federal court can take jurisdiction.

On the other hand, the Federal rulings are that you must exhaust your State administrative remedies before you go into court.

Now, this, as I interpret it, requires an exhaustion of legal remedies, and is an infringement of the laws of today.

Mr. SHIPLEY. As I understand the underpinning of this proposal, Federal jurisdiction in areas apart from direct Federal statutes depends entirely on exhaustion of State judicial remedies, before one can come into the Federal courts and get to the Supreme Court, I think that is consistent with our governmental structure of dual sovereignty.

In any event, I would be in favor of exhausting State remedies, because I think it leads to a great deal of difficulty if you open up this whole problem of States rights and federalism and the relationship between the State and Federal courts.

If we want an effective remedy, we ought to try to follow the channel of our jurisprudence as they now exist.

Mr. FOLEY. *Lane* v. *Wilson*, which was decided in 1939, and was a civil rgihts case, specifically held that you do not have to exhaust your State legal remedy.

Mr. SHIPLEY. Well, I know in some of the statements on the bill, the long delay has been pointed up many times by Chairman Celler and other members, that sometimes it is as long as nearly 2 years before they get to court. And that is a very real problem, certainly. It should be corrected.

On the other hand, there is this other consideration, that when you begin bypassing the State institutions, you get the whole population up in arms against you, because it looks like a breakdown of our basic Federal system, which, apart from any racial considerations, is an extremely important thing in the thinking of lots of people, from Governor Rockefeller to I guess Senator Jim Eastland.

Almost every American of every political view in either party places great faith in the Federal system, with the checks and balances between the States and the Federal Government, and if there is any great ground swell in this country today, it is against any further centralization of Government in Washington, and big Government, and this indeed is becoming a very potent issue in both parties.

Mr. RODINO. Well, thank you very much, Mr. Shipley.

Mr. KASTENMEIER. I have just one more question, Mr. Chairman.

Mr. RODINO. We have another witness to hear, and then we want to conclude for the day.

Mr. KASTENMEIER. I am interested in whether you believe that voting frauds should be investigated by the Civil Rights Commission.

Mr. SHIPLEY. Yes, I do. One of the things that President Eisenhower's administration did was to establish the Civil Rights Division on the Department of Justice, and in that Department, if you make a vote fraud complaint today, it goes to the Civil Rights Division.

I would have thought it would have gone to the Criminal Division under the Assistant Attorney General in charge of the Criminal Division, but the administrative determination was made that voting frauds were properly a civil rights measure, as Congressman Cramer has pointed out.

So that is where you do business today, in the Department of Justice, Executive decree and Executive determination. And so it seems to me that the provision of the Republican bill——

Mr. KASTENMEIER. What frauds would you have in mind, especially?

Mr. SHIPLEY. Well, all of the vote fraud statutes on the criminal books now—these are criminal laws—are enforced by the Civil Rights Division, oddly enough. The Assistant Attorney General in charge of the Criminal Division cannot get anybody indicted for vote fraud. It has to originate in the Civil Rights Division of the Department of Justice.

The wisdom of that I do not challenge. The Republican administration did it. The Democratic administration handles its business that way.

Mr. KASTENMEIER. Do you know of any recent cases or allegations of voting frauds?

Mr. SHIPLEY. I think the purpose of this bill, the Republican bill, as it has been explained, is to make sure that every person—the bill not only arranges to see that every person who is qualified gets registered and he votes, but that he is permitted to cast the vote after he has registered to vote, and then his vote is counted, afterward, and further, it is not diluted by fraudulent voting, purchased voting,

gravestone voting, all of the devices we know of which violate existing laws.

This is all part and parcel of the same problem.

Mr. KASTENMEIER. Are you talking about frauds perpetrated on people by reason of their race, creed, color, national origin? Or not?

Mr. SHIPLEY. No. No, indeed. All types of voting frauds, such as the difficulties we had in Chicago with the various officials of both parties running around trying to count ballots, or as we had in Kansas City a few years ago, during President Truman's time. Vote frauds of this kind are on a colossal scale.

In Kentucky, a White House assistant wound up in jail a few years ago on a vote fraud charge, and it has happened in both parties.

It is a very serious matter, getting worse all the time, and it should be included in the bill.

Mr. KASTENMEIER. Would you also want included, something against gerrymandering, to be assured that both would be more equal?

Mr. SHIPLEY. Well, I think that goes beyond vote fraud. This gets to be a political device, which has been condemned by the Supreme Court, but it is not a vote fraud. It has happened in California as well as New York.

Mr. KASTENMEIER. No, it is not a vote fraud, but it has to do with the subject of where one vote counts as one—the dilution of votes, which you were describing, as in New York State.

Mr. SHIPLEY. I do not think this bill contemplates that.

Mr. KASTENMEIER. No, this bill does not.

Mr. SHIPLEY. No, I do not think it should be included, because that is a discretionary matter, relating to other problems.

Here we are concerned that a person can register and vote and can cast his ballot, and he must be secure in knowing that his ballot will be counted, and that they are not going to count some other person's ballot falsely against him to dilute his ballot.

These are the things, I think, that are properly within the reach of the Civil Rights Division.

Mr. CRAMER. Would the gentleman yield?

This amendment passed the Judiciary Committee by a very substantial majority 3 years ago, in 1960, and there is no more valuable civil right that I know of than the right to vote and have it properly counted, so it properly comes within the civil rights structure.

Mr. KASTENMEIER. This is what I was exploring, whether or not he felt deeply enough about it so that he would also oppose gerrymandering or have the Civil Rights Division investigate States that have gerrymandering, such as New York.

Mr. SHIPLEY. It happens in both parties, and both types of legislatures. I think the present bill applies where the whole ballot box disappears, as in the case of Congressman Slaughter, back in 1947 or 1948 in Kansas City. This happens in every election with both parties.

Mr. KASTENMEIER. Do you not really concede that there is a difference between protection of the individual and the great mass of people, such as all voters? That these are distinctive? Granted both ends are necessary, but that these are distinctive in terms of the operation of a commission of this type, or indeed legislation generally of this type? We are trying to protect the individual as such.

Mr. CRAMER. What is the difference between protecting the individual in a minority and the individual in a majority? This protects everybody and their right to vote and to have their vote counted.

And as I stated before the gentleman came in, when this was under discussion, according to the Honest Ballot Association, which is an organization dedicated to the ideal of clean elections, at least a million votes were stolen during the presidential election of 1952, and worse, the experts agree that elections are becoming even more crooked.

And this appeared in an editorial in the Saturday Evening Post of October 27, 1956. So there is no question about vote stealing taking place.

It is a question of: Are we interested in it enough to do anything about it? And I think we should be.

Mr. SHIPLEY. And it is bipartisan, I think, too, as I think the Congressman would say.

In one of Chairman Celler's bills, where he authorizes the Attorney General to take action where less than 15 percent of the potential voters are registered, this is prima facie, apparently, evidence that something is grossly wrong.

This broad principle I think has been introduced by him in some areas. We get it in some Democratic areas and some Republican areas, where they vote more people than even exist, or there will be a thousand votes for one party and none for another party, things wholly beyond the range of mathematical probability, and so you know there is fraud right on the face of it.

Mr. RODINO. Thank you very much, Mr. Shipley.

Mr. SHIPLEY. Thank you, Mr. Chairman, for the opportunity to be here. I appreciate it.

Mr. RODINO. Thank you for your interest and for your very able and enlightened presentation.

Our next witness is Mr. Noel H. Marder, president of Education Heritage, Inc.

Mr. Marder?

STATEMENT of NOEL MARDER, PRESIDENT, EDUCATIONAL HERITAGE, INC., AND CHAIRMAN, BACK OUR BROTHERS, INC.

Mr. MARDER. Thank you, Mr. Chairman.

Distinguished members of the Committee on Civil Rights Legislation, I was asked to testify here today as a result of a trip I took to Birmingham, as a matter of fact, two trips, and I am here to tell you what I saw and what I experienced there.

I claim no special wisdom in the field of race relations or civil rights. I only know that as a member of what we call a minority group, as a member of the business community, and as an American citizen, I am deeply disturbed about conditions in our country, conditions which are blurring not only our image throughout the world, but our own image of our beloved country.

However, my reason for coming here today is not to comment on the way the world sees us, but to deastigmatize our own complacent view of the most serious problem our country presently faces.

I believe the moment is at hand for many of us who are characterized as white Americans to take a more honest look at this, our prob-

lem. And here, I offer no prescription with which I have not been willing to treat my own deficiencies.

It is simple enough to sit in an office in a pleasant Westchester County community and to administer one's business, to send contributions to humanitarian causes, organizations, and projects, to verbalize about democracy and to live in a posture frequently categorized as liberal. This does not take too much effort.

But for 8 years, now, I have been aware that Dr. Martin Luther King and what started out as a small handful of segregation weary Negroes have been carrying on a nonviolent assault against a modified slavery.

I feel free to use the term "slavery" because on close examination, the basic difference between the Negro of Birmingham, 1963, and his forebears of 1863 is that today's Negro has the uncontested right to own himself and his children.

Thus, peculiarly, in this centennial year marking the 100th anniversary of the physical emancipation of the Negro, he is psychologically, politically, educationally, and socially deprived.

Many Americans are aware of this, and are willing to involve themselves in constructive efforts to help the Negro attain recognition as a first-class citizen.

We all were privileged to listen to two very interesting and apparently very dedicated gentlemen prior to my speaking.

But there are too many of us who limit our concern to the mechanical contributions, the gestures of individualized and personal good will, and to the comfort of the attitude that, "He, the Negro, has come a long way."

We rationalize in our evaluations, not realizing that although the Negro has come a long way, he still has a long way to go in achieving his own goals.

Nobody is more aware of this than the Negro, and recent events indicate that he intends to go.

This point was driven home to me during recent visits to Birmingham at the invitation of Dr. King. The first invitation was the result of a telephone conversation wherein I had been questioning Dr. King as to what was actually going on in Birmingham.

And Dr. King invited me to come down and see what was going on in Birmingham for myself.

I did, of course. My experiences and observations in Birmingham—during this trip and a later visit—motivated me to return to New York and to work with other interested persons to launch what is fast becoming a national movement, the Back Our Brothers Organization.

I would like to tell you something about the experience that I had, the kinds of experiences, I should say, in Birmingham.

I will first tell you about some of the ugly things I saw and felt in Birmingham.

Mr. RODINO. By the way, Mr. Marder, are you reading from your statement, or are you summarizing?

Mr. MARDER. I am doing both.

Mr. RODINO. Thank you.

Mr. MARDER. I was saying that Birmingham was and still is—it was when I was there and still is now—a city of tensions. I was on

the phone with Birmingham last night, and talking with the people there, and the tension is very great. There is a tremendous feeling of hate, I think, on both sides, now, in Birmingham.

I think the recent bombings of the motel Dr. King was staying in and his brother's home indicate that murder is still stalking the streets of Birmingham.

When I was there, I saw it in the frigid, expressionless faces of many of the policemen whose job it is to reinforce America's gift to apartheid.

It was seen in the overzealous responses to Bull Connor's order: "Give it to them."

I saw dogs unleashed on startled children. I saw an obviously pregnant woman poked with a nightstick. I saw high-pressure water hoses put into action, hoses so overwhelmingly powerful that a 10-year-old boy was swept off his feet and flung to the opposite curb.

I also saw some, I would say, personally uplifting things, very beautiful things.

I saw several thousand youngsters coming to a church. They came by twos and threes. They came by tens and dozens. They came by entire school classes and sometimes in numbers which appeared to be legion.

They were youngsters ranging anywhere from 10 to 17 and 18. Some of them were walking. Some of them were trotting.

As they came, older people, lining the streets in front of and surrounding the church, cheered them.

I understand that this is a new thing. When Dr. King started his movement in Birmingham, it was very difficult to get some of the older folks to participate in it. That has changed now.

Inside the church, they registered and signed commitment cards. And this was very important to me, because I was personally intertested in seeing how these kinds of nonviolent movements were organized.

The cards pledged them to nonviolence, and to quiet but purposeful behavior.

Inside the church, resourceful, authoritative young leader-trainers organized them into classes, instructed them in nonviolent ways, and warned anyone armed with as little as a toothpick or a grain of resentment to withdraw. They did not want any part of any youngsters or any grownups who were interested in becoming physical.

They shouted their freedom slogan and sang their songs. They listened gravely and with respect and approval as their leaders—Dr. Martin King, Dr. Ralph Abernathy, Rev. Wyatt Tee Walker, and Rev. Fred Shuttlesworth, spoke to them of the indignities they have known since birth, spoke to them of how they could help to emancipate their parents and themselves—and, yes, the white brother, who, by keeping them in oppression, was dooming himself to the hate which debilitates the hater more than the hated, certainly at least as much.

They were not dressed elaborately, these children. Most of them were from very poor backgrounds. But their faces revealed they were rich in awareness and intelligence. They were very aware as to what they were doing, even if it was in very basic ways.

They were not being manipulated by Dr. King, as some have suggested. They were manipulating the soul force which Dr. King taught them is more powerful than physical force.

True enough, they were highly inspired—justly and fully convinced that their every act was an act which could eventually bring them to a position of equality; that by taking a stand now, they could eventually see the recognition of their importance as human personalities, each with his individual dignity.

In their minds, the word "eventually" does not mean that they must wait until their children's children are accepted as genuine human beings. In their minds, it means that the very simple necessities of a dignified life—being able to play in a park, being able to eat at a lunch counter, being able to go to a restroom—must be made available to them now.

It was a young people's movement which I saw in Birmingham. It was a fresh proof that it is always the young who have the courage, not so much because they have less to lose, as that they have more to gain.

Their belief in natural justice is so great that they have not yet become disillusioned—not even by threats, the police billies, the hoses, or the dogs or any other kinds of difficulty that they ran into in attempting to demonstrate peaceably.

These were the youngsters who sang and chanted in the church. At given signals, they marched out in groups, marking forth to offer their physical beings as a witness to a very American desire: the desire to be free, the desire to have dignity, the desire to protest peacefully, the desire to assemble peacefully in tribute to a basic idea on which our Nation was founded and with which it has remained reliant.

Some of them were permitted to walk only a few steps from the church before they were halted by the stony-faced police. Some of them marched a few blocks before they were arrested. Some of them were fleet enough to reach the downtown area—downtown where the city hall stood from which come the segregation administration, downtown where the shops are which accept their parents' money but will not give them jobs or orange juice at a lunch counter.

That day, 1,000 of these youngsters were arrested—that was on May 2—packed into police wagons, shoved into trucks and schoolbuses. That day, these youngsters heard Gandhi crying out with Martin King: "Fill up their jails."

Incidentally, that was the slogan, and the children made it very clear to anybody who was not deaf in the area.

The older people of Birmingham—the people who had lived with fear—the people who had believed they must accept second-class citizenship—these people cheered and applauded as their youngsters went to jail. And the youngsters sang and went quietly.

The evening came, and for every youngster who had been locked up, two more came to fill up the church which had been the cradle of their freedom movement. They held a spirit-filled meeting, paying honor to their companions who had won the badge of courage, to make plans for the next day's demonstration. They heard moving talks by their leaders and their singing was like that of some grand, inspired choir, or so it seemed.

I heard all kinds of interesting bycomments. I made notes. That is how this testimony got into print. But the most important one I did manage to put down was that of a 13-year-old child speaking to me, and I asked her what she thought personally about this. I mean, how did she really relate to what was going on.

She told me a few things, but the most interesting was this. She said, "I would like once to own a brand new textbook, a textbook that didn't first belong to another child." And I found out that none of those children in the area had ever owned or had the opportunity to own new materials, as their white brothers and sisters did, in the so-called separate but equal schools of Birmingham.

And this, of course, is the kind of incident that strikes home.

The general attitude of the people was extremely optimistic.

I experienced a very interesting thing. Walking down a police-lined street back to the movement's headquarters, the strains of the last freedom song haunted me, and I think it is a very famous old Negro spiritual, which then made its own place in the labor movement of our country, and now seems to be back with the Negro people themselves. I do not know if any of you have heard of it. It is, "We Will Overcome," "Deep in my heart, I do believe we will overcome." And I believe they will overcome.

For theirs is a revolution not unlike that which led to the founding of our Nation. Theirs is a revolution which cannot be denied or ignored, because they have the right on their side which can defeat 1,000 Bull Connors.

Shortly before dawn on Friday, I had a chance to speak to Dr. King, and he gave me this commission. He said—

Please talk to the people.

Tell them that Birmingham has turned out to be the most important battle in our fight for freedom.

Tell them that Birmingham can be decisive as to whether integration in the South becomes a reality in our time.

Tell them we will overcome, but that we need their help.

I promised Dr. King that I would transmit his message.

We had a little meeting in New York with some very wonderful people, and we are having a banquet as tribute to Dr. King this coming June.

Our tribute to Dr. King and his fellow leaders is a deserved tribute. These are dedicated men who have developed the capacity to give of themselves completely. They are as courageous in the face of bombings and beatings as they are in the face of financial privation which threatens them because of their unselfishness in their work.

It is beyond my comprehension how Americans, north or south, can falter over a choice between Martin Luther King, who preaches love and unity and nonviolence, and all the morbid pretension of Malcom X, who preaches hate and division and violence, and I have yet to hear one constructive word come out of this type of man.

Mr. KASTENMEIER. Is it a fact that Black Muslims preach violence?

Mr. MARDER. Yes, they preach violence. However, they do not act, except on 125th Street.

Mr. KASTENMEIER. That is not what they state.

Mr. MARDER. Let me state this, then. There are many ways of preaching of violence. A direct statement of: "Let's go and attack our enemy." Or using very controversial things in a negative way

to stimulate people who are emotionally on fire as it is, and agitating in such a way that the end result is violence.

By preaching hate and rejection of a brother on a racial basis or religious basis, you are preaching violence, because the next thing is to do something about your resentment and translate your hate and your anxieties about this enemy to some kind of activity.

Malcolm X does not show any other outlet. He certainly does not talk about any real legislation. He does not talk about improving housing. He talks about a world without specifics—no answer and no out. And he talks about organizing people in a military way.

As a matter of fact, on many occasions they wear armbands, in many communities. I have never found armbands, outside of their use at funerals, to be less than militant. And the indication that I have seen—as a matter of fact, individually, the followers of Malcolm X speak violence, what they intend to do and what they would like to do. Fortunately, they have not done much yet.

Mr. KASTENMEIER. Do they not teach resistance to violence?

Mr. MARDER. Let me say this: I do not think that I can talk about Malcolm X—I hate to use this cliche that has been used several times today—I am not an expert on Malcolm X. I have spoken to many who have had to contend with him. In my own area I have worked with over 600 ministers in the New York area, not to mention Chicago and Philadelphia. Their fear is that when you talk about resistance to violence, which implies taking the initiative, you are talking about an armed assault.

"Remember when this man comes over and breaks your head, this is what you are going to do." This is not merely resistance to violence.

I do not believe, personally, this is the answer I would like to see. I am certain nobody on this committee would like to see that, either.

Besides, what Dr. King and his followers made very clear to me, and what was very obvious to me by seeing the actual miltary force that Bull Connor was able to materialize: If violence were to really break out, the Negro would lose everything. He certainly could not compete with machineguns.

I saw one car parked in front of the Gaston Motel, which most of the newspapers avoided mentioning as the actual headquarters of Dr. King's people; there were three men in it, all visibly, were armed with machineguns.

That is the kind of force that the Negroes of the South, as well as of the North, are not interested in competing with or contending with, and even if they were, they could not very well do much about it.

I say that the South will one day be aware that it owes great gratitude to Dr. King, especially in the light of the Malcolm X or Muslim thinking.

I think that America in general will learn this, too. For it is no secret that the American economy is locked in a life-and-death struggle with totalitarian enemies, and that we certainly cannot survive with 20 million of our people being deprived of the right to offer their contribution.

The have great wealth to give us, creatively, in the arts. They have treasures to offer us in the sciences. They can swell and improve our industrial force. They can make contributions to the space age. We need them.

And I say that they can bring prosperity to the South, and enrich the potential of America through integration and the development of their potential, or they can be left to rot in the costly, dangerous ghettoes of America, which we are building all over the United States presently.

I should like to say, in coming to a close, that Back Our Brothers movement sponsored—at Dr. King's request—the trips of two fine Americans, Jackie Robinson, cochairman of Back Our Brothers, and Floyd Patterson, to Birmingham.

It was we who sent them to Birmingham. There has been much criticism about these two men. I would like to state they did not go for their own aggrandizement. I would like to make that clear.

I have heard it said that they had nothing to do with the Birmingham situation. What were they doing in Birmingham? They were not local citizens. This kind of thinking is rediculous; this is not a localized problem—anything that affects people's rights is everyone's business—you do not have to wait until bigotry comes knocking at your door. If you happen to be a Negro, and people are slaughtering Negroes across a State line, their intentions are obviously anti-Negro, I think you can relate to this. I think it is the same kind of thing that happened to Jesse Owens during the 1930's at the Olympics.

They went down there really to give moral support to the people of Birmingham, and they were extremely well received, the youngsters in particular. It is nice to see somebody you can look up to as a model of life coming down and showing physical sympathy, by exposing themselves to the same dangers that these youngsters were exposing themselves to.

An Alabama editor told President Kennedy that conditions would be fine in Birmingham if "outside agitators" like Dr. King, Mr. Robinson, and Mr. Patterson stayed away.

I might point out that Jackie Robinson was considered an outsider when he first stormed the segregation barriers of baseball, but he went on to make the great American game more pleasurable and also more American.

Floyd Patterson, when he became the first champion in the history to regain his title, was the champion of all the American people, and in his conduct has remained a true champion.

As for Dr. King, the awakening Negro of Birmingham beckoned to him and he responded—they requested his appearance there; he did not choose Birmingham—in order to lead their fight for freedom.

Back Our Brothers is proud of its role in sending Mr. Robinson and Mr. Patterson to Birmingham to let Negro children and the world know that even the most distinguished of the Negro race will never feel emancipation is a reality until the poorest child in the South has an equal chance.

Gentleman, I have appreciated this opportunity to speak for my own heart and for the Back Our Brothers movement.

I commend you on the work you are doing.

I commend you—and you will forgive me, if from deep sincerity of purpose—I challenge you.

I challenge you not to take my word.

I challenge you to get the most unerring, the most accurate, the most eloquent testimony you can get.

I do not believe you can get it all, certainly, from listening to me, and you cannot get it all from listening to "Bull" Connor, and you cannot get it even from listening to Dr. King alone.

But you can get it by holding sessions of this committee in Birmingham itself.

It seems there is peace in Birmingham now, but the evidences of the battles are still there. The scars have not healed. The provacations are continuing. And we are yet to see a real satisfaction of their problems.

We can learn much by examining close up and with honesty the truths to be learned about what happened to Birmingham.

Gentlemen, I make this respectful suggestion, that you go to Birmingham before many days have elapsed, and talk to "Bull" Conner, talk to Dr. King, talk to the white people on the streets, who I really did not believe were very participant in all the problems of the past couple of months in Birmingham.

I think you will gain a lot by talking to the children recently released from the jails. Yesterday I was told that several are still in jail, but I am not clear in this. I will not make that statement as a fact.

Mr. FOLEY. Was not that order issued by Judge Dutton yesterday in Atlanta, freeing 1,100 of them?

Mr. MARDER. Right. But I understand there was still some kind of a little hitch. I am sure if not already out, they will be out very shortly.

Your verdict, I believe, anyway, by going to Birmingham, will be that the Negro fight for freedom is a just fight, and that it will be won.

The important thing is where we, as white Americans, will stand in the days of that victory. Will we be proud of the role we have played? Will we have heeded the voice of a King who calls for morality, or the voices that cry out for mass murder?

Incidentally, there is something I almost forgot when I wrote this: When Dr. King was explaining to the children in the church classes—when I actually heard this the first time, there were about 600 kids in the basement of this church, and this was about the third group that had just finally made their way to the church in preparation of going out and marching, and he said, "Keep it in mind that the white man of America, Mr. Kennedy and the lawmakers in this land, have given you all they are able to give or want to give at this time. The rest has to be earned by you, by your conduct, by your determination, and by your overall attitude."

And then he instructed them as to how they must behave when they walk out on the streets, that the world is watching them. And it certainly has been, fortunately and unfortunately, for the Americans.

And most importantly, these children believed him. There is no question about it: that they had to win our admiration and respect.

And all the time I was there, I never saw one youngster who was ever exposed to Dr. King or any of his followers' lectures or talks who raised a hand to a policeman. The most I ever saw—interesting and very humorous (if I can go by the fact that some of the white policemen even smiled) was a waggling of fingers. I never saw one

youngster who had anything to do with King's movement pick up a rock or say anything that would have irritated me, particularly. And I do not think I am the most passive individual.

I do not know if I could keep my hands stuffed in my pockets if somebody was sicking a dog on me. I saw children bitten, and I do not see any of these children make any effort to retaliate, aside from running and avoiding being bitten.

Later on, after the bombing, the people who were involved in the violence were people who had nothing to do with King's movement. This I personally believe and know to be a fact.

The President of the United States has uttered some courageous words in recent days. Many of us thought he should have acted with greater authority before violence erupted in Birmingham. I, person- perhaps made other stands. I am not that familiar with the law.

But it gives us courage, with his warning that the Federal Government will protect its citizens, even if it takes the use of troops. I think this is a very admirable thing.

I think we need more laws, gentlemen, laws which distinguish between the rights of States which make segregation a sacred tenet, and the rights of each American, under our Constitution.

It is very well to say that the Negro should be patient, but the Negro has been patient for many, many years, actually since the first Negro was ever brought to this country, over 300 years ago. He has been patient. He has been very loyal. He has been nonviolent.

We, the non-Negro Americans, must learn to be impatient with immorality. I do not think that once we accept the idea that a man has the right to be free or he is entitled to freedom, we can then turn around and say when and if. If freedom is what we express it to be according to the Constitution—and everything I was taught in school about Americanism, then there is no time limit on when a man is to be given this freedom.

It is not something we carry around in a little black box and say to the prospective recipient, "Now, if you continue behaving yourself, if you continue to demonstrate how wonderful you can be by following our leadership, one day I am going to open it up and hand it to you, and you will then be free." I cannot possibly find any reason to be critical about a man who says, "You gave it to me according to law, I want it now. I don't want to wait. I have been waiting a long time, since the day I was born, and my mother did the same, as her mother before her."

It is illogical, this making people wait, it is undiplomatic, because of the emerging nations. Segregation, gentlemen, is a sin—a sin against God, a sin against mankind, and a sin against our national ethics.

Thank you.

Mr. RODINO. Mr. Foley?

Mr. FOLEY. Mr. Marder, will you tell us the purpose of education heritage?

Mr. MARDER. We are publishers of an encyclopedia.

Mr. FOLEY. Now, the "Back Our Brothers Committee"—when was that formed?

Mr. MARDER. I will give you the exact date. It was the day that I came back from Birmingham. It was on the 9th.

Mr. FOLEY. Of May?

Mr. MARDER. Of May.

Mr. FOLEY. How big is that organization?

Mr. MARDER. Pardon me. It was not on the 9th of May; it was on the 7th.

Mr. FOLEY. How big is the membership now?

Mr. MARDER. The membership of it?

Mr. FOLEY. Yes.

Mr. MARDER. It is very difficult to say. We had 156 very prominent citizens, including the attorney general of New York State, Mr. Lefkowitz, at our first luncheon for organization. Commissioner Beame was there. As a matter of fact, I myself was extremely impressed when looking at the list of those people who attended. I would say we have about 200 members. I would say it is an ad hoc movement. I am not a professional.

Mr. FOLEY. Is it just limited to New York?

Mr. MARDER. We hope not; no.

Mr. FOLEY. You have no other chapters organized in other cities yet?

Mr. MARDER. No. Definitely not.

Mr. CRAMER. How is this group financed? Where do you get your money?

Mr. MARDER. Well, so far, we have not really needed any outside financing. Our first project is this banquet.

I, personally, and friends of mine, have laid out the few dollars that have been necessary. Everybody is a volunteer. We have nobody on payrolls, so we have no need to finance.

Incidentally, the proper corporate papers have been filed with the New York State authorities, including the welfare department. This is a nonprofit organization. We do not intend to have paid officers, and as far as I am concerned, no paid employees. Everything is voluntary.

Mr. CRAMER. How many members are there of your organization?

Mr. MARDER. I would say between 200 and 300 people who are active at this point.

I think, though, that at the end of this month it will be more like 1,000 to 1,500, from the indications of the letters, the mail that is coming in to us now.

Mr. CRAMER. That is just localized in New York City?

Mr. MARDER. Right.

Mr. RODINO. Thank you very much, Mr. Marder.

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

Mr. RODINO. This concludes the hearing this morning. The committee will resume its sitting on May 28.

The hearing is now adjourned.

(Whereupon, at 12:20 p.m., a recess was taken until Tuesday, May 28, 1963.)

CIVIL RIGHTS

TUESDAY, MAY 28, 1963

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

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

Present: Representatives Celler, Rodino, Rogers of Colorado, Kastenmeier, McCulloch, and Lindsay.

Also present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The hearing will come to order.

Our first witness this morning is Mr. Cary D. Blue, of New York City. Mr. Lindsay, are you prepared to introduce the gentleman?

Before you do so, the Chair wishes to read a statement into the record.

We are facing a crisis in Negro-white relations. The civil rights struggle is coming to a head—a tragic head. Birmingham and Oxford are symptomatic of the dangers we face unless we act and take control of the freedom movement, which is getting into the hands of extremists.

Patience is finite. Negroes have waited long. Smoldering flames are shooting forth in parts of our fair land.

Token relief and pseudo measures of reform will not stem a rising tide of wrath among 20 millions. The present rate of change is too slow. This freedom movement is being led by a new type of Negro. He is better educated, he now has more money and more political power than heretofore. He will use these assets to secure his rights.

Negro emancipation has reached a point where every white citizen must search his conscience and ask, "What am I doing to bring justice to the Negro?" The answer is mainly in the negative.

Our colleague, Adam Clayton Powell, with unbecoming language, said, "The white man is scared." The white man is far from scared. He is, however, becoming aroused from his apathy and seeing some of the errors of his inaction. He is realizing that relief is not fast enough.

We must immediately address ourselves to passing constructive legislation. Civil rights hearings are now proceeding before this committee. They started May 8.

They will definitely terminate June 13. Those seeking to testify must do so before that date. Otherwise, their statements will only be received for insertion in the record.

I shall brook no delays. I hope to present a committee bill directly after June 13, because I believe that time is of the essence.

I should like to place into the record a statement that appeared in the Herald Tribune this morning, under the byline of Marguerite Higgins, a very eminent member of the Herald Tribune staff, which article is headed "Rusk Bemoans Racial Crisis, Gravest Problem Since 1865."

I should like to place into the record a very constructive statement made by Walter Lippmann this morning in the Washington Post, entitled "The Negroes and the Nation."

(Newspaper articles referred to follow:)

RUSK BEMOANS RACIAL CRISIS, GRAVEST PROBLEM SINCE 1865

VOICE MUTED, FRIENDS ASHAMED, ENEMY GLEEFUL

(By Marguerite Higgins, of the Herald Tribune Staff)

WASHINGTON.—Secretary of State Dean Rusk solemnly warned civic leaders yesterday that racial strife is crippling U.S. foreign policy and confronting the Nation with the gravest issue since 1865—the end of the Civil War.

As a result, said Mr. Rusk, "our voice is muted, our friends are embarrassed, our enemies are gleeful. * * * We are running this race with one of our legs in a cast."

In this somber tone, Mr. Rusk advised his listeners with great urgency that the best thing they could do for their country in 1963 is to go back to their communities and personally seek to mend Negro-White relations and eliminate discrimination of all kinds, whether it be based on race or religion or national origin.

In the same vein another top official warned the audience that "when you see a Negro citizen walking down the street who is not a Communist, you see a miracle of the human spirit."

This official who also bears great responsibilities in the field of foreign policy remarked additionally: "It is hard to be content with the situation in which half of the diplomatic corps finds the getting of a haircut in our National Capital to be a problem." He was referring to the fact that many diplomats of the new embassies representing Africa and parts of Asia often—despite their diplomatic status—suffer from discriminatory practices that still exist against American Negroes here.

Mr. Rusk's words on the impact of racial strife in world affairs was by far the starkest ever publicly stated by an American official.

The Secretary pointed out that the violent turn of events is even more tragic because it comes at a time when the prospect of success in the general struggle against the Communists is brightening. Indeed, Mr. Rusk has seldom permitted himself to be so optimistic about American progress in the cold war—race relations excepted—as he was yesterday.

Mr. Rusk raised the racial issue in a luncheon address to American civic leaders who are receiving a series of State Department foreign policy briefings.

The Secretary said "I do think that we all ought to recognize that this Nation is now confronted with one of the greatest issues that we have had since 1865 and that this issue deeply affects the conduct of our foreign relations. I am speaking of the problem of discrimination in this country based on race, religion, or national origin. I believe that in general the free world is in a position to move forward in confidence—if we do not let up, if we maintain our effort and continue to support the great causes of freedom. But in this country we are running this race with one of our legs in a cast."

In dealing with race problems, the Secretary stressed the issue of human rights must always necessarily take priority over questions of foreign policy.

The reasons for this, he explained, include America's "own commitments to principle, the character of our society, the necessity to respect the dignity of our fellow citizens and the kind of life we want to lead here at home. But let's not underestimate the difficulties caused in other parts of the world. The readjustment of relationships is upon us internationally as well as at home."

TODAY AND TOMORROW—THE NEGROES AND THE NATION

(By Walter Lippmann)

Suddenly, as it were, the struggle of the Negroes toward equality of status in American society has taken a sharp turn.

The demonstrations in Birmingham have proved to be something more than the work of outsiders playing upon the imaginary grievances of otherwise docile and contented masses. Nobody can now doubt that the grievances are genuine and are deep under the rule of such men as Bull Connor and Governor Wallace. And nobody can have any doubt either that the new generation of American Negroes are shedding the mentality of slaves and that they will not accept quietly an imposed inferiority in education, in jobs, in housing, and in the public facilities.

For a hundred years since Lincoln freed the slaves, this country has relied upon the education of the Negroes and the persuasion of the whites to bring about that equality of status to which it is committed. We are now realizing that the present rate of change will not be fast enough. The redress of the grievances of the Negroes is for the new generation too slow in coming. History teaches us that when this point is reached in the struggle for what men regard as their just rights a revolutionary condition exists.

Then the supreme questions are posed. Will the ruling and privileged classes take command of the coming changes? Or will they cling to their privileges and become the immovable object in collision with an irresistible force?

The white people of this country, not only the white people of Alabama and Mississippi, are now at that crucial point where they must answer those questions. They must choose, on the one hand, between leading the movement toward equality of status and, on the other hand, standing aside and letting matters be decided by collisions between the Negro agitators and the Bull Connors.

The Negro rebellion is now led by men like Martin Luther King who preach and practice the Gandhian doctrine of nonviolence. It is a difficult doctrine in any country, and this is a rather violent country. The doctrine worked effectively in British India. But there the ruling power was under the restraint of the long British habit of constitutionalism.

We cannot count upon nonviolence persisting in the face of brutal and illiterate resistance. The outstanding danger is not that there may be rioting and brawling. For these can be suppressed. The outstanding danger is a loss of confidence by the Negro people in the good faith of the white people. This is where the turning point lies at the present time.

If confidence is lost that there is a legitimate remedy for genuine grievances, there will be lost at the same time confidence in the doctrine of nonviolence. What will come after that it is unpleasant to contemplate.

But those among us who are capable of learning from history will do well to remember what happened in Ireland and what happened in Palestine before the grievances of the Irish and of the Jews were redressed, and also to reflect on what is boiling under the surface in those parts of Africa where black inferiority is imposed.

The time has come when there must be a change in the American policy as it was laid down under Eisenhower and continued under Kennedy. This is the policy of leaving desegregation, which is a national commitment, to the conflict between private lawsuits and local authorities. The causes of desegregation must cease to be a Negro movement, blessed by white politicians from the Northern States. It must become a national movement to enforce national laws, led and directed by the National Government.

I think this is the direction in which the President and his brother, the Attorney General, are now moving. They should move directly and boldly and take command of a cause which cannot now be left to irresponsible people. If it is still possible, and I think it is, to hold and even to recover the confidence of the Negroes in the good faith of the whites, then this is the basic principle by which to do it. It is to make plain by word and deed that the Negroes are no longer a weak and isolated minority trying to push the Nation into doing what the national law and American principles require it to do.

Then, because the national power is behind the movement toward equality of status, that national power, which will be more than sufficient, can be exercised without violence, with wisdom, and with restraint. For it is the very weak rebels who feel that they must resort to the extreme measures.

The CHAIRMAN. Mr. Lindsay?

Mr. LINDSAY. Mr. Chairman, it is a great pleasure for me to introduce to the subcommittee a very old friend of mine, Mr. Cary D. Blue, a resident of Harlem from at least the end of World War I and an active leader in civic work of all kinds. He has concerned himself for many decades with problems of race relations and group relations. He is a leader in the community who has a good idea of what is going on in New York City.

I should like to point out, incidentally, also, that Mr. Blue is a Republican leader in the 11th Assembly District in Harlem.

It is a great pleasure for me to have the honor to present him to the committee, and I thank the chairman and the members of the subcommittee for receiving him as a witness today.

STATEMENT OF MR. CARY D. BLUE, NEW YORK CITY

Mr. BLUE. Mr. Chairman, I believe I received permission from your office that I could read a brief statement. Have I that permission?

The CHAIRMAN. You may be seated, if you wish.

Mr. BLUE. Thank you, sir.

To the members of the House of Representatives Committee on the Judiciary: Gentlemen: I, Cary D. Blue, of 163 West 131st Street, New York, N.Y., am speaking in the interests of the people in my district, in the heart of Harlem, New York City.

I thank you very much for permitting me to appear before you in behalf of bill H.R. 3140, introduced by the Honorable John V. Lindsay, Member of the House from the 17th Congressional District, New York.

This bill, to amend the Civil Rights Act of 1957, should bring giant steps in the right direction.

The United States of America, our country, if you please, has for 300 years permitted the rights, yes, the constitutional rights, of millions of its citizens, to be trampled and ignored.

The Emancipation Proclamation of 100 years ago notwithstanding, the pattern continues to be the same: discrimination, segregation, denial of the right to vote, denial of educational and job opportunities, also being denied access to public parks, playgrounds, or business establishments, and so forth, which is or should be the simple right of all.

These conditions, and others even worse, are well known to you gentlemen.

There is one very big difference, one very big difference. First, you have not experienced these conditions personally, as I and my people have. You have not experienced the deep resentment and hatred engendered by these conditions as my people and I have.

I believe I am expressing the sentiments of nearly 20 million people, Americans all, when I say we are not going to wait another hundred years for equality and our constitutional rights as Americans.

We ask no favor. We ask for, yes, we even demand, our rights as citizens. We ask our Congress to enact laws and amendments to protect all Americans, regardless of race, creed, or color.

It is unfortunate that it is necessary to pass special laws or amendments to prevent bigots, racists, and segregationists, with the help of

law enforcement officers with dogs, clubs, and pistols, from depriving millions of loyal Americans of their rights as citizens.

Like millions of those I have the honor to speak for, I am a real 100-percent American. And with your permission, I submit some of my background to prove it, briefly.

Born in North Carolina, reared and schooled in New England, in 1917 I resigned my job in an ammunition plant, earning from $50 to $75 weekly—some salary in those days. Twenty-eight days after World War I was declared, I enlisted.

There was no draft at that time, and I would not have been drafted, because I was in an ammunition plant, in any event.

I served about 22 months, 11 of these in France, and I was on seven different battlefronts.

While machinegunning Germans, whom I had never seen, and who as far as I knew had done no harm to me or mine, we were sent newspaper clippings by the folks at home, telling of atrocities of all kinds being committed against our people, the worst of which was a picture of a colored woman hanging by her feet and an 8-month-old unborn baby lying on the ground beneath her body, which had been cut open, because she was accused of shielding her husband, who was accused of committing a crime. All this happened while we were fighting to make the world safe for democracy.

We helped defeat the Germans, and we were decorated and returned home.

This mistreatment in various degrees has continued even to this day. Witness the pictures of recent events, policemen dragging a woman by the feet, dogs attacking women and children, all this because they sought peacefully to gain some of their lawful rights.

I have listened for years to the agitations of the Muslims, the Black Nationalists, the "buy blacks." I see that their activities in most cases are reflections of an a reaction to a white society's actions.

All the so-called ignorance, hatred, and violence attributed to any of these groups can be matched or surpassed by hatred and violence on the part of white people.

Yes; I have listened to their preachings. They point out that the white people of the earth are greatly outnumbered by colored people, by people of color. They charge that white people have taken unto themselves the rule of the world. They prophesy that the day will soon come when those who have exalted themselves will be abased.

As I consider this grim doctrine, I reflect upon the words of the Great Emancipator, Abraham Lincoln, in his second inaugural address. I quote:

> The Almighty has His own purposes. Woe unto the world because of offenses, for it must needs be that offenses come. But woe to the man by whom the offenses cometh. If we shall suppose that American slavery is one of these offenses which in the providence of God must needs come, but which, having continued through His appointed time, He now wills to remove, and that He gives to both the North and the South this terrible war as the woe due to those by whom the offense came, shall we discern therein any departure from those divine attributes which the believers in a living God always ascribe to Him?

Gentlemen, when I think of these words, I fear that they may one day be spoken of discrimination, as Lincoln spoke of slavery. I wonder how much time we Americans have left. We must put our house in order. We must give all an equal chance now, lest racial an-

tagonism paralyzes our national effort, or even causes blood to flow in the streets of American cities.

From the bottom of my heart, I say: God bless America, my home, the land that I love.

Thank you.

Mr. LINDSAY. I just have one question I would like to ask Mr. Blue, Mr. Chairman.

First, I want to congratulate you on an excellent statement. It means a great deal to members of any congressional committee to have citizens make the effort to travel to Washington and to state a point of view, and I think the point of view that you have just stated is excellent.

I have made the comment that every American must be warned that some of the local violence we have seen in various parts of the United States is just a token of what might come, and that there can be violence in Harlem, in Westchester County, New York, on Long Island, in my own congressional district, in Brooklyn, Queens, and Bronx, indeed in every State in the Union, unless the promise of the Constitution and the Bill of Rights and the Emancipation Proclamation is made a reality in all walks of life.

I do not wish even to suggest that warnings are necessary in respect of additional violence in the future, because I do not wish to be a party to encouraging violence, but nevertheless, it sems to me that we would be playing ostrich with head in the sand if we did not face up to and recognize the possibility.

You made one comment to the effect that there could be bloodshed. Do you feel this is true in your own community?

Mr. BLUE. Even in my own community, there is a danger of it, because the resentment, the hatred, is being preached and is being felt by people who heretofore were loyal, faithful Americans, loving only America—and they still feel that way.

The CHAIRMAN. Who is preaching this?

Mr. BLUE. It is the preachings of radicals, semiradicals, in various organizations. There are a number of them cropping up, and they are getting a reaction from a number of people who years ago would not even stop in the street to hear them speak.

The CHAIRMAN. Do you care to name any of those?

Mr. BLUE. Those names, for instance, that I just called.

My clubhouse happens to be on the corner of 125th Street and 7th Avenue. They have taken upon themselves the right to rename that Harlem Square, and they have taken possession of that area. It has even reached the stage where apparently the police officials feel that it is ill advised to have too many policemen around, because it creates additional resentment.

By keeping them away, in large numbers, it seems as if things run along more smoothly, and they blow off their steam. But if they are surrounded by a number of policemen, resentment might develop, and there is always someone who is likely to start agitation.

The CHAIRMAN. Would you say that the Black Muslims are stirring up this kind of strife?

Mr. BLUE. I would not want to say that they are stirring up strife so far as the speeches that I have listened to. I think they are expressing resentment at the treatment, resentment of the treatment, that the Negroes are experiencing.

The CHAIRMAN. Do they not preach violence?

Mr. BLUE. I have never heard them preach outright violence. I do not think they would dare. I would personally resent it if they did. I have never heard the outright preaching of violence. But there are remarks that are made that are on the borderline, and they might bring about violence eventually, or maybe sooner than you or I think.

There is a great bitterness, and unhappiness. The American people of Negro race are discouraged. We begged on bended knees, we asked with our hats in our hands, at the back door. All of those efforts that we made were not rewarded, except by limited considerations.

We feel that we have earned our rights as citizens. I know I have, and there are millions of others like me. And I defy any American to put his American loyalty ahead of mine. But still I resent the fact that I cannot have my rights as a citizen.

I do not want any more than anybody else. We do not want any special favor. That is the sincere truth. There may be a few who want special favors, but I do not. I would like to be a simple American like everybody else, and have my rights, not overdo it, and, as I said in the statement, it is shame that America has made it necessary to enact laws to protect any one minority group. All Americans should be protected by the same laws and by the same equal effort.

Thank you.

The CHAIRMAN. I want to say that your statement is most creditable, and it comes from a thoroughgoing American. And I am one of those who say that nobody dare impugn the patriotism of the Negro race. They have shown it, and they have shed their blood in the cause of America.

I thank you very much for taking the trouble and going to the expense of coming down here from New York City. As Mr. Lindsay indicated, it is very fine of you to do this.

Mr. BLUE. Thank you, gentlemen, for receiving me.

Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is Mr. Harold C. Burton, Republican County Committee of New York City.

Mr. LINDSAY. Mr. Chairman, it is my privilege to introduce another very old friend of mine, Mr. Harold C. Burton, whom I have known for many, many years.

Like Mr. Cary Blue, Harold Burton is a leader in the Harlem community in New York, a lifetime resident of Harlem, another leader in civic work and church work.

He is particularly active in the work of the Catholic Church in this community, a much beloved figure in this part of New York City.

And he has, I should like to add, contributed his time and efforts toward improving the political scene in New York. He is the Republican leader of the 12th South Assembly District in New York City, in Manhattan.

So it is a great honor and privilege for me to introduce my old friend, Harold Burton, to the chairman and members of the subcommittee.

The CHAIRMAN. We will be glad to hear from you, Mr. Burton. You may be seated, or stand, as you wish.

STATEMENT OF HAROLD C. BURTON, REPUBLICAN COUNTY COMMITTEE, NEW YORK CITY

Mr. BURTON. Thank you.

Mr. Chairman and members of the committee—first let me say that I am glad to meet you again, Mr. Chairman; I have been taking note of your activities. I do not know whether you remember. Years ago, you and I debated, or considered, the question of civil rights on the radio. You were much younger, and so was I.

Today I look at you, fighting for the same principle that I am fighting for. The only difference is in the way. It probably has to do with the party we belong to.

To me, America is the greatest country in this world. It was not my privilege to be born here. I was born in the little island in the West Indies called Dominica. I arrived in the city of New York in 1908, and in 1910 I was taking part in the political activities of the country. In 1912, I campaigned for Teddy Roosevelt.

I say that so that you can realize that even though I am not born here——

The CHAIRMAN. You were a Bull Mooser then?

Mr. BURTON. That is right. Your memory is good.

After all, looking at you and looking at myself, and considering our ages—I am 74. If my information is right, you, too, are 74, or thereabouts. And let me compliment you by saying, "You look good." And I know I feel good.

I am here to ask you and the members of your committee to give consideration to the bill of Congressman Lindsay.

I want to take the opportunity of reading this statement to the committee. And as you have granted me the permission of sitting down, I will do that. Let me conserve a little strength for later days.

I wish to express my thanks to the committee for giving me this opportunity to state my views on the vital subject of civil rights.

Our great Nation is being torn asunder because of the withholding of equal opportunity for all our citizens. This matter is not solely a domestic one, but one which affects our posture before the entire world.

Our Nation is the leader of the free world. The United States of America is the showplace of democracy. However, in this democracy of ours, our black brothers and fellow citizens are being deprived of their civil rights guaranteed by the U.S. Constitution.

The right to vote, equal opportunity for employment and equality before the courts are not privileges to be handed out to our black Americans by the individual States of our Nation, but they are rights guaranteed by the founders of our great country and embodies in one of the greatest documents of freedom and brotherhood ever written, our U.S. Constitution.

Along with that great document is another, our Declaration of Independence. Can these words ever be forgotten?

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness. That to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the Governed * * *

The very sound of those words is enough to cause your heart to pound, your eyes to flash and your head to be lifted upward. Those words express the American ideal. They are the words of freedom.

Why have our black American brothers been deprived of their heritage to live as free Americans? What power of evil and ignorance proclaims the hideous doctrine that one human being, one of God's most magnificent creations, is inferior to another human being solely because his skin is black?

We have made progress in attaining our American ideal for all our people. That fact is not questioned. But my black brothers are impatient. We helped build our great Nation with our blood, tears, and sweat. This is our country, and we will have our rights as men and citizens. We will fight with every lawful means available.

The President of the United States and the Congress have the power under the Federal Constitution to enforce equal rights for all our citizens. The U.S. Supreme Court also is obligated to uphold the Constitution and to protect the rights of all Americans.

The U.S. Supreme Court in May of 1954, made a significant start in getting America on the track leading to the American ideal of freedom for all people. The civil rights law of 1957 led us further down that road. Amendments to that law in 1960 continued this hopeful trend.

Today, that trend must continue with even greater speed. Desegregation of our public schools, instead of proceeding with "deliberate speed," is creeping in low gear. Today, we need new civil rights legislation which will state with great clarity that the President and the Congress are serious about the oath of office they took when they swore before God and man they would uphold the Federal Constitution and to protect and defend the rights of all our people.

H.R. 3140, the bill introduced by Representative Lindsay, is such a bill. Congress must pass that bill. The President must give his support to that bill. Otherwise, all America and the whole world will say our democracy is a sham and the Presidential and congressional oaths of office blasphemies.

The time of decision is now. There may not be much more time remaining.

With the permission of the committee, I would like to ha vredae

With the permisison of the committee, I would like to have read into the record the following resolution adopted by the Square Deal Republican Club, of which I am the executive member.

May I state here that that resolution was sent to the President of the United States, and to the Attorney General?

Whereas our brother Americans in Alabama, Georgia, Mississippi, North Carolina, Tennessee and other States in the southern portion of the United States have been and are being deprived of their civil rights guaranteed them as equal citizens under the Constitution of the United States of America; and

Whereas they have been assaulted, attacked by dogs, clubbed, imprisoned, and subjected to other physical abuses and moral indignities; and

Whereas even little children have been beaten and imprisoned for exercising their right of freedom of speech and lawful assemblage; and

Whereas the Governor of Alabama has vehemently declared he will employ all means necessary to prevent desegregation in the State of Alabama, and has further vowed with premeditation that he intends to continue to deprive our Negro Americans of civil rights guaranteed them by the Constitution of the United States of America; and

Whereas no significant Federal civil rights legislation has been enacted into law by Congress of the United States since 1957; and

Whereas discriminatory practices against Negroes are still being followed by business firms doing business with Federal agencies and departments and receiving huge profits from such dealings; and

Whereas the U.S. Supreme Court has decreed in 1954 that desegregation of public schools is to proceed with "all deliberate speed" and such decree has been openly disobeyed in many parts of the United States; and

Whereas the vast majority of Negroes in the southern part of the United States have been and are being deprived of the right to vote; and

Whereas the Federal Civil Rights Commission has conducted extensive investigations and made recommendations which for the most part have not been acted upon; and

Whereas many States in the United States of America have created commissions of human and civil rights with enforcement powers and the Federal Government has lagged behind such States in enforcement of such rights; and

Whereas many labor unions still discriminate against Negroes and other minority groups in the conduct of their affairs: Therefore, be it

Resolved, That the Square Deal Republican Club, call upon the President of the United States of America, in the name of its members, in the name of the people of our local community, in the name of Negro citizens of America, to uphold the Constitution of the United States and protect the civil rights of all our citizens and use all means necessary to protect and uphold those rights; and be it further

Resolved, That the President of the United States, place the prestige and power of his high office behind the drive to enact comprehensive civil rights legislation to guarantee all citizens of the United States of America equality of opportunity in employment; the right to vote; to aid all State and local educational agencies in their programs to desegregate public schools with financial and technical assistance; and equality of treatment in labor unions for all peoples; and be it further

Resolved, That a permanent Civil Rights Commission be established to guarantee the aforementioned civil rights and to withhold Federal funds from employers and States that pursue discriminatory practices against Negroes and other minority groups and to decertify labor unions who discriminate against minority groups; and be it further

Resolved, That the President of the United States do these things not with "deliberate speed," but with "immediate speed"; and be it further

Resolved, That copies of this resolution be forwarded to the President of the United States and the Attorney General of the United States forthwith—

that has been done, Mr. Chairman and members of the committee.

and be it further

Resolved, That copies of this resolution be forwarded to the chairman of the Republican State Committee and the chairman of the Republican New York County Committee forthwith.

This letter accompanied these resolutions to the President:

Sir: There is enclosed with this letter a copy of a resolution authorized by the membership of this organization. This resolution was prepared not in the interest of partisan politics, but came forth from the hearts and tears of our members who are shocked and saddened by the display of police-state tactics employed by the brutal fanatics in Birmingham, Ala., against our black brothers and fellow citizens.

We are aware of the great burden placed upon you in upholding the rights of all our citizens. However, you undertook to meet this burden when you took the oath of office as President of the United States of America. Under the Federal Constitution you are obligated to protect the rights of all our citizens guaranteed under our Constitution.

There is an additional obligation imposed upon your administration. You vowed there would be comprehensive civil rights legislation passed within 90 days after your administration took office. We are therefore asking no more than that which you have already promised to do and have sworn to do.

Our prayers and support are with you in this difficult task you face. Please save our black brothers from further persecution. Our eyes and the eyes of the world are upon your administration. We know you will not let America suffer shame.

Mr. Chairman and members of the committee, I wish to present all these to the committee, and I want to put this in as an exhibit. It came from the New York Times, Saturday, May 4, and you can see for yourself the treatment afforded American citizens by people who are inhuman. In other words, they are savage to the very meaning of the word.

The CHAIRMAN. That will be received as an exhibit for the record.

Mr. BURTON. Yes, Mr. Chairman. I will leave all these.

The CHAIRMAN. We cannot place it in the transcript of the hearings, but we will put it in as an exhibit in the committee's file.

Mr. BURTON. Thank you very much.

May I say this in closing. The other night, in New York, or the other day in New York, there appeared an organization. I think it is called the Renaissance Party. It is a duplication of what the Hitler bunch used to be.

Surely you must have read where they caused some kind of a riot. And I am mindful of that. Unless this committee and this Congress take the position that such a thing must stop, particularly what is happening in Alabama, it will leave, for these crackpot organizations, the right to do anything they think they have the right to do.

I am mindful, Mr. Chairman and gentlemen, that but a few years back, Negroes were lynched and hanged on the tree. Then came the time when a white man was lynched. A gentleman by the name of Frank.

And I am afraid, gentlemen, if we continue to permit these things to take place in America, there is no telling. I, as a Negro, with the double jeopardy of being a Roman Catholic—that will not happen to me when I leave this door. There is no saying what will happen to any member of any race if this United States of America and the Congress of America does not pass such legislation that will protect every citizen disregarding what his color may be, disregarding what his religion may be, disregarding where he was born.

The fact is that if he is an American citizen, he is entitled to the protection of its officers, the Constitution, and the Congress.

Thank you very much, gentlemen.

Mr. LINDSAY. Mr. Burton, I should like to say to you, as I said to Mr. Cary Blue, that members of congressional committees are deeply appreciative of citizens who make an effort to come and testify on important subjects.

Your testimony this morning is enormously helpful to every member of the Judiciary Committee, whether or not he is a member of this particular subcommittee.

Your statement reflects great credit upon you, sir, and upon your community, aand I for one wish to express my gratitude to you for making every effort to be here, and for making a very good statement, on a very difficult and troublesome problem.

Mr. BURTON. Thank you very much.

The CHAIRMAN. I am very glad to have you, a fellow New Yorker, approaching my age, testifying here this morning.

Mr. BURTON. Mr. Chairman, let me say that I hope to see you some more. You know, this year, on November 13, I will be 75, and as long as I live, I hope you will live, because I want to live long.

The CHAIRMAN. The next witness is Mr. John deJ. Pemberton, Jr., executive director of the American Civil Liberties Union.

Mr. Pemberton.

STATEMENT OF JOHN DE J. PEMBERTON, JR., EXECUTIVE DIRECTOR, AMERICAN CIVIL LIBERTIES UNION; ACCOMPANIED BY LAWRENCE SPEISER, DIRECTOR, WASHINGTON OFFICE, AMERICAN CIVIL LIBERTES UNION

Mr. PEMBERTON. Mr. Chairman, may I ask that the record show that I am accompanied by Lawrence Speiser, director of the Washington office of the American Civil Liberties Union.

My name is John Pemberton, Jr., and I appear as executive director of the American Civil Liberties Union.

We are grateful for the opportunity to present the views of the union to this subcommittee.

We believe that the civil rights legislation now pending is the first order of domestic business concerning our whole Nation, and the recent events in several cities, Engelwood, N.J., as well as several southern cities, make this all too obvious.

Discrimination and segregation will some day be wiped out of our society, but if it is not accomplished sooner rather than later, all of the generations of Negroes and American Indians alive today will live out their lives in degradation. If it is not accomplished sooner rather than later, our democracy will have failed.

Where men of good will prevail, barriers to accomplishing our national ideal may drop voluntarily, but unfortunately, men of good will have too often been unconcerned with the victims of discrimination, or have been in a minority, or have been silenced by fear engendered by the intransigence of officials such as Governors Wallace and Barnett.

The CHAIRMAN. Well, they have been apathetic. And it is necessary for organizations like your own and Members of Congress to do a little whip scourging at times to remind them that they have a duty.

Mr. PEMBERTON. In every case the law must stand behind men of good will. The Federal Government's power and prestige must be thrown enthusiastically into this struggle.

In the last decade Negro communities around the Nation have dramatically thrown off their cloak of fear and silence and are relying on self-help to win the precious rights of citizenship.

Through private lawsuits, schools, parks, pools, and other public facilities have been desegregated—but only a fraction of them. By sit-ins and other demonstrations, facilities such as lunch counters and movies which are not always subject to the mandate of the Constitution, have been opened to all, regardless of race—but only a fraction of them.

By a handful of private lawsuits in the past, and more recently by a handful of Federal lawsuits, the right to the franchise has been won by additional Negroes—but only a fraction of them.

The problem is that no private lawsuit can punish a wrongdoer who commits a crime by unlawfully refusing to allow a Negro to vote, or discriminating because of the color of his skin, or excluding Negroes from jury lists, or hosing down human beings in the middle of a highly industrialized city, or turning loose vicious dogs.

Nor can private lawsuits hope to have access to the same resources that are available to the Federal Government to institute a large

number of suits to compel desegregation of schools, publicly supported hospitals, and other publicly supported facilities.

With a problem so gigantic in size as this one is, the Federal Government must provide vigorous leadership.

Nine years after the *Brown* decision, only some 7 percent of the South's Negro children attend desegregated schools, and while some southern communities have demonstrated leadership and intelligence in their local efforts to end school segregation, in terms of the total problem to be solved, the pace of educational desegregation has been a snail's pace.

Because of the absence of adequate legislative power, the Federal Government cannot act in advance in many situations, and must when the crisis point is reached, employ Federal troops, as it did in Little Rock and in Oxford, and threatened to do in Birmingham.

The simple fact is that more can be done to strengthen the Federal Government's arm in this area.

I believe the chairman's announcement indicated that 50 bills were being considered by this subcommittee at the time the hearings were called. We do not pretend to be covering all of them in this presentation.

We have selected for our particular attention the adoption of new voting legislation, the amendment of the criminal provisions of the Civil Rights Acts, and the civil remedies therein, too, the passage of legislation to empower the Federal Government to bring suits on behalf of individuals deprived of their civil rights, and public accommodations legislation.

Referring first to the amendment of the old Reconstruction Era Civil Rights Acts, we strongly urge the passage of Mr. Ryan's bill, No. 6030. We commend the first part of the bill, which would amend section 242 of title XVIII, without reservation.

The present 242, providing criminal penalties for depriving of constitutional rights under color of law, was construed by the U.S. Supreme Court, in Screws against the United States, to require proof of specific intent to deprive a person of a constitutional right.

Accordingly, if it appears that a defendant maltreated a prisoner in a fit of anger, rather than with the aim of depriving him of his rights, he will be acquitted.

Although there have been convictions, they are rare. Recent events have indicated that the deprivation of constitutional rights with which we are concerned may be effected when violence results from hatred, malice, or other motives.

In examining some of the examples of police brutality, given in the report on Mississippi by the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, the acts of the police were often unconnected with any proceeding or charge.

Although the effect is obviously to intimidate Negroes, and the entire Negro community, on several occasions the police indicated that this was their objective by questioning the victims as to their membership in CORE or NAACP, although this was the effect, it would be extremely difficult to prosecute under the present section 242.

The difficulty that judges and lawyers have in formulating instructions embodying the requirement of proof of specific intent, and the difficulty jurors have in understanding these instructions, has been

pointed out in the 1961 report of the Commission on Civil Rights, in the volume entitled "Justice."

On its face, the present statute does not define the nature of the offense sufficiently to give warning of prohibited conduct. We agree that it was necessary for the Supreme Court in Screws to interpret the statute so as to save it from the taint of unconstitutional vagueness.

The language of H.R. 6030, however, will cure that defect, and will simplify the statute's enforcement by prohibiting six concrete acts, each of which is a violation of the 14th amendment. Proof of the willful performance of any one of those six acts, under color of law, thereby depriving another person of a Federal constitutional right, would be sufficient.

The six enumerated acts include the two which are most frequently complained of at the present time: Subjecting arrested persons to violence, and refusing to provide protection from unlawful violence at the hands of private persons.

There is no adequate remedy now when police officers stand idly by and permit private persons to attack Negroes who are exercising their constitutional rights of assembly and speech.

The Justice Department has indicated in a letter to me that it cannot supply Federal protection under such circumstances because "the responsibility for preservation of law and order, and the protection of citizens against unlawful conduct on the part of others, is the responsibility of local authorities."

The letter goes on to state that the Department has "utilized necessary force to suppress disorders so general in nature as to render ineffectual the efforts of local authorities to protect citizens exercising Federal rights."

Early action may prevent disorders from becoming general, and we believe that prosecution under the proposed provisions of section 242 will be useful in that respect.

Mr. Chairman, I have appended copies of that correspondence with the Department of Justice to the copies of the text of my presentation, here, which I would like leave to file with the committee.

The CHAIRMAN. You have that permission.

Mr. PEMBERTON. The second section of 6030 is extremely important. It amends section 1983 of title 42 so that cities, counties, and other political subdivisions would be liable for damages for the unconstitutional acts of their employees.

At the present time, individual officers may be sued under 1983, but the court, in Monroe against Pape, held that the city or other local authority which employes the officers would not be liable for those acts.

In Monroe, a Negro sued several individual police officers of the city of Chicago, charging that he was arrested without a warrant and treated brutally. The court upheld the suit against the individual defendants, but held that the city was not liable, because the present section defines only persons within its prohibitions, and not municipalities.

Now, it may be more important to obtain a judgment against a city than against an individual violator. It is the responsibility of local governments to insure that their personnel, particularly law enforcement personnel, will not deprive members of the public of constitu-

tional rights. Such rights can be effectively protected only when local governments clearly demonstrate that they will not tolerate their infringement.

If this bill is passed, the potential liability of cities and other political subdivisions may encourage many local authorities to instigate programs involving the training, instruction, and supervision of personnel, to prevent police brutality and other unconstitutional activities.

And it would be well to call attention to the recommendation of the Commission in its volume on justice that I have referred to earlier, that a Federal grant-in-aid program be considered to assist in these kinds of training of local law enforcement officers.

The third provision of the bill would enlarge the applicability of section 1114, title 18, of the United States Code, making it a criminal offense to prevent or attempt to prevent any person from exercising his responsibilities under Federal office. It would enlarge the extent of military personnel enjoying the protection and the extent of the personnel under the Department of Justice enjoying the protection of that statute.

The fourth section of H.R. 6030 would authorize the Attorney General to seek an injunction against individuals who under color of law exclude Negroes from juries.

Although systematic exclusion of persons from jury duty on account of their race, color, or national origin is unconstitutional, it is a pervasive practice in some Southern States.

The U.S. Court of Appeals for the Fifth Circuit observes that—

> As judges of a circuit comprising six States of the Deep South, we think it is our duty to take judicial notice that lawyers residing in many southern jurisdictions rarely, almost to the point of never, raise the issue of systematic exclusion of Negroes from juries.

End of quote from *Goldsby* v. *Harpole* (263 F. 2d 71, 82, cert. denied, 361 U.S. 838).

In addition, it is often difficult to prove systematic exclusion. The Attorney General is in a better position to obtain the necessary witnesses and records than are most private lawyers, as the Attorney General's voting suits have demonstrated.

In addition, even frequent reversals of criminal convictions on the grounds of exclusion may not result in abandonment of the practice.

An injunction against the exclusionary practice, as is provided in this bill, will undoubtedly be more effective than the objections of numerous individual defendants.

We believe that the passage of the bill is essential if the practice of exclusion of Negroes and other minorities from juries is to be terminated.

Legislation to empower the Department of Justice to sue on behalf of individual citizens who have been deprived of their rights is probably the most urgent legislation before the Congress.

Although similar legislation was deleted from the 1957 Civil Rights Act, whence it came to be known as title III legislation, events over the past 3 years have made this proposal seem indispensable.

Mr. McCULLOCH. Mr. Chairman, I would like to again say that you, Mr. Chairman, took the lead in this committee and on the floor of the House in support of such legislation, and as I recall, it was in the

bill that passed the House, but there were some propnents of this provision who unexplainably took a different position in the other body.

Mr. PEMBERTON. In the 1957 act, Mr. McCulloch?

Mr. MCCULLOCH. Yes.

Mr. PEMBERTON. Yes, sir.

At his press conference last week, the President noted:

> There may be other things that we could do which would provide a legal outlet for a desire, for a remedy, other than having to engage in demonstrations which bring them, the Negroes, into conflict with the forces of law and order in the community.

I submit that title III legislation is the exact remedy for which this comment of the President indicates a searching, and it is unfortunate that it has not as yet been included in the administration's recommendations.

The Federal Government now lacks adequate authority to prevent unlawful conduct in the violation of 14th amendment rights. Part III legislation will fill that vacuum.

I submit that a bill introduced in the Senate by Senator Douglas—and I have not found, perhaps through ignorance, a companion bill in the House—S. 1389, would permit the Attorney General to seek injunctive relief against practices which deprive persons of the equal protection of the laws contrary to the 14th amendment of the Constitution. It provides:

> (4) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person, contrary to the fourteenth amendment to the Constitution of the United States, of the equal protection of the laws because of race, color, religion, or national origin, 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 a permanent or temporary injunction, restraining order, or other order. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this Act.

The CHAIRMAN. Of course, you know, Mr. Pemberton, that the fact that the administration has not presented any bill containing that famous provision called part III does not mean that we cannot offer it in the committee, ourselves, when we go into executive session.

Mr. PEMBERTON. And I was hoping that the committee would. Your comment encourages me.

The CHAIRMAN. I can assure you of that.

Mr. PEMBERTON. Present lack of such authority recently resulted in the dismissal of an action brought by the Justice Department in Hattiesburg, Miss., on behalf of military and civilian personnel at bases seeking desegregation of schools. The court held that the Federal Government could not sue for the deprivation of civil rights of others, even its own soldiers and employees.

We believe that the effectiveness of this remedy has already been demonstrated. The Justice Department now has specific authority to sue for an injunction to protect voting rights under section 1971 of title 42. Although only four actions, I believe, have been brought under section 1971, they have been eminently successful.

Among them, United States against Wood resulted in an order for the issuance of an injunction to stay a criminal prosecution of workers engaged in a voter registration campaign.

A more recent one a few days ago in Jackson, Miss., resulted in Negro voter registration activists being freed from the local court the next day after the Federal suit was filed.

This proposal would extend similar language to that now in section 1971 to the breadth of 14th amendment rights, whereas section 1971 applies only to voting rights.

Mr. ROGERS. May I interrupt you there?

I assume that you are familiar with the decision the Supreme Court handed down in the *Greenville, S.C.*, case, which, in effect, said that any city ordinance which provided for segregation was unconstitutional, and could not be enforced, and anyone who attempted to enforce that ordinance under color of law was acting contrary to the 14th amendment.

Now, my question is; If you do not have a statute, or you do not have an ordinance which is unconstitutional, then what authority has the Federal Government or the Supreme Court to step in, in those cases?

Mr. PEMBERTON. It might have none, sir.

Mr. ROGERS. Could an individual, for example, who is running a business where there is no ordinance which has the segregation feature in it, would he be permitted to exclude people as he sees fit?

Mr. PEMBERTON. Where there was no ordinance requiring him to do so, no pattern, as in New Orleans, of official policy requiring him to do so, I think it might well be that the court would not hold that the 14th amendment required that to be viewed as State action, because of the lack of State impact.

I am not prepared to concede that this is so, but for the purpose of considering the title III-type legislation, let us assume for the moment that it is so. The court has certainly not yet held otherwise.

Mr. ROGERS. You recognize that we have the problem?

Mr. PEMBERTON. Yes.

Mr. ROGERS. Now, if all of these States and cities that have these segregation ordinances and statutes should repeal them, as unconstitutional, as the Supreme Court has so stated, what right has the individual who may be engaged in business to then discriminate?

Mr. PEMBERTON. Well, let me enlarge my prior answer.

It seems to me that the 14th amendment might be found to make his discrimination an aspect of State action, on the analogy to the case of Shelley against Kramer, in which restrictive covenants were held not void but unenforcible by a court of the State, since its enforcement would be State action.

An the analogy here would be that the public licensure or regulation of the place of public accommodation, and the police enforcement of order and commands to leave the place of accommodation, are a form of State action.

I am not arguing that this should be the case. I do not appear before you as a constitutional lawyer.

Mr. ROGERS. I know you do not.

Mr. PEMBERTON. I am just speculating that the decisions in the sit-in cases last week might be expanded, on the analogy of Shelley against Kramer, to a larger area.

(Discussion off the record.)

Mr. ROGERS. Some States, like my own, and I am sure yours, prohibit this discrimination. In fact, my State says that anybody who dis-

criminates because of race, color, or creed is subject to a suit of $250 for each instance. That is a State statute which prohibits it.

But I am talking about the area where there is no State statute.

Mr. PEMBERTON. The State does not need to prohibit it nor command it.

Mr. SPEISER. May I make just a comment to Congressman Rogers and also to Congressman McCulloch?

The *Glen Echo* case may answer that, and may not. There is an additional factor in the *Glen Echo* case, because the guard who ordered the people off the property at Glen Echo had been deputized.

There is an additional problem that has not yet been answered by the Supreme Court, which was not covered by the cases last week, and that is: If you do not have an ordinance, and if you do not have official statements of policy, but you can show a factual situation where there is local custom, a custom that has never been breached, of segregation in public places, then is it possible to proceed with State action brought into the picture by the business owner calling in the police to arrest individuals for trespass?

The CHAIRMAN. That statement about customs and so forth was only obiter dicta. Was it not in that particular case?

Mr. SPEISER. That is right. That was the position that the Solicitor General urged in the amicus brief that he filed, and I think that question may still be open.

Mr. ROGERS. Of course, what I am trying to get at is: Can we effectively pass any piece of legislation that would cover private action, so to speak?

Mr. PEMBERTON. Well, if I might clarify what we are seeking to urge upon the committee, it is not that we seek to test the very limit of the constitutional power, but that the Congress use the commerce power to regulate discrimination in places of public accommodation, leaving it to the States and the local communities to regulate it in industries not affecting interstate commerce.

Mr. ROGERS. Of course, naturally, on interstate commerce, we recognize that the Federal Government has the exclusive jurisdiction and can enact any piece of legislation they so desire, so long as it is not a burden on commerce.

Mr. PEMBERTON. Right.

Mr. ROGERS. But aside from that, I do not think it should tend to envision that every transaction in a State constitutes interstate commerce.

Mr. PEMBERTON. That is correct.

Mr. ROGERS. And with the result that it leaves an area, as witnesses have testified to, that must be covered now. Whether we can cover it in legislation of this type is what I am trying to find out.

Mr. PEMBERTON. We felt that the most urgent thing was to reach the areas where the authority of the Congress is clear, and no Federal law yet exists. And this would, as far as public accommodations are concerned, involve the exercise of the commerce power. It seems to me the authority would be unquestioned, there, to legislate.

This admittedly would leave an area unreached, but it seems to me that we could put first things first. And I have urged on this committee that there probably are other areas than public accommodations that deserve Congress' first attention, and I put title III as that area which does deserve the Congress' first attention.

Then there is an umbrella, or, excuse me, a penumbra, a gray area, as to which the court has not yet made it clear how far the Federal power extends. And because there is so much to be done in the black and white area, where the power is clear, I would urge that the Congress enact legislation in that area.

Mr. ROGERS. Thank you.

Mr. FOLEY. Just one question on this. I notice in quoting from Senator Douglas' bill, there is no language in there as to color of law, custom, usage, or anything.

Mr. PEMBERTON. No, nor did I suggest that there needed to be.

Mr. FOLEY. Then that language would cover private action, would it not?

Mr. PEMBERTON. It would have to involve a violation of the 14th amendment.

Mr. FOLEY. Yes, but the 14th amendment requires color of law, deprivation.

Mr. PEMBERTON. It does not involve the Congress in determining what is the limit of the 14th amendment.

Mr. FOLEY. We can only implement the 14th amendment. But if you are going to talk of a deprivation or a violation of the 14th amendment, it must be State action of some kind.

Mr. PEMBERTON. This the court has said. We are not urging that the committee define that a violation of the 14th amendment is something different than what the court has said that it is, but only that it afford the Attorney General the power to seek an injunction where a violation has occurred or is about to occur.

The CHAIRMAN. You do not want us, do you, to enact a law that we know definitely will be declared unconstitutional?

Mr. PEMBERTON. No. I cannot see how this act, Senator Douglas' bill, would run the risk of being declared unconstitutional. It merely affords a power in the Attorney General to commence litigation when he finds that a violation has occurred.

The CHAIRMAN. Do you want us to empower the Attorney General willy-nilly, whether the act will be declared ultimately unconstitutional or no? Is that what you want?

Mr. PEMBERTON. Conceivably the Attorney General could commence an action under this language that the Court would ultimately determine did not involve a violation of the 14th amendment.

The CHAIRMAN. But do you think that we, as responsible Members of Congress, members of the Judiciary Committee, should go that far? Namely, just for the sake of giving power to the executive, should we do something which we know is going to be declared ultimately unconstitutional?

Mr. PEMBERTON. I suggest there is nothing in here, Mr. Chairman, to suggest that anything will follow from this legislation that we know is unconstitutional. I may not be following your question.

The CHAIRMAN. As far as I can see, the Court has held, in a recent case, that where there was an ordinance contrary to the Constitution, the action of the Attorney General was perfectly proper, and they had a right to sit in.

Mr. PEMBERTON. These were not Attorney General suits, sir.

The CHAIRMAN. Because there was that ordinance. In the decision there also was some statement to the effect that if customs or local

mores sanctioned that type of segregation, the action there could be properly brought.

Then, the other angle is where you have a real estate transaction between two private persons, and they make a restrictive covenant. There is nothing unlawful about the restrictive covenant, because it is between private parties. But if anybody tries to enforce that covenant, he then is using the court, and therefore using color of law, and therefore there would be an injunctive remedy under the 14th amendment.

Now, how much further have the courts indicated the law can go? Do you know? I do not think it has gone any further than that.

Mr. PEMBERTON. Mr. Chairman, if I may, I think our discussion is mixing some apples and pears, here. The advocates of public accommodation laws, Senator Cooper and Senator Dodd, I believe, have introduced some measures that would go much further than the measures I know of before this committee, in regulating restaurants, lunch counters, movies, places of public accommodation, whether or not they are in interstate commerce, by reason of the States' license of these facilities. I am not advocating this to this committee.

The CHAIRMAN. But when you have a State license, like in New York, where cabarets must be licensed, and certain places of public accommodation must be licensed—you have the equivalent of the ordinance, as in the southern case. But where you have no such license, like an ordinary restaurant, and they discriminate, how can you get after that?

Mr. PEMBERTON. I am not urging that the Congress do get after that. I am urging only, Mr. Chairman, that the Congress get after those facilities that are in interstate commerce.

The CHAIRMAN. I do not think you need any statute on it. The courts seem to have held that you can do that.

Mr. FOLEY. The recent ICC case was brought directly.

Mr. PEMBERTON. But it started with an ICC regulation.

Mr. FOLEY. That is correct.

Mr. PEMBERTON. And here we would need an act of Congress if it involved something not regulated by the ICC.

Mr. COPENHAVER. Mr. Pemberton, trying to analyze the language that you have quoted from Senator Douglas' bill, you start out by saying, "Whenever any person," whereas the Constitution says, "under color of law."

But going on:

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person—

I want to emphasize—

contrary to the 14th amendment.

Now, are you reading into that language the "under color of law" provision?

Mr. PEMBERTON. No. The limitation of the 14th amendment itself.

Mr. COPENHAVER. Well, the constitutional provision says it has to be under color of law.

Mr. PEMBERTON. No, I believe that is in section 242, sir, not in the Constitution.

Mr. COPENHAVER. It requires State action under the 14th amendment.

Mr. PEMBERTON. The court has interpreted it as requiring State action. This I agree.

Mr. SPEISER. The words "under color of law" are not necessarily the limit of the 14th amendment's application. That is the way it was expressed in the Civil Rights Acts.

Mr. FOLEY. Yes, but the 14th amendment says, "No State shall make or enforce any law." "No State"—it is directed to the State, not to a private individual. So therefore you must have some color of law.

Mr. COPENHAVER. The point is: Where is the State action, under Senator Douglas' bill, which would tie it in with the constitutional amendment?

Mr. PEMBERTON. Oh. Excuse me. Now I follow your suggestion that I see it read in here. I see State action read into the words "contrary to the 14th amendment."

Mr. COPENHAVER. That is where you have your tié-in provision, is that correct?

Mr. PEMBERTON. The limit of this act is the limit of the 14th amendment, yes.

Mr. COPENHAVER. Now, what objection would there be to putting the phrase in, as the existing proposed title III provision held, including the words "under color of law," to make it a more specific provision?

Mr. PEMBERTON. Is it beyond probability that citizens not acting under color of law may nevertheless seek to interfere with the exercise of rights protected by the 14th amendment, and be in violation of a proper exercise of this Congress power to legislate in effectuating the 14th amendment, by conspiracy, by violence, by threats of violence?

Mr. COPENHAVER. Well, under existing proposals under title III, you have the proposal that where an individual seeks to interfere with a State official who is seeking to protect——

Mr. PEMBERTON. To protect, not to deprive.

Mr. COPENHAVER. You still have the State action there.

Mr. PEMBERTON. In providing the 14th amendment right, yes.

Mr. COPENHAVER. This is the only example that has come to my attention.

Mr. PEMBERTON. But is there anything offensive about the Congress empowering the Attorney General to seek to protect individual rights insofar as the 14th amendment will protect them?

Mr. COPENHAVER. Well, I am thinking of an example where you have an individual who does not operate a business under a license, who is not in any way attached to a government, State or local, who seeks to go up to an individual who is seeking to register to vote, and seeks by some physical act or threat to deprive him of the right to vote.

Now, I do not see any State action on that.

Mr. PEMBERTON. Do you believe that the 14th amendment would cover that?

Mr. COPENHAVER. I do not.

Mr. PEMBERTON. Then this act would not cover it, either, would it?

Mr. COPENHAVER. That is why I asked you earlier whether that statement I read to you, contrary to the 14th amendment, was the language you were seeking to rest constitutionality on.

Mr. PEMBERTON. Exactly, yes.

The CHAIRMAN. I might refer you to my own bill, H.R. 1768. Will you turn to page 4? It contains title III, an amendment to part III of the Civil Rights Act of 1957, section 123(a).

Whenever the Attorney General receives a signed complaint that any person or group of persons is being deprived of, or is being threatened with the loss of, the right to equal protection of the laws by reason of race, color, religion, or national origin, and the Attorney General certifies that, in his judgment, such person or group of persons is unable for any reason to seek effective legal protection for the right for equal protection of the laws, the Attorney General is authorized to institute for or in the name of the United States a civil action, or other proceeding for preventive relief, including—

mark you this—

including an application for an injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or subdivision or instrumentality thereof, deprives or threatens to deprive such person or group of persons of the right to equal protection of the laws by reason of race, color, religion, or national origin, and against any individual or individuals acting in concert with them.

Now, does that not embody your idea?

Mr. PEMBERTON. The latter part, yes.

The reason for my suggesting that the language of Senator Douglas' bill would be preferable would be the absence of a reference to a signed complaint, or a specific certification that the group of persons are unable——

The CHAIRMAN. That is a matter of procedure. In other words, you feel that there would be reluctance on the part of the party aggrieved to complain because there might be a threat of some economic or other sanction?

Mr. PEMBERTON. Exactly.

The CHAIRMAN. But aside from that, you are satisfied with that language?

Mr. PEMBERTON. Yes. I think as my discussion with the committee's counsel suggests, my feeling is that there is no reason why the Attorney General should not be authorized to protect individual rights to the limit of the 14th amendment.

I take it Mr. Celler's bill would attempt to define what those limits are. I would think it would be more satisfactory not to attempt to define what it is.

As I say, I would think it would be preferable not to attempt to define what the court is going to set as the ultimate limits of the 14th amendment. I do not think we are going to know that today.

But I do not find, under color of any statute, an offensive provision, to include it in here. My only point is: Why include it?

Mr. SPEISER. You may have a problem, Mr. Chairman, in that part of your bill may be declared unconstitutional, if the Supreme Court determines that custom or usage is not sufficient to indicate a violation of the 14th amendment.

The CHAIRMAN. Will you repeat it, please?

Mr. SPEISER. Yes.

There may be a danger, by Congress attempting to define the scope of the violation of the 14th amendment, of part of your bill being

declared unconstitutional, if the Supreme Court determines in a case before it that custom or usage is not a sufficient basis for determining that there is State action or a violation of the 14th amendment.

Mr. FOLEY. You know there are statutes where custom and usage is used, and they have never been stricken down yet for unconstitutionality.

Mr. SPEISER. Well, I am not familiar with all the cases, and I am not sure that any cases relied on such statutes in trying to show State action occurred on the basis of custom or usage.

Mr. COPENHAVER. Mr. Chairman, two comments.

One, of course, title IV is in a separate clause, as it comes into the chairman's bill. But in certain cases I believe the Court indicated there was no resistance.

Mr. SPEISER. There were statements by public officials that stated that if anyone violated local custom or usage, they would then bring the police in.

Mr. COPENHAVER. Of course, you would have to have some evidence to prove custom or usage. You cannot say it without having some evidence.

Mr. SPEISER. My hunch is that you are going to find cases now in which the local city officials are going to be smart enough to keep their mouths shut publicly, and you are still going to have the problem in which the only basis of defense is to bring in custom or usage, and not being able to point to any specific statements by public officials.

The CHAIRMAN. You could bring in usage without resorting to the testimony of public officials.

Mr. PEMBERTON. But the Court's latest decision only referred to statements by public officials, not to other evidence of custom.

The CHAIRMAN. You could take judicial notice of it.

Mr. PEMBERTON. Let me make it clear that my testimony is not intended to be an attack on H.R. 1768. Apart from my objection about the preliminary provisions, about the preliminary findings of the Attorney General and the signed complaint, I would be perfectly satisfied with it.

I recommend to the committee's careful consideration the simple language of S. 1389, which would reach as far as the 14th amendment reaches, and no further. And this seems to me to be a very simple proposition, worthy of some consideration.

Thank you.

We have already discussed the public accommodations legislation in this recent discussion, and I have said that it was the position of the Union to support the exercise of the commerce power in regulating discrimination in places of public accommodation.

This, on analogy to the *Labor Board* cases, would seem to provide a clear source of constitutional authority for congressional action in this field, and this is the extent of our recommendation, here.

Mr. ROGERS. You would not go so far as to recommend that where licenses are required for restaurants, they be required to not discriminate?

Mr. PEMBERTON. To not discriminate. My feeling is that the introduction of this measure, which would touch only those places not affecting interstate commerce—and I think the *Labor* and the *Agriculture* decisions indicate that is a relatively small area—would not warrant the concentrated attention of the Congress that getting any

civil rights measure passed requires, and I would urge the Congress to concentrate on measures of greater urgency than that.

Mr. ROGERS. Do you think if that were included in this, it would diminish its chances of being passed?

Mr. PEMBERTON. Of course, I think it would diminish its chances of being passed, yes.

Very briefly, on behalf of the voting rights bills——

The CHAIRMAN. Before you get to that, I understand that by your statement you seem confident that the Supreme Court, if the case came before it now, under your interpretation of the act of 1875 and the Court's decision concerning inns and hotels, and so forth, would reverse itself.

Mr. PEMBERTON. No, I am not confident of it. That act, the Civil Rights Act of 1875, did not purport to limit its application to interstate commerce, or to any indicia of State action, and the court found in absence of power in the Congress to regulate public accommodations without any such limitation.

Perhaps the court would overrule itself today, but I have not urged that course upon this committee. I have not urged this committee to reenact the Civil Rights Act of 1875.

Mr. ROGERS. Because it would detract from the possibility of passage of the bill if it was included?

Mr. PEMBERTON. Exactly. Thank you, Mr. Rogers.

The CHAIRMAN. We are on voting rights, now.

Mr. PEMBERTON. We are on the subject of voting rights. Thank you, sir.

Let me refer, if I may, to the President's comment in his message, on the importance of this right, wherein he said:

> The right to vote in a free American election is the most powerful and precious right in the world, and must not be denied on grounds of race or color. It is a potent key to achieving other rights of citizenship.

And I will leave the rest of the quotation to the printed text.

We think these rights do deserve that priority, and we recognize the active role that the administration has played and is playing in enforcing voting rights legislation now on the books.

The major thrust of the proposals before the committee concerns the question of the abuse of State literacy qualifications and the immediate registration of citizens heretofore denied the right to vote.

The Commission on Civil Rights, in its 1961 report on voting, recognized that it has become increasingly clear that literacy tests, interpretation tests, intelligence tests, understanding tests, has become a widespread technique for discriminating against voters on racial grounds.

We would urge the adoption of a provision to insure that in any State in which a literacy test is administered to determine qualification to register or vote, the successful completion of six or more grades of formal education shall satisfy all requirements of such examination.

It is our position that this provision would both be within the constitutional mandate of the Congress and a realistic confrontation of the problem of racial discrimination in voting.

Under article I, section 2, and under the 17th amendment, the Constitution recognizes that the standards and qualifications for voting are set by the States, and should be coincidental in both Federal and State elections.

The CHAIRMAN. In other words, you believe because article I, and the 17th amendment, say that the Federal standards must be like the State standards, therefore, they must also be consistent with the 14th amendment?

Mr. PEMBERTON. Exactly.

The CHAIRMAN. Therefore we have a perfect right to legislate in connection therewith?

Mr. PEMBERTON. Exactly. And I would urge that the legislation not be confined just to Federal elections, that the identity of standards and their application in both Federal and State elections be preserved.

The CHAIRMAN. In other words, we should provide for all elections, State and Federal?

Mr. PEMBERTON. Yes.

Mr. MCCULLOCH. And do you think the legislation should likewise provide that the votes, when cast, should be counted in accordance with the intention of the voter?

Mr. PEMBERTON. As in the language of the 1957 act; exactly.

Mr. ROGERS. May I inquire: You say that the standards should apply to both State and Federal, and that we should enact legislation as it relates to State election?

Mr. PEMBERTON. Exactly, yes.

Mr. ROGERS. I would like to get your thinking on the authority of the Congress under the Constitution. Have we the right to pass legislation that would affect only a city election, or a county election?

Mr. PEMBERTON. I think the answer to it is here: That it is the States that have the authority to set the qualifications and standards for eligibiliy to vote, but it is the Federal Constitution that says there shall be no discrimination in the application of those standards.

Mr. ROGERS. Equal application?

Mr. PEMBERTON. Equal application, right.

And it is the Federal Constitution, also, that gives Congress the power to pass implementing legislation, to guarantee that there will be equal application.

Mr. ROGERS. Would you not hinge your authority on the 14th amendment? Or would you take it on 1 and 17? The 14th, you see, is that no State shall do thus and so, deprive a person of life and liberty and equal protection of the law.

Mr. PEMBERTON. Right.

Mr. ROGERS. Now, if we passed such legislation, would you hang it on the 14th amendment?

Mr. PEMBERTON. I would, yes.

The CHAIRMAN. Mr. Pemberton, you have to remember this. We have to be, shall we say, pragmatists, on this committee. And there is no doubt in my mind, and no doubt in yours, that we have the right to determine criteria for State elections; but if we would broaden it beyond Federal elections, we would provide opponents of this bill a large target to shoot at, and it might jeopardize passage of the bill.

Sometimes half a loaf is better than no loaf at all. We may have to compromise on this situation to get legislation through.

You understand that?

Mr. PEMBERTON. I do understand that, Mr. Celler. It seems to me there might be some objections to legislation that would set up dual standards, that would result in dual standards.

The CHAIRMAN. There would be a tremendous wave of objection if we would try to legislate as to State qualifications for voters.

But must you not also take into consideration that if we pass a bill providing for Federal qualifications, and the States have different qualifications, would not the States be likely to change their statutes to make them consistent with Federal qualifications? Otherwise you would have two types of ballots.

Mr. PEMBERTON. That is the problem, and it is an awfully serious practical problem for administration of voting, is it not?

It seems to me that the literacy test bill as in the past tended to be misjudged in terms of its application. I do not think it says—neither the bill that was before the Congress in the last session, nor the recommendation of the Civil Rights Commission that led to the bill—that a sixth grade education is the highest qualification a State may set.

It only says that when the State uses the method of examination or testing, which is subject to such arbitrary or subjective determination, then it may not apply it adversely against a voter applicant who has a sixth grade education.

In other words, the legislation is dealing with the application or the method of applying it, and not with the qualifications. That still leaves the State free to set even a higher qualification, an eighth grade education, a high school education, a college education. It only says it may not use the subjective method of testing in order to employ a literacy test to discriminate.

Mr. FOLEY. On that point, do you not think we would have to go a little further than just article I and the 17th amendment? Because when we are dealing with the electoral college, the State is given blanket authority under article II.

Now, if we are going to get into this picture, people are going to have to utilize the 14th and 15th amendments, also.

Mr. PEMBERTON. Precisely. I hope my answer to the prior question——

Mr. FOLEY. It was not clear. I just wanted to bring that out, because you do not want to limit it just to Representatives or Senators. We have to get into the presidential election.

Mr. PEMBERTON. I thank you, then, for asking the question and enabling me to make my answer clear, that the reliance is on the 14th and 15th amendments, not on the others.

I thank the committee for the opportunity to present our views on these limited number of bills, which I recognize have not included many of the subjects which are before the committee.

I repeat my urging that the subject of civil rights legislation is probably the most important business before the country at this time.

Mr. RODINO (presiding). Thank you very much, Mr. Pemberton. The statement will be included in the record in its entirety.

Mr. PEMBERTON. Thank you.

(Statement referred to follows:)

TESTIMONY OF AMERICAN CIVIL LIBERTIES UNION ON CIVIL RIGHTS LEGISLATION PRESENTED BY JOHN DE J. PEMBERTON, JR., EXECUTIVE DIRECTOR

The American Civil Liberties Union believes that civil rights legislation is the first order of domestic business with which the Government should be concerned. The recent events in Birmingham make this all too obvious.

Discrimination and segregation will someday be wiped out of our society. If it isn't accomplished sooner than later, all the generations of Negroes alive today will live out their lives in degradation. If it isn't accomplished sooner than later, our vaunted democracy will have failed.

There are different paths to the inevitable goal. Where men of good will prevail, the barriers may drop voluntarily. Unfortunately, men of good will, where discrimination is involved, have too often been unconcerned with the victims of discrimination, or have been in a minority, or have been silenced by the fear engendered by the intransigence of officials such as Governors Wallace and Barnett. In every case, therefore, the law must stand behind the men of good will with a judgment or an injunction to translate abstract good will into concrete results. The cities and States in the Nation which have adavnced furthest in their efforts to provide genuine equality of opportunity have found it necessary to adopt legislation to prohibit discrimination in housing, employment, and other everyday areas of life. Elsewhere in the Nation it is the responsibility of the Federal Government to fill the gap. This is because our ideal of equality is a national purpose, declared in our original charter of nationhood, which it has now become incumbent upon us to fufill.

The Federal Government's power and prestige must be thrown enthusiastically into the struggle. It must be empowered unambiguously so that it can be armed constitutionally to become intimately involved in civil rights with every legal weapon, civil and criminal.

In the last decade Negro communities around the Nation have dramatically thrown off their cloak of fear and silence and are relying on self-help to win the precious rights of citizenship. Through private lawsuits, schools, parks, pools, and other public facilities have been desegregated—but only a fraction of them. By sit-ins and other demonstrations, facilities such as lunch counters and movies which are not always subject to the mandate of the Constitution, have been opened to all regardless of race—but only a fraction of them. By a handful of private lawsuits in the past, and more recently by a handful of Federal lawsuits, the right to the franchise has been won by additional Negroes—but only a fraction of them.

But no private lawsuit can punish a wrongdoer who commits a crime by unlawfully refusing to allow a qualified Negro to vote, or by beating a man only because of the color of his skin, or by excluding Negroes from jury lists, or by hosing down human beings in the middle of a highly industrialized city, or by turning loose vicious dogs. Nor can private lawsuits hope to have access to the same resources that are available to the Federal Government to institute a large number of suits to compel desegregation of schools, publicly supported hospitals and other public facilities.

With a problem so gigantic in size as racial discrimination, the Federal Government must provide vigorous and effective leadership. While 9 years after the *Brown* case, 7.6 percent of the South's Negro children attend desegregated schools, and some southern communities like Louisville demonstrate that intelligence and determination can crack through educational discrimination, in terms of the problem to be solved, the pace of educational desegregation is snail-like. True, the Federal Government has intervened in court actions to support school desegregation suits in many areas, but the core of resistance has hardly been cracked. Only one Negro is in a public school in Mississippi, one in South Carolina, and none in Alabama—and there the Governor vowed just a few days ago to interpose himself between the University of Alabama and the two Negroes who hope to enroll there early next month. Because of the absence of adequate legislative power, the Federal Government cannot act in advance and must, when the crisis point is reached, employ Federal troops as it did in Little Rock, Oxford, and Birmingham to uphold constitutional rights.

The simple fact is that more can be done to strengthen the Federal Government's arm in this vital area. Additional legislative authority would help to end executive indecision which sometimes has held back the progress of the civil rights movement. But this legislative authority must come from the Congress, which rightfully, under our system of government, shares responsibility for advancing the welfare of American citizens.

Many civil rights bills have been introduced. We cannot cover all of them, nor can we do justice even to those few areas on which we have chosen to concentrate. We have selected for our particular comment the adoption of new voting legislation, the amendment of the criminal provisions of the Civil Rights Acts (title 18 U.S.C., 242), the passage of legislation to empower the Federal Government to bring suit on behalf of individuals deprived of their civil rights,

and the adoption of legislation outlawing discriminatory practices in places of public accommodations.

H.R. 6030

We strongly urge the passage of H.R. 6030. We approve the first part of the bill, which amends section 242 of title 18, United States Code without reservation. The present section 242 was construed by the Supreme Court of the United States in *Screws* v. *United States*, 325 U.S. 91, to require proof of specific intent to deprive a person of a Federal constitutional right. Accordingly, if it appears that a defendant maltreated a prisoner in a fit of anger rather than with aim of depriving him of his rights the defendant will be acquitted. Although convictions have been had under this section, they are rare.

Recent events have indicated that the deprivation of constitutional rights with which we are concerned may be effected when violence results from hatred, malice, or other motives. In examining some of the examples of police brutality given in the report on Mississippi by the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, the acts of the police were often unconnected with any proceeding or charge. Although the effect is obviously to intimidate the Negro population—on several occasions the police indicated that this was their objective by questioning their victims as to their membership in CORE or the NAACP—it is extremely difficult to prosecute under the present section 242.

The difficulty that judges and lawyers have in formulating instructions embodying the requirement of proof of specific intent, and the difficulty jurors have in understanding the instructions given, have been pointed out in the 1961 report of the Commission on Civil Rights entitled "Justice."

On its face, the present statute does not define the nature of the offense sufficiently to give warning of prohibited conduct. We agree that it was necessary for the Supreme Court in Screws to interpret the statute so as to save it from the taint of unconstitutional vagueness. The language of H.R. 6030, however, will cure that defect and simplify the statute's enforcement by prohibiting six concrete acts, each of which is a violation of the 14th amendment. Proof of the willful performance of any one or those six acts, under color of law, thereby depriving another person of Federal constitutional rights, would be sufficient.

The six enumerated acts include the two which are most frequently complained of at the present time: Subjecting arrested persons to violence, and refusing to provide protection from unlawful violence at the hands of private persons. There is no adequate remedy now when police officers stand idly by and permit private persons to attack Negroes who are exercising their constitutional rights of assembly and speech. The Justice Department has indicated in a letter to me that it cannot supply Federal protection under such circumstances because "the responsibility for preservation of law and order, and the protection of citizens against unlawful conduct on the part of others, is the responsibility of local authorities." The letter goes on to state that the Department has "utilized necessary force to suppress disorders so general in nature as to render ineffectual the efforts of local authorities to protect citizens exercising Federal rights." [1] Early action may prevent disorders from becoming general, and we believe that prosecution under the proposed provisions of section 242 will be useful in that respect.

If the amendment to section 242 is passed it should be possible successfully to prosecute local police officials both for their own brutality and for turning their backs on the brutality of others. Swift prosecution of local officials who have the responsibility for preservation of law and order will encourage those officials to act before disorders become widespread.

We also believe that the second section of H.R. 6030 is extremely important. It amends section 1983 of title 42 of the United States Code so that cities, counties and other political subdivisions are liable for damages for the unconstitutional acts of their employees. At the present time individual officers may be sued under section 1983 for depriving persons, under color of law, of any rights, privileges or immunities secured by the Federal Constitution and laws. However, the Supreme Court of the United States held in *Monroe* v. *Pape*, 365 U.S. 107, that the city or other local authority which employs them is not liable for such acts. In Monroe, a Negro sued individual police officers and the city of Chicago charging that he was arrested without a warrant and treated brutally. The Court upheld the suit against the police officers but held that the city of Chicago

[1] We have appended copies of this exchange of correspondence between myself and Mr. Burke Marshall to emphasize the difficulties that now attach to section 242.

was not liable because section 1983 includes only "persons" within the prohibitions, not municipalities.

It is more important to obtain a judgment against a city than to obtain one against an individual official. It is the responsibility of local governments to assure that their personnel will not deprive members of the public of their constitutional rights. Such rights can be effectively protected only when local governments clearly demonstrate that they will not tolerate their infringement. If this bill is passed, the potential liability of cities and other political subdivisions should encourage many local authorities to instigate programs involving the training, instruciton, and supervision of personnel to prevent police brutality and other unconstitutional activities.

The third provision of this bill would make it a criminal offense to prevent or attempt to prevent any person from accepting or holding Federal office and to impede the discharge of Federal official duties. It would serve to protect Federal activities, such as that of the local advisory committees to the U.S. Commission on Civil Rights. The Mississippi Advisory Committee has reported that its efforts were actively opposed. The Chairman of the U.S. Commission on Civil Rights, Mr. John A. Hannah, noted that the Mississippi Advisory Committee served "In the face of official and unofficial hostility, as well as serious abuses amounting, in some instances, to violence." Indeed, the Commission's April 16, 1963, interim report notes that the home of the vice chairman of the Mississippi Committee has been bombed and another member and his wife were jailed on trumped up charges after their home had been defiled. It can be expected in the future that committees to the Commission, the FBI, other Federal officials, such as marshals, and even Federal judges, will be threatened and serious attempts will be made to prevent local personnel from accepting such Federal positions. The threat of prosecution under this statute may afford some protection to those who engage themselves in the cause of constitutional principles and who are subjected to hostility of their neighbors.

The fourth section of S. 1215 would authorize the Attorney General to seek an injunction against individuals who, under color of law, exclude Negroes from juries. Although systematic exclusion of persons from jury duty on account of their race, color, or national origin is unconstitutional, it is a pervasive practice in some Southern States. The U.S. Court of Appeals for the Fifth Circuit observes that,

"As judges of a circuit comprising six States of the Deep South, we think it is our duty to take judicial notice that lawyers residing in many southern jurisdictions rarely, almost to the point of never, raise the issue of systematic exclusion of Negroes from juries"; *United States ex rel., Goldsby* v. *Harpole* (263 F. 2d 71, 82, cert. denied, 361 U.S. 838).

In addition, it is often difficult to prove systematic exclusion. The Attorney General is in a better position to obtain the necessary witnesses and records than are most private lawyers. In addition, even frequent reversals of criminal convictions on the ground that Negroes have been excluded from the jury, may not result in abandonment of this practice. An injunction against exclusion will undoubtedly be more effective than the objections of numerous individual defendants. Accordingly, we believe that the passage of this bill is essential if the practice of excluding Negroes and other minorities from juries is to be halted.

TITLE III LEGISLATION

Legislation to empower the Justice Department to sue on behalf of individuals who have been deprived of their civil rights is the most urgent legislation before the Congress. Although similar legislation was deleted from the 1957 Civil Rights Act (whence we have title III), events over the past 3 years make this proposal indispensable.

At his press conference last week, the President plaintively noted that "there may be other things that we could do which would provide a legal outlet for a desire for a remedy other than having to engage in demonstrations which bring them [Negroes in the South] into conflict with the forces of law and order in the community." Title III legislation is the exact remedy for which the President is searching and it is unfortunate that it is not included in the administration's recommendations.

The Federal Government now lacks adequate authority to prevent unlawful conduct in violation of 14th amendment rights. Part III legislation will fill that vacuum. The legislation that will best serve that purpose is contained in a bill introduced in the Senate by Senator Douglas, S. 1389, which would permit the

Attorney General to seek injunctive relief against practices which deprive persons of the equal protection of the laws contrary to the 14th amendment of the Constitution. It provides:

"(4) Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person, contrary to the fourteenth amendment to the Constitution of the United States, of the equal protection of the laws because of race, color, religion, or national origin, 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 a permanent or temporary injunction, restraining order, or other order. The district courts of the United States shall have jurisdiction of proceedings instituted pursuant to this Act."

Present lack of such authority recently resulted in the dismissal of an action brought by the Justice Department in Hattiesburg, Miss., on behalf of military and civilian personnel of military bases seeking school desegregation. The court held that the Federal Government could not sue for the deprivation of civil rights of others, even its own soldiers and employees.

We believe that the effectiveness of the remedy provided by the language of S. 1389 has already been demonstrated. The Justice Department now has specific authority to sue for an injunction to protect voting rights under section 1971 of title 42, United States Code. Although only four actions under section 1971 have been brought, they have been eminently successful. In *United States* v. *Wood* (295 F. 2d 772), the fifth circuit ordered the issuance of an injunction to stay the criminal prosecution of workers engaged in a registration and voting campaign. Another was filed only a few weeks ago in Jackson, Miss. The arrested Negroes were freed by the local court the next day on the ground that there was insufficent evidence to prosecute them.

The union prefers the terms oaf S. 1389 over the related proposals in H.R. 6031 and H.R. 1768. The latter authorizes the Federal Government to sue for an injunction only when the Attorney General has received a signed complaint and when he certifies that commencement of litigation by the complainant might endanger the person or property of the complainant, his family, or his counsel.

In those areas of the country where intimidation, harassment, and the threat of retaliation prevent private persons from seeking redress in the courts, such persons may well fear to sign a complaint. The Commission on Civil Rights has pointed out in its report "Justice" that Negroes hesitate to complain to Federal authorities for fear that local officials will learn of the complaint. The existence of such fear would make the remedy provided by H.R. 1768 a nullity, whether or not the fear is justified.

We suggest that the language of S. 1389 would be improved if amended to include provisions similar to those contained in the present section 1971, the voting statute. It provides that the act of an official of a State or subdivision thereof shall be deemed the act of the State and permits the State to be joined as a defendant, if the official is no longer in office. It also provides that the Federal court shall have jurisdiction without regard to the exhaustion of State remedies. The former provision is necessary to prevent litigation from being thwarted by the resignation of individuals who are sued under the statute. For it has become clear that where official resistance to desegregation is most strong, such devices will be employed.

PUBLIC ACCOMMODATIONS

We recommend the adoption of legislation to prohibit discrimination and segregation because of race, color, or creed, in places of public accommodation.

Congress first enacted legislation prohibiting discrimination in places of public accommodations as part of the Civil Rights Act of 1875 (18 Stat. at Large 385). It was held unconstitutional in the *Civil Rights Cases*, 109 U.S. 835 (1883). The statute provided:

"SEC. 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement; subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude."

The Supreme Court held the statute unconstitutional as applied to defendants who had variously denied Negroes the accommodations of an hotel, a theater,

the Grand Opera House in New York, and a ladies' car on the Memphis & Charleston Railroad Co.

In essence, the Court held that the 14th amendment did not reach private action, only "State action." Just how much of that holding is still vital is a matter of doubt, particularly after last week's decisions in the sit-in cases. In addition, of course, the lady who was refused a seat on the Memphis & Charleston Railroad could not have suffered the same indignity over the past 22 years, ever since the Supreme Court in *Mitchell* v. *United States* (313 U.S. 80 (1942)), held constitutional a provision of the Interstate Commerce Act prohibiting discrimination in interstate commerce. More obviously, perhaps, what the Supreme Court once said about separate-but-equal facilities in *Plessy* was quite different from what it said 58 years later in *Brown*.

Last week's Supreme Court's decisions in the sit-in cases bring this problem into dramatic focus. They demonstrate the conflict between the rights of private owners of public accomodations and the right of individuals not to be denied the equal protection of the laws. Where the two rights clash, their relative weights must be put in the balance. We have no difficulty in concluding that the right not to be discriminated is paramount. We believe that the paramount right has constitutional sanction, either directly through the interstate commerce clause, or indirectly through the State action of licensing places of public accommodation. (We read that a bill adopting the latter route has been introduced in the Senate. We have not had an opportunity to study it and therefore confine ourselves now to the former proposal.)

It is hardly open to dispute that Congress, through the commerc clause of the Constitution, has the authority to enact legislation which prohibits discrimination in facilities engaged in interstate commerce. Even in the *Civil Rights Cases*, the Supreme Court was constrained to note that "Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce * * * among the several States * * *. In these cases, Congress has power to pass laws for regulating the subjects specified *in every detail*, and the conduct and transactions of individuals in respect thereto * * *." (27 L. Ed. at 841; emphasis added.)

We think that a statute prohbiting discrimination where interstate commerce is affected will stand on exactly the same footing at the statutes adopted to regulate labor-management relations. Since *N.L.R.B.* v. *Jones & Laughlin* (301 U.S. 1 (1937)), that power has been taken for granted. And in *Boynton* v. *Virginia* (364 U.S. 454), the Court brought discrimination by privately owned facilities within the ambit of the Interstate Commerce Act's prohibition on discrimination. There, of course, the bus terminal restaurant was an integral part of an interstate commerce facility. We confidently predict that an explicit congressional declaration prohibiting discrimination in facilities affecting commerce, will be found constitutional.

VOTING RIGHTS

In his special message on civil rights of February 28, 1963, the President said:

"The right to vote in a free American election is the most powerful and precious right in the world, and it must not be denied on the grounds of race or color. It is a potent key to achieving other rights of citizenship. For American history, both recent and past, clearly reveals that the power of the ballot has enabled those who achieve it to win other achievements as well, to gain a full voice in the affairs of their State and Nation, and to see their interests represented in the governmental bodies which affect their future. In a free society those with the power to govern are necessarily responsive to those with the right to vote."

The American Civil Liberties Union is in complete sympathy with the views expressed above by the President of the United States and we recognize the active role of the administration in enforcing the voting rights legislation now on the books. The new proposals now before you, will allow the Government to play even a more effective role.

The major thrust of the proposed legislation concerns the question of abuse of State literacy qualifications, and the immediate registration of citizens heretofore denied the right to vote.

Discussing State literacy qualifications first, all the proposals before you recognize the extent to which literacy standards as a qualification for the right to vote has been used and abused as a basis for the deprivation of that right for reasons of race, color, or creed. The U.S. Commission on Civil Rights, in its

1961 report on voting (p. 137) recognized that it has become increasingly clear that literacy tests, "interpretive" tests, and intelligence tests have become a widespread technique for discriminating against would-be voters on racial grounds.

We urge the adoption of a provision to insure that, in any State in which a literacy test is administered to determine qualification to register or vote, the successful completion of six or more grades of formal education shall satisfy all requirements of such examination. It is the position of the American Civil Liberties Union that the provision is both within the constitutional mandate of the Congress and a realistic confrontation of the problem of racial discrimination in voting, posed by the application of State literacy, "interpretive" or intelligence tests.

Under article I, section 2 and the 17th amendment of the Constitution of the United States, the standards and qualifications for voting in Federal elections are coincidental with the standards for voting in State elections. These standards, both State and Federal, are subject to the 14th amendment, forbidding the States from denying any person equal protection of the laws and the 15th amendment, forbidding the States from discriminating against any citizen on account of race, color, or previous condition of servitude. Thus while any State may, in the first instance, determine those voting standards, such standards are unconstitutional when they are racially discriminatory on their face or in their application. *Guinn and Bell* v. *United States* (238 U.S. 347 (1915)), cf. *Yick Wo* v. *Hopkins* (118 U.S. 356 (1886)).

Enforcement of the mandate of the 14th and 15th amendments need not depend solely on ad hoc judicial decisions declaring that a particular State standard is constitutionally infirm. Congress is specifically vested with the power to enforce the sanctions of these amendments by affirmative action through "appropriate legislation."

What then is appropriate legislation? In view of the specific congressional finding based upon the extensive investigations, reports and documentary material accumulated by the U.S. Commission on Civil Rights which sets forth the extensive discriminatory abuses of State literacy tests, we have no doubt that the proposed legislation is "appropriate" within the constitutional meaning of the term. Significantly, the U.S. Supreme Court has spoken of "appropriate legislation" under the 14th amendment as that "adapted to carry out the objects the amendments have in view." *Ex parte Virginia* (100 U.S. 339 (1879)), *U.S.* v. *McElveen* (177 F. Supp. 355 (E.D. La. 1959)). A conclusive presumption of literacy is effectively directed toward those objects; it would eliminate established and documented techniques of unconstitutional disenfranchisement. We recommend its passage.

With respect to analogous provisions which call for a presumption of literacy upon completion of six grades in an accredited school, we believe it unnecessarily complicated in several respects.

The utilization of a presumption of literacy creates burdensome procedural difficulties. A presumption is in itself a somewhat cumbersome evidentiary device. The quantum of proof by which such presumption can be rebutted remains obscure and results in the reintroduction of subjectivity, evasion, and probable delay. A conclusive presumption alleviates these difficulties.

We note that H.R. 5455, the administration proposal, is restricted in its application to Federal elections. In view of the coincidence of State and Federal election standards envisioned by article 1, section 2 of the Constitution of the United States, any such distinction is unnecessary.

We now turn to the proposals which seek to expedite voter registration in those areas where a particularly blatant pattern of discrimination is apparent.

The proposal that we favor in order to wipe out discriminatory voting practices is the proposal which will accomplish its purpose in the least amount of time, will affect the greatest number of people, and which applies to both State and Federal elections. We therefore favor both H.R. 5455 and H.R. 6028. H.R. 5455 would require the issuance of an order declaring an applicant eligible to vote, if the Attorney General alleges in his complaint that fewer than 15 percent of the total number of voting age persons in the class discriminated against are registered.

H.R. 6028 would empower the President to appoint a Federal enrollment officer upon a court finding of a pattern of discrimination, or a finding by the Commission on Civil Rights of a pattern of discrimination. The Federal en-

rollment officer will accept enrollments to vote, pass them to the appropriate State officials, and attend the election to be certain the right to vote is granted and the vote counted. The duties of the Federal enrollment officer would be enforcible by court order.

APPENDIX

FEBRUARY 25, 1963.

Hon. ROBERT F. KENNEDY,
Attorney General of the United States,
Department of Justice,
Washington, D.C.

DEAR MR. ATTORNEY GENERAL: This letter is prompted by the suit recently filed in the U.S. District Court, District of Columbia, entitled *Moses, et al.* v. *Kennedy and Hoover.*

The gist of the action, which is spelled out in some detail in the complaint, charges that there are frequent incidents of civil rights violations by citizens and officers of the State of Mississippi that lend reason to believe that section 242 of title 18 of the United States Code is violated with some frequency. Although representatives of the Department of Justice and of the Federal Bureau of Investigation have been repeatedly requested to institute criminal prosecutions against the alleged offenders, who have denied citizens their civil rights under color of law, no such prosecutions have taken place. The complaint also asserts that agents of the Justice Department and the FBI have frequently been notified in advance of planned civil rights demonstrations, and that requested protection by the Federal Bureau of Investigation or U.S. marshals has never been provided.

It is common knowledge to all of us engaged in civil liberties and civil rights work, and to the Nation at large, that the denial of constitutional rights to Negroes in Mississippi, as well as other parts of the Deep South, is compounded by ruthless oppression of any activity—activity guaranteed by the 1st and 14th amendments—to relieve that oppression. It is our opinion that the situation in Mississippi has so deteriorated, and presents so little promise of improving in the foreseeable future, that stern measures are more than justified.

We realize, of course, that the administration is not inactive in Mississippi and note that the Justice Department only a few weeks ago filed its 11th lawsuit in the State under the voter registration provisions of the civil rights acts. But the responsibility of the Government doesn't end there. It extends as well to affirmative assistance and protection of private citizens who are exercising their 1st amendment rights for the purpose of securing their 15th amendment rights. That the State of Mississippi denies a vast number of its citizens of their right to vote is a scandal; that it physically interferes with persons actively engaged in seeking the franchise and other civil rights is equally outrageous.

We recognize the legal and practical problems that are posed under section 242. The atmosphere in Mississippi, as well as the structure of its judicial system, makes it difficult to obtain indictments, and more difficult to obtain convictions. On top of that, the *Screws* doctrine makes convictions once obtained difficult to sustain on appeal because of the restrictive interpretation given it by the Supreme Court. But none of these impediments should deter the Government from discharging its primary duty under the civil rights acts. Since section 242 is a misdemeanor, prosecutions may be begun by information rather than by indictment, and well prepared cases may succeed in gaining convictions and insure against reversal on appeal.

It is our understanding that few if any section 242 prosecutions have been instituted in Mississippi within the past few years. With the dramatic increase in civil rights activity in the South, the need for protection and assistance, as demonstrated by the *Moses* suit, is made all the more imperative. We urge as forcefully as possible that the Department of Justice give serious consideration to the questions raised in the *Moses* suit.

We would be pleased to have the Department's views concerning the enforcement of section 242 and its reasons for failing to supply Federal protection when it has been requested.

Sincerely yours,

JOHN DE J. PEMBERTON, Jr., *Executive Director.*

DEPARTMENT OF JUSTICE,
Washington.

Mr. JOHN DE J. PEMBERTON, Jr.,
Executive Director, American Civil Liberties Union,
New York, N.Y.

DEAR MR. PEMBERTON: This is in reply to your letter to the Attorney General dated February 25, 1963, which you advise was prompted by the suit recently filed in the District of Columbia entitled *Moses, et al.* v. *Kennedy and Hoover.*

In your letter you note that the complaint in the *Moses* action charges that, although representatives of the Department of Justice and the Federal Bureau of Investigation have been repeatedly requested to institute criminal prosecutions under section 242 of title 18 of the United States Code against persons who allegedly have denied citizens their rights under color of law, no such prosecutions have taken place; that though the Justice Department and the FBI have frequently been notified in advance of planned civil rights demonstrations, requested protection by the FBI or U.S. marshals has never been provided. Recognizing both the legal and practical problems which prosecutions under section 242 present, difficulties which make indictments and convictions hard to obtain and appeals difficult to sustain, you state it is your understanding that few if any such prosecutions have been instituted in Mississippi within the past few years and suggest that, since section 242 is a misdemeanor, prosecutions be commenced by information rather than by indictment. Finally, you urge that the Department give serious attention to the questions raised in the *Moses* suit, and you request our views concerning the enforcement of section 242 and the Department's reasons for failing to supply Federal protection when it has been requested.

As your letter indicates, you are, of course, well aware that this administration has brought a substantial number of suits in Mississippi as well as in other States to enforce the civil rights of Negroes. You also appreciate that any particular complaint by a citizen is likely to present complicated legal and factual issues which must be carefully studied in order to determine whether it is advisable for the Department to institute proceedings under 18 U.S.C. 242. I can assure you that complaints of violations of the civil rights acts are always given thorough consideration by the Department and that we have a vigorous policy of enforcing civil rights. This policy is illustrated by that fact that during the period January 1, 1962, to February 28, 1963, a total of 102 complaints involving alleged deprivation of civil rights in the State of Mississippi was received and investigated by the Department.

It is not true, as you suggest, that there have been "few if any" prosecutions under section 242 in recent years. For the same period as mentioned above, eight cases involving police or prison brutality were presented to Federal grand juries sitting in the State of Mississippi. In six of these, the grand juries refused to return indictments. Of the two cases in which indictments were returned, one went to trial; the defendant was acquitted by the verdict of the jury. Trial of the remaining case is expected to take place in the near future. I think you will agree that this record reflects a vigorous enforcement policy on the part of this Department.

It is true that in a substantial proportion of the cases in which prosecution has been authorized grand juries have refused to return indictments. I cannot concur, however, in your suggestion that grand jury proceedings be therefore abandoned in favor of prosecution by criminal information. I feel that the support derived in a criminal trial from the fact that the charges stemmed from consideration by a grand jury composed of local citizens should not be minimized. Moreover, the great preponderance of cases of this type turn on the credibility of witnesses; the grand jury procedure provides a useful if not, indeed, indispensible forum for testing this critical factor. It is frequently well nigh impossible for a prosecutor to appraise the potential of a civil rights criminal prosecution from the cold record developed during an investigation. Difficulties encountered in obtaining access to persons involved in or who witnessed the incident also present obstacles to proceeding at once to trial on criminal informations. Nonetheless, the Department at times has commenced criminal actions by filing informations; it will continue to do so where the circumstances render such procedure appropriate. But I will not permit the filing of a criminal information where I am not convinced the evidence will support a conviction and sustain the judgment on appeal, for to do so, it seems to me, would involve a gross violation of the rights of the defendant. I do not believe such misuse of prosecutive authority is permissible, even where the ultimate purpose is to effect a desirable sociological change.

Finally, in regard to your query as to why the Department does not supply Federal protection when requested, it is appropriate to observe that the responsibility for preservation of law and order, and the protection of citizens against unlawful conduct on the part of others, is the responsibility of local authorities. As you are aware, this Department has utilized necessary force to suppress disorders so general in nature as to render ineffectual the efforts of local authorities to protect citizens exercising Federal rights. Where such circumstances exist, the Department will continue to utilize the resources at its command. I know of no instance in which there was any failure by this Department to carry out its responsibility in this regard.

The plaintiffs in the *Moses* case have acted in good faith. They are, as you know, represented by most competent counsel. But I cannot agree that the charges against the Department will withstand analysis.

Sincerely,

BURKE MARSHALL,
Assistant Attorney General, Civil Rights Division.

MARCH 28, 1963.

Hon. BURKE MARSHALL,
Assistant Attorney General, Department of Justice,
Washington, D.C.

DEAR SIR: Thank you for your reply dated March 13, 1963, to our recent letter concerning the issues raised in *Moses, et al.* v. *Kennedy and Hoover.* Thoughtful as your explanation is, I am afraid that we remain unpersuaded on the two issues involved.

We continue to believe that section 242 violations can usefully be prosecuted by information without diminishing the rights of the defendants. You state that your purpose in proceeding by indictment in these misdemeanor cases is to assure that "the evidence will support a conviction and sustain the judgment on appeal." But from the information which your letter recites, the result in fact is the inability to obtain an indictment in the great majority of cases and, in the single instance where an indictment was returned, the defendant was acquitted at trial. In that instance, indictment did not appear to have justified an assurance that the evidence would support a conviction, while the overall consequence has been, therefore, practically no visibility of Federal law enforcement in the civil rights area.

There are two arguable points of view in considering what role Federal law enforcement can most effectively play in Mississippi. You would presumably argue that the role of the Federal Government would be demeaned if it were to bring prosecutions that invariably resulted in acquittals. We disagree. We think that there is a great deal to be gained by vigorous efforts to enforce section 242 even if acquittals are generally forthcoming.

I think you will share our view that there is in fact systematic transgression of civil rights in the State of Mississippi, many of which are well within the scope of section 242. But for the singular Mississippi environment, convictions could fairly be expected.

The dilemma then is whether constitutional rights are best served by proceeding on the assumption that prosecutions will be instituted only where the quantity of proof is extraordinarily high (more so, we think, than would normally be the standard) in the hope that the jury's conscience will somehow be touched, or contrariwise, by filing prosecutions in a larger number of cases with the expectation that few if any will result in conviction. Frankly, we would not expect at the present time that convictions would result regardless of which standard was used, but we believe that there is more to be hoped for by visible good faith efforts to enforce Federal criminal law, even if acquittals are anticipated, than by the highly selective and equally unsuccessful process which is now in effect.

We think a less demanding standard will have two benefits. By increasing the visibility of efforts of Federal law enforcement, those private citizens in Mississippi working on behalf of civil rights will receive the kind of encouragement that they need but which has often been disappointingly absent. In addition, we think that there is at least as much to be said for a fairly large number of prosecutions that result in acquittal as there is to be said for a single prosecution in 14 months that has the same result. In the latter case, everyone's impression is either that there is no such systematic transgression of civil rights in Mississippi, or that the Federal Government is seriously neglecting its duty.

If the former practice were adopted, it would become clear soon enough to the Nation at large that the citizens of Mississippi cannot be expected to be fair in any aspect of their treatment of civil rights. Less pessimistically perhaps, it may even be that a larger incidence of prosecution will result eventually, if not immediately, in more frequent convictions.

We want to make it perfectly clear that we are not suggesting by any means that prosecutions be filed by information capriciously. It is just that we are confident that a reasonable amount of FBI investigation will produce enough evidence to justify prosecution. It is our impression that prosecution by information for other Federal misdemeanors is the rule rather than the exception. We see no reason why the civil rights area should be exceptional in that regard.

You say that it is "well nigh impossible for a prosecutor to appraise the potential of a civil rights criminal prosecution from the cold record developed during an investigation." But we know, as lawyers, that a prosecutor's interview of a potential witness to determine his credibility is at least as accurate as a layman's judgment. Indeed, it is probably a more reliable foundation for a prosecution than the judgment of a Mississippi grand jury. Nor is it any more burdensome a procedure than putting the same witnesses before a grand jury .

With respect to the second issue which we raised in our letter, namely the use of Federal officers to protect citizens in the exercise of their civil rights, you say "this Department has utilized the necessary force to suppress disorders so general in nature as to render ineffectual efforts of local authorities to protect citizens exercising Federal rights. Where such circumstances exist, the Department will continue to utilize the resources at its command."

I take it that your reference is principally to the outbreak of violence at the University of Mississippi last fall. You will recall that we commended these steps by the Federal Government at that time.

In reference to Mississippi again, however, we think it is difficult not to conclude that the condition of the Negro population is quite beyond description. To describe it as domestic apartheid may be too strong, but it certainly is not entirely inaccurate. Negroes in Mississippi are not second-class citizens; more correctly, they have hardly any status at all.

Apart from their economic condition, and the systematic discrimination against them in all phases of life, you can take as the clearest example of the flagrant violation of their civil rights the fact that only a miniscule portion of the Negro population may vote. We know that the administration realizes this condition exists, as is indicated by the 11 voting-right suits that have been filed in the State.

However, there is incident after incident where persons working to secure the vote for Negroes—not least of all those associated with the Student Nonviolent Coordinating Committee—are beaten, imprisoned, denied the right to distribute literature, and generally have been intimidated, not alone by private citizens but by law enforcement officers as well. Thus, as far as these people are concerned, they are not only without any protection by local law enforcement officers, but to the contrary, it is often the local law enforcement officers who deny them their rights. We do not recommend the establishment of a second Reconstruction by any means. It may be, however, that a display of Federal protection, either through the use of agents of the FBI or Federal marshals, would be quite successful in the outlying rural areas where these offenses most generally occur. We recognize that there may be reluctance on the part of the administration to take measures of this kind for fear that violence may break out between Federal officers and local officers. On the other hand, Federal protection in local and small-scale stages would probably have its uses. Indeed, if the white people of Mississippi were persuaded that the Federal Government had no intention of leaving civil rights workers to their own devices, perhaps the insurrection on the Ole Miss campus would never have occurred.

We trust you will give these thoughts your consideration.

Sincerely yours,

JOHN DEJ. PEMBERTON, Jr.,
Executive Director.

Mr. RODINO. Our next witness is Mrs. Samols, of the Women's International League for Peace and Freedom.

Mrs. Samols?

STATEMENT OF MRS. SELMA W. SAMOLS, WOMEN'S INTERNATIONAL LEAGUE FOR PEACE AND FREEDOM

Mrs. SAMOLS. Mr. Chairman and members of the committee, may I ask your permission to allow Miss Caroline Ramsay, the legislative assistant of the Women's International League for Peace and Freedom, to accompany me here?

Mr. RODINO. She may be so permitted.

Mrs. SAMOLS. Our statement is very short and rather general.

My name is Mrs. Selma W. Samols. I live at 700 Lamberton Drive, Silver Spring, Md. I am an attorney engaged in law practice at 517 11th Street NW., Washington, D.C.

I am here today as a member of the National Legistlative Committee of the U.S. Section, Women's International League for Peace and Freedom, which is pleased to have the privilege of presenting to your subcommittee its views on the civil rights legislation currently before it.

Our organization, since its founding 48 years ago, has made civil rights and liberties two of its major priorities.

The league, believing that peace in the United States and in the world is inseparable from the protection of individual rights and freedoms, is gratified whenever legislation is designed to secure and protect the civil rights of U.S. citizens.

We are encouraged to note that over 90 bills have been introduced on this subject in the 88th Congress, which indicates that, if hearings on these bills can be expedited, there may be a better chance than ever before to assure the passage of meaningful civil rights legislation during this session of Congress.

Hitherto, the failure to adequately protect the civil rights of our Negro citizens has resulted in flagrant injustices which have filled most Americans with shame, and dangerously undermined our reputation as the leader among the free world nations. There is no time to be lost in improving our practice of the democracy we preach.

The league is specifically concerned with the recent events in Mississippi, Alabama, Tennessee, and North Carolina, which have clearly and tragically shown how many of our citizens are denied the rights and freedoms guaranteed all Americans by our Constitution. The legislation in this Congress reflects the increasing concern that these rights be safeguarded.

As President Kennedy noted in his address at Vanderbilt University on May 18:

> * * * a special burden rests on the educated men and women of our country—to reject the temptations of prejduice and violence and to reaffirm the values of freedom and law on which our free society depends.

These values, these rights, are what concern us today.

The Women's International League for Peace and Freedom believes that broad Federal enforcement powers in civil rights matters are necessary and imperative to insure equal treatment for all.

Specifically, the league will continue to work for legislation which:

1. Authorizes the Attorney General to protect all civil rights by civil injunctive suits in the same way he is authorized to safeguard voting rights under the 1957 Civil Rights Act (pt. III).
2. Requires that school districts submit desegregation plans.
3. Establishes a national Fair Employment Practices Commission.
4. Establishes a permanent Civil Rights Commission.

The league believes the above points suggest the crucial and necessary features of any civil rights legislation, embracing as they do the collateral requirements contained in the various bills.

It is our hope your committee will see fit to consider them favorably, report them out promptly, and work vigorously for their enactment in this session of Congress.

Thank you, Mr. Chairman, for the opportunity to present our views on this very important legislation.

Mr. RODINO. Mrs. Samols, just two questions.

Mrs. SAMOLS. Yes.

Mr. RODINO. You refer in your statement to expediting hearings on these bills. Do you not consider that this committee is moving fast enough?

Mrs. SAMOLS. Yes, I think so; but then there is the Senate to be considered. It is just a question of getting everything done very quickly and getting legislation through the House and the Senate.

Mr. RODINO. In one of the points that you referred to in your statement—the establishment of a permanent Civil Rights Commission—what is the basis for this recommendation? Are you of the opinion that there will be a necessity for continuing a Civil Rights Commission even though we may reach the point—and we are hopeful that we will—within the near future, where a Civil Rights Commission may not be necessary?

Mrs. SAMOLS. Well, I think that the league has these hopes, too, but even if legislation is passed, considerable effort will still be needed to create all the conditions that would make a Civil Rights Commission unnecessary. The statement was prepared by the committee, Mr. Rodino, and if you wish, we could submit a supplemental statement for the record.

Mr. RODINO. Well, that will not be necessary. I merely thought that you might have elaborated on it. I recognize that that is the position of the league, and some people heretofore have expressed the same feeling with regard to the permanency of the Civil Rights Commission, although there are various views as to whether or not it may be necessary once civil rights have been really guaranteed and established.

Mrs. SAMOLS. The only difficulty is that for my own feeling, I do not see how we can project that. The Civil Rights Commission will die of attrition over a certain period of years.

Mr. RODINO. In my opinion, it presupposes that we are never going to actually guarantee civil rights, but there will always be the need for the work of such a Commission. And I would rather labor not only under the hope, but work in the direction that we get this work done.

And if there comes to be then a real need shown that the life of the Commission should be extended, I am sure that we could work in that direction again.

Mrs. SAMOLS. Well, we hope so, but this is the position of the league, and this is the position we are propounding here.

Mr. RODINO. We appreciate your frankness in telling us of this. Thank you very much for your appearance here this morning. We appreciate it.

Mr. RODINO. Our next witness is Mr. John Roche, national chairman of the Americans for Democratic Action.

Mr. Roche.

STATEMENT OF JOHN P. ROCHE, AMERICANS FOR DEMOCRATIC ACTION

Mr. ROCHE. Thank you, Mr. Chairman.

If I may, I shall proceed with my statement.

Mr. RODINO. You may.

Mr. ROCHE. My name is John P. Roche, and I am the national chairman of Americans for Democratic Action, on whose behalf I appear here today.

In private life, I am Morris Hillquit, Professor of Labor and Social Thought and chairman of the Department of Politics at Brandeis University, Waltham, Mass. I have also written a number of articles and books on problems of constitutional rights.

I thank the subcommittee for allowing ADA time to testify on this most timely and urgent subject. The subcommittee, in our view, is absolutely right in its decision to deal with civil rights, the denial of rights to American citizens, from a broad perspective, since it is evident that constitutional rights are violated in many different ways in all areas of the country.

Civil rights legislation is being considered against the backdrop of recent nonviolent demonstrations in support of immediate total equality and achievement of constitutional rights in Birmingham, Ala., Charlotte, N.C., Chicago, Ill., Durham, N.C., Englewood, N.J., Greensboro, N.C., Greenwood, Miss., Nashville, Tenn., Philadelphia, Pa., Raleigh, N.C., and Washington, D.C.

These demonstrations indicate a singular failure by the executive and legislative branches to implement the Constitution of the United States. We of Americans for Democratic Action consider these activities—the activities of the sitins—to be in the finest tradition of American history.

Indeed, these nonviolent acts of civil disobedience are, in a great moral context, that of the antislavery activists who took their case against oppression to the American conscience over a century ago.

We hope that Congress, too, will be stirred by the "trumpet that has never called retreat." It would be a fitting celebration of the centennial of the Emancipation Proclamation.

We urge the executive and legislative branches to apply now the obvious lesson of American history. The denial of a constitutional right to even one citizen of the United States is intolerable. Today there are millions of Americans whose constitutionally guaranteed civil rights are so thoroughly abrogated as to render them effectively meaningless.

The sad fact is that the executive and legislative branches have failed to protect, aid, and encourage those seeking their constitutional rights. Both of these branches have lagged unconscionably behind

the correct constitutional and legal standard set by the courts in the achievement of equality.

President Kennedy acknowledged on May 22 that those who are denied equal rights "do not have a remedy." Failure to have an institutionalized legal remedy, now so sorely lacking, limits enforcement to specific court orders.

And it is essential for the judiciary to proceed in this task with firm support from the executive and legislative branches. Without appropriate legislative and executive action, these principles are undermined. Legislative and executive inaction has meant that civil rights are only protected on a hit-or-miss basis—there is a sporadic reaction to crisis, but no continuing pattern of enforcement.

Mr. RODINO. Well, Mr. Roche, are you implying that there has been a lack of total action when you say, "legislative and executive inaction?"

Mr. ROCHE. From the point of view of my organization, sir, there has been inadequate action by the executive and inadequate action by the legislative; yes.

Mr. RODINO. Proceed.

Mr. ROCHE. ADA believes that no useful purpose is served by blaming the cancellation of constitutional rights on the Barnetts, Connorses, Wallaces and the northern division of their clan. Indeed, Birmingham has already disposed of "Bull" Connor.

These men are committed to subverting the Constitution. Their activities have sanctioned violence and brutality and even death in Oxford, Miss. They are not interested in negotiating a moderate compromise—they are totally committed to a last-ditch defense of white supremacy.

The executive and legislative branches have the greatest obligation for the fulfillment of constitutional rights. Neither has accepted its responsibilities.

Compare, for example, the massive executive-legislative assault that has been mounted against the pathetic, bumbling, FBI-ridden American Communist Party, with the wrist-slaps that have been administered to the powerful racist subversives.

The Communists would like to destroy our constitutional Government—the racists, however, are extremely successful at it.

The executive branch, as the enforcer of the Constitution, should propose legislation that will guarantee protection of rights now being violated. To date the administration proposals, though lofty in rhetoric, would make no real dent in the power structure that buttress white supremacy.

The sad fact is that the Justice Department has even been derelict in the enforcement of an existing statute. It is a punishable offense for anyone under "color of any law, statute, ordinance, regulation or custom (to) willfully subject any inhabitant of any State, territory, or district to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States."

The nonviolent demonstrations in Alabama were in opposition to segregated public facilities which have been held clearly unconstitutional. The use of firehoses and police dogs upon the peaceful demonstrators manifested an intent to deny the right of peaceful assembly.

The Justice Department reliance on mediators alone indicates the uncertainty with which it will apply existing statutory law. More-

over, its informal efforts to influence the "power elite" work on the assumption that the businessmen of Birmingham have a local monopoly on the employment of violence—that the taxi drivers check with the chamber of commerce before they beat up a Negro agitator or bomb a church.

This ticket-fixing approach to racial problems is both naive and a shameful confession of unwillingness to protect the helpless. Like the rain, the ministrations of the Justice Department fall equally on the just and the unjust. And the moderates that the Department is so eagerly seeking seem to be defined as whites who are opposed to beating up egalitarians, but are also opposed to equality.

The Justice Department has been derelict in its duties in another fundamental way. Its comment on the timing of the demonstrations was ill conceived. It was shocking that the Justice Department could have believed that the exercise of constitutional rights should be postponed until another day. The time for postponement of constitutional rights and enforcement of existing law has ended.

It might be added on the historical level that in the last century when the Boston Brahmins told the Irish immigrants to wait for their rights, they were met with a hail of "Irish confetti"—a 19th century term for bricks. The Attorney General might read up on his local history.

Prior to the many demonstrations the executive branch was also derelict in its duty to propose a legal remedy that is more capable of effective enforcement than the one the Justice Department has neglected to use, the one that I cited a moment ago.

Mr. RODINO. Mr. Roche, I am as impatient as you are—it seems to me that you have just been reading a terrible indictment of the Executive and Congress and the Justice Department. Do you recognize that there has been anything at all done?

Mr. ROCHE. Certainly. Mr. Chairman, I am delighted at what I consider to be the ineffectual actions that have been taken.

Mr. RODINO. You are delighted at what?

Mr. ROCHE. I have been delighted at some, by my standards, ineffectual steps, that have been taken, because they mark steps forward from the ineffectiveness of the Eisenhower administration.

Mr. KASTENMEIER. I am interested in this point, too.

Taking the years from 1900 to 1954, and comparing the last 9 years, in terms of legislative, judicial, and executive action, more has been done, many time more, in terms of volume of things and actions, than in the preceding part of the 20th century, you will have to admit.

Mr. ROCHE. Indeed, Mr. Kastenmeier, I have, if I may say so, a thesis which is coming out on the history of civil liberties in the 20th century, which makes this precise historical point.

But the problem seems to me that history at this point can give no absolution. In other words, we cannot turn to history for any absolution from our contemporary sins. We cannot say to the Negroes, "Look how far you have come in 10 years." This is a judgment for a historian, not for someone who has been waiting on his rights.

And in our view, while we recognize historical dimension, the time has come to recognize that there is an existential problem. We are confronted right now with a problem of choice and decision, and to turn to history is not going to give us an answer.

Mr. RODINO. This is true; but in balance, when we compare the inaction of years before, the fact that there has been action taken and some protection of rights, no matter how ineffectual the action may be, as you describe it—nontheless, we are moving forward.

Again I say I am as inpatient as you are to see it, but frankly, my opinion is that in reading your statement, up until now, it would seem to be a complete indictment of inactivity, and not just ineffectual action, but a failure to take any action whatsoever. And this I hardly think squares with the actual fact.

Mr. ROCHE. Well, sir; I do not want to get into an argument with you about it, because I do not. I think fundamentally, here, there is a difference in where we start in analyzing the problem. I start from what seems to me to be the absolute necessities at this moment. You are starting from a position of more historical perspective.

Now, I am the last person in the world, as a historian, to deny, as I said a moment ago to Mr. Kastenmeier, that there has been a fantastic transformation in the character of the American society in the course of the last 30 years.

But the trouble is that now history will not wait. We are having a pace of change which is constantly accelerating.

It is like saying to let's say a new nation in Africa, if I may just divert for a moment, "Look, it took us 50 years to get industrialized. Why don't you wait?"

Well, it happens to be quite a decent philosophical argument, but it is no answer to their problem.

Mr. RODINO. I do not intend to argue with you about your statement, because it is your statement, and the position that you have taken. I just feel that I cannot agree with you when you talk about the Executive and the Justice Department being derelict in a fashion which would almost imply that they did not intend to take any action, that they have not attempted to take any action, whereas the facts speak to the contrary and show that there were great forces and great obstacles which made it impossible.

This is the only point that I would like to make in observing the difference between your statement and my position.

Mr. ROCHE. Well, historically, I would agree with you that in the perspective of what has happened in the last 3 years, as opposed to, let's say, the decade prior to that, there has been great improvement in the Department of Justice's standards.

From the viewpoint from which I am looking at this, namely, what I see to be a terrible crisis in American morality, in the year 1963, the actions of the Department of Justice do not strike me as even approaching an adequate level for enforcement of rights.

Mr. FOLEY. Do you believe that the tools that are left to the Department of Justice to work with are adequate today?

Mr. ROCHE. No, sir.

Mr. FOLEY. Is that not our problem?

Mr. ROCHE. Absolutely. This is very definitely part of the problem. And one of my difficulties here is that I do not see the Department of Justice even asking for what seems to me to be the kind of tools——

Mr. RODINO. Let's hold that up until we are able to hear from the Department of Justice and the Attorney General.

Mr. ROCHE. They have been around now for some time, sir.

Mr. RODINO. You may proceed.

Mr. ROCHE. The situation today demands immediate enforcement of constitutional rights. The Federal Government must help those who are being denied their constitutional rights in whatever area such denial exists.

One of the legislative remedies required would permit the Attorney General to file suit for an injunction against persons or officials who deprive, or so threaten, any person, group, or association of any right guaranteed by the 14th amendment.

We are pleased that the administration is revising its existing proposals, and we strongly urge the Attorney General to recommend such an all-inclusive protection of rights guaranteed by the 14th amendment—not one merely limited to just schools and public accommodations.

These recommendations should be formulated on the basis of long-range constitutional necessity; they should not be shaped by the exigencies of the next few weeks or months.

The Congress, also, has a major responsibility for providing legislative leadership in civil rights. Sole responsibility under our system of government does not lie with the executive. Although the executive proposes incomplete remedies, Congress must establish its own standards for legislative action.

I submit, Mr. Chairman, that the reported revisions of the executive branch proposals, coupled with the earlier ones, do not pass muster. Where the executive fails to urge comprehensive remedies, the legislative branch, it seems to me, must seize the initiative.

Mr. Chairman, the proposals submitted by the executive in every area of civil rights—voting, education, employment, administration of justice, public accommodations, and the extension of the Civil Rights Commission—fall way short of what is needed. The time has long passed for token action.

This committee should not walk in terror of the Rules Committee—I am not suggesting that it does.

Mr. RODINO. I am glad that you added that.

Mr. ROCHE. Nor should its labors be haunted by rule XXII. Its function is to draft a measure which meets the needs of the epoch, not to capitulate to the so-called realities of congressional politics.

Politics is the art of knowing when not to compromise, and that point has been reached in the area of constitutional rights. Neither the executive nor legislative branches should surrender to the tyranny of congressional rules which foster minority rule.

Mr. RODINO. On that point, since you make the statement that politics is the art of knowing when not to compromise, is there a point when compromise, too, may be something acceptable, if compromise means advances along the way?

Mr. ROCHE. Well, this brings up a basic problem in the whole area. And I am sorry Mr. Cellar had to leave, because he made the point to Mr. Pemberton, one of my predecessors: Isn't he aware of the political situation?

As a matter of fact, I write books about Congress, and one of the things that bothers me is that I see a number of Congressmen acting like intellectuals rather than like politicians.

I discuss the problem with a Member of Congress, and he gives me an extremely good lecture. In fact, the same thing occurred recently

with the President of the United States. He gave me an extremely good lecture on the situation inside Congress.

And it seems to me it is my task to write the books describing these matters, and it is your task, gentlemen, and the President's task, to change things.

Therefore, when I talk about my position, here, I am talking about what seems to me to be a position that is set out without reference to the political problem. I am telling you what we believe should be done.

Mr. RODINO. Yes; but how can you possibly, without reference to the political problem, when the political problem is ever with us? I mean, are you going to just shoo it away?

Mr. ROCHE. Well, it seems to me that there are times when you have to run up the flags and just fight for what seems to be the best possible proposal. And strangely enough, as Mr. Truman demonstrated on occasion, there are a number of causes which everybody thought were lost when they started out, which turned out to be causes which can be won.

That is, it seems to me there is a profound pessimism over whether anything can be done. And one of the ways to defeat pessimism, it seems to me, is to start out with the opposite assumption; namely, that if you will get in and fight for what seems to be the true and just provision, perhaps you can alter the situation.

Mr. RODINO. I have to gainsay what you say, because we move just in the opposite direction. We try to get as much as we possibly can get, and we fight for as much as we can get. But we cannot just close our eyes to the political realities that exist, the complexion of parties and the thinking of people who are now in the Congress.

Mr. ROCHE. I recognize that fact, sir.

Mr. RODINO. And you just cannot make a majority of voters vote in the affirmative, when there are many others who are voting in another direction. You just cannot add up 218 votes to pass a piece of legislation when you do not have them.

And this is not to say that those of us who believe as you do are wrong. Now is the time for us to move in that direction and do everything possible in order to achieve that objective. We fall short of our goal because we do not just have, No. 1, the ammunition, and we do not have the votes.

Mr. KASTENMEIER. Well, in this context of this dialog between the chairman and the witness, I am interested in whether you feel that if it were a question, let's say, of making some type of sophisticated analysis and getting a moderate bill through, you would feel that the matter is so urgent that you would risk defeat for a much stronger bill. That defeat might even be, let's say, preferable to gaining, let's say, a pyrrhic victory, in terms of civil rights.

Mr. ROCHE. Yes. Mr. Kastenmeier, I think that the bill of 1957 was a pyrrhic victory. I think it was a pyrrhic victory because it was billed as a great improvement, and in fact it seemed to me to be a bill which did very little in terms of effective institutionalized change.

Now, Mr. Chairman, I said before that it seemed to me that sometimes politicians these days act too much like intellectuals, and the opposite side of that is that intellectuals act too much like politicians.

And it is not my function here to tell you how to be politicians, and I would not attempt to. What I am trying to do is suggest a position

that seems to me to be one of integrity that I think has to be taken into consideration.

How you gentlemen act—and I do not question your motivation, nor do I question your interest and concern about the topics, but I am simply presenting what seems to me to be the view that my oraganization feels should be brought forward, even if perhaps it is going to get licked.

Mr. RODINO. Well, this is merely a dialog in order to elaborate and show you actually what we feel, and what our positions are on these various measures. And of course it is good to know how you reach these various opinions, and how you reach these conclusions.

Proceed.

Mr. ROCHE. There is, it seems to me, a majority in both Houses that supports comprehensive civil rights legislation.

It clearly is one and the same, and you gentlemen know more about the House, certainly. A persistent vigorous fight for the full scope of civil rights legislation by the executive and this committee will significantly move us toward that achievement.

Regardless of the legal remedies enacted into law, the American community is on notice that the nonviolent demonstrators intend to make the Constitution a living document, and not a frustrating dream. They will succeed. The only question is "when" and "how." And it is evident, Mr. Chairman, that the "when" will determine the "how."

"When" equals now. The frustrations stemming from a century of patience can neither be contained, nor should they be contained. We witness today, after 100 years, a second emancipation. Let us recognize that these demonstrations are an act of human dignity and support the mandate of the Constitution—total equality now.

Unless the necessary group of civil rights measures become law and grant a legal remedy to those seeking equal rights, ugly scars may prevail after equality is achieved. Our choice is simple: grant Americans seeking their constitutional rights immediate accessible legal remedies. Or face their increasing alienation from the usual standards of pressure group behavior.

By the way, Mr. Celler mentioned the problem of the Black Muslims. It seems to me the Black Muslims can be understood sociologically as representing the dammed-up frustrations of the American Negro community, of a certain wing of the American Negro community, taking itself out in this form of extreme nationalism and chauvinism.

The Negro demonstrators have exercised their choice. They will have their freedom, whether by direct action or legislative pressures. Direct action will continue until freedom is won.

If Congress and the Executive want desegregation to be orderly, without the brutality of police dogs and firehoses and the use of electric cattle prods, and conducted in an atmosphere of mutuality without recrimination, Congress must provide immediately the legal means to implement effectively all constitutional rights.

Unless legal outlets are provided to those who seek their rights as Americans, we will see the Negro, and other minorities, driven away from the existing legislative and political processes. And the fault will be ours.

But that is not all, Mr. Chairman. The white community that lives by the Constitution and the law—and that community is the overwhelming majority—I am convinced it is even a majority in the South,

although it has been a suppressed majority—must be given the opportunity to establish equality. Comprehensive civil rights legislation will provide a legal framework with which to achieve that cherished goal.

In a sense, we are here confronted by a sinister malady—a thrombosis in the democratic political process—which not only denies the rights of minorities but also cripples the majority in its quest for justice, equality and civility.

Let me discuss briefly the specifics of needed legislation.

ADA urges the Congress to consider establishing a system of Federal registrars in Federal, State, and local elections after an executive determination that citizens had been denied the vote because of race.

Our objective should be to safeguard the right to vote. Therefore we urge the abolition of all literacy tests, since evidence abounds that literacy tests have been used in some States to prevent voting for reasons of race. The abolition of literacy tests runs to all elections—Federal, State, and local. Only by a system of Federal registrars, will we find a speedy end to discrimination.

We are aware that article I, section 2, and the 17th amendment of the U.S. Constitution permit the States to set the qualifications for electors. Nevertheless, the evidence indicates that often literacy tests are thinly disguised violations of the 15th amendment. The court has held since 1884 that setting qualifications for voting must not be in violation of the 15th amendment—be it Federal, State, or local election.

The Federal registrar system is necessary to overcome the slowdown that stems from considering discrimination on a case-by-case basis. Constitutional violations should be remedied as speedily as possible, not with all deliberate slowness.

We also see no reasonable relationship between voting and attending an accredited elementary school. Of course, if literacy tests were abolished, school accreditation would be superfluous. In any circumstance the accreditation provision ought to be eliminated from H.R. 5455, since it may serve as a further tool to disenfranchise voters because of race.

Finally, if Congress chooses the route of permitting literacy tests for those who have not reached the sixth grade, there should be a conclusive presumption of literacy for all those who have gone beyond the sixth grade, and at the very least a rebuttable presumption for those who have not completed the sixth grade.

EDUCATION

Nine years after the Supreme Court declared school segregation unconstitutional, more than 2,000 of 3,000 southern biracial school districts remain segregated. The problem of school segregation is, of course, nationwide, when we consider the "de facto" school segregation in the North and West.

In education we need a two-pronged program. Immediate filing, within 180 days after enactment, of plans for desegregation in the school districts still totally segregated. Those school districts that meet constitutional requirements of school desegregation, as determined by an appropriate agency, should receive financial and technical assistance. We therefore prefer H.R. 1766 to H.R. 3139.

EMPLOYMENT

Before another congressional committee, ADA has endorsed equality of opportunity in employment through an FEPC vested with authority to issue enforceable orders.

The President's Committee on Equal Opportunity in Employment has, through the use of voluntary programs, supported by its Chairman, Vice President Johnson, contravened the Executive order barring racial discrimination by firms that do business with the Government.

Such facts suggest that this committee should be given statutory authority with increased jurisdiction to include all employment that occurs as a result of a Government contract and Federal grant funds.

Moreover, I would suggest that, until we get a national FEPC, Congress should close the channels of interstate commerce to all goods produced by firms practicing racial discrimination in employment. There is a huge body of constitutional precedent—such as the Fair Labor Standards Act, and so on—for such utilization of the commerce power.

ADMINISTRATION OF JUSTICE

We support section 203 of H.R. 24, since it protects the individual citizen against activity prohibited by the 14th amendment.

We also support legislation that will improve the professional quality of police forces, increasing their knowledge with minority group problems, on a matching grant-in-aid program.

We also support legislation that will effectively prohibit jury exclusion on the basis of race, and protect individuals from private violence such as lynching.

CIVIL RIGHTS COMMISSION

More than ever the need is manifest for a permanent, dispassionate governmental agency that has increased authority to serve as a national clearinghouse for information and provide advice and technical assistance to government agencies, committees, industries, organizations, or individuals in respect to equal protection of the laws.

Such legislation would enable the Commission to serve as a welcome outlet for discussion and solution of tense racial problems in both the North and the South.

PUBLIC ACCOMMODATIONS

We urge the Congress to prohibit discrimination in any business which sells goods or facilities to the public. In this area, Congress has a unique opportunity to meet its responsibilities in advance of court decisions. A legal instrumentality can be provided so that public accommodations will be open to all.

The motion behind this is broader than the Cooper-Dodd suggestion which is limited to State facilities that are licensed. All political activity proceeds within the ambit of the police power. In other words, the reach of the 14th amendment through State action indirectly could cover such a statute and would meet the constitutional standard of reasonableness.

FEDERAL GRANTS-IN-AID

Every effort must be made to assure that public funds are spent in a nondiscriminatory manner. The Supreme Court has made abundantly clear that racial discrimination is unconstitutional. Public funds are nevertheless spent for segregated purposes.

The introduction of bills such as H.R. 5741, to assure equality of opportunity in Federal expenditures, does not deprive the President of the authority to enforce the 5th and 14th amendments. Indeed, the President has the duty to so enforce the Constitution.

Rejection of "Powell amendments" or failure to enact H.R. 5741 does not lessen the President's duty to enforce the Constitution. Failure of the President to issue an Executive order barring public expenditures for segregated activities necessitates "Powell amendments" and H.R. 5741.

Thank you very much, Mr. Chairman.

Mr. RODINO. Are there any questions?

Mr. COPENHAVER. On page 5 of your statement, in the last paragraph, you state:

> The white community that lives by the Constitution and the law—and that community is the overwhelming majority—must be given the opportunity to establish equality.

Then, on page 3, in the first paragraph, you say:

> The Justice Department reliance on mediators indicates the uncertainty with which it will apply existing statutory law.

Then you go on to say:

> Moreover, its informal efforts to influence the "power elite" work on the assumption that the businessmen of Birmingham have a local monopoly on the employment of violence.

I do not understand that comment, but before I have you discuss that: It would seem to me that merely the passage of law by itself, and the bringing of cases in court, would by no means solve the problem; that without trying to speak in defense of the effort of the Department of Justice, the effort they were trying to engage in, in Birmingham, to work through the people, through the local communities, and to actually bring out the moderates, as we call them, to fight against the rabid group, is a fine step in the right direction.

And yet you seem to attack it in your statement.

Mr. ROCHE. Sir, I wish to correct my statement at this point. I did not mean to suggest that mediative activities are a bad thing. And I guess you are right. The statement does give that implication.

I think that mediation in this kind of situation is a very good thing, and a very useful thing, provided that it is not a substitute for the enforcement of the law.

It seems to me, in fact, that mediation can only operate effectively if it rests upon a solid foundation of power, of State power.

And it seems to me that, for example, on this school segregation business, from the very beginning I have taken the position that once the school district said it was prepared to accept the principle of desegregation, that is, that it would accept the idea that at this point one could sit down with these people and face the fact that they have problems, of course they do, and realize it.

But they had to admit the validity of the Supreme Court's decision and accept it. Once we had bona fide evidence they were prepared

to go with the mandate of the Court, then one could sit down and attempt to work out the details.

Now, in the same way, with mediation, it seems to me that as to the remark about the "power elite," as you might say: I spent some time in the South, and what impressed me was that the people who were the lynch mob types were the taxi drivers, and the businessmen do not control these people.

The notion that Birmingham has a business elite that sort of runs everything struck me as a bit naive. But certainly we want to see that one of the things we have urged on President Kennedy is that he use his power and the moral suasion of his office to mobilize what I called many years ago the law-abiding majority.

This sort of thing, it seems to me, is extremely important.

And I agree with the point that you made.

Mr. RODINO. Mr. Kastenmeier?

Mr. KASTENMEIER. I have a very minor question. But I am curious.

On page 5, you allude to electric cattle prods. I must have missed this in the press. I am curious as to the particular situation.

Mr. ROCHE. These were the freedom walkers. The freedom walkers, who took up the walk when Mr. Moore was murdered. And a group came to the Alabama line and started marching down what I take to be a Federal highway, and were met by State troopers with electric cattle prods, who proceeded to prod them with these things, to drive them off the road.

It was one of the most outrageous things. The pictures in the New York Times were enough to make anybody sick. There was one picture in the back where they showed people being poked with these electric prods.

Mr. KASTENMEIER. Incidentally, may I say that as one member, I am not offended by your tone of outrage at what the three branches of Goverment have been doing. I would be very concerned if you were complacent about what either the Congress or the executive branch have been doing or are doing at the moment. And if you were pleased or complacent, I could see no purpose in your appearing before us this morning.

Mr. RODINO. Well, I would like to say that the Chair did not feel offended. I think the Chair tried to put the problem in the proper perspective, that there are certain things that have been done, and we have put the train on the track, and we are moving. We hope it gets there fast.

I might say that I am one of those who believes that if people only accepted the law and the provisions of our Constitution as written, there would be no need to implement. But nonetheless, they do not.

And so it is a question of mobilizing opinion, and it is a question of trying to educate them, and it is a question of, then, implementing, as you say, by the force of law, which may become more clear.

Thank you very much, Mr. Roche.

The committee will adjourn at this time, and will reconvene at 2 o'clock this afternoon.

(Whereupon, at 12:30 p.m., the subcommittee was recessed, to reconvene at 2 p.m., the same day.)

AFTER RECESS

(The committee reconvened at 2 p.m., Hon. Emuanel Celler, chairman of the committee, presiding.)

We now have members of the Student Nonviolent Coordinating Committee. And we have with us Mr. Timothy Jenkins of Philadelphia, Charles Sherrod of Albany, Ga., and Robert Moses of Greenville, Miss.

Will these gentlemen come forward?

Who is Mr. Jenkins? And Mr. Sherrod and Mr. Moses?

I do not think we have time to have you read the entire statement. Could you epitomize what you gentlemen are endeavoring to present to us? We shall put the entire statement in the record. Of course, we cannot reproduce these photographs, you understand that. We might keep them for the exhibits.

Mr. KASTENMEIER. Mr. Chairman, I think the statement itself is quite short. The whole text, of course, is long. But the statement is only three pages plus.

The CHAIRMAN. Thank you very much for your information, Mr. Kastenmeier.

You might read your statement and then the balance will be placed in the record. Or you can handle this any way you wish. Use your own discretion.

STATEMENTS OF TIMOTHY JENKINS, PHILADELPHIA, PA., CHARLES SHERROD, ALBANY, GA., AND ROBERT MOSES, GREENVILLE, MISS.

Mr. JENKINS. Mr. Chairman, members of the committee, I am Timothy Jenkins of Philadelphia, Pa.

The CHAIRMAN. Will you please raise your voice. I am not a young man and my hearing is not too good.

Mr. JENKINS. I am serving as special assistant to the executive director of the Student Nonviolent Coordinating Committee, who was unable to come here.

The CHAIRMAN. Tell us, what is the Student Nonviolent Coordinating Committee?

Mr. JENKINS. I think that will be explained in the text of our statement.

The CHAIRMAN. All right.

Mr. JENKINS. With me is Mr. Robert Moses, currently acting as the field director for our program in Mississippi and Mr. Charles Sherrod, the field director in the State of Georgia.

Mr. Chairman, members of the committee, I am appearing on behalf of the Student Nonviolent Coordinating Committee whose central office is located in Atlanta, Ga., at 6 Raymond Street.

I wish to express our appreciation to the committee for this opportunity to comment on the proposed voting rights legislation.

It should be appreciated that we do not pretend to come here as lawyers to analyze and comment on all the numerous legislative proposals before you, but rather to stress some of the special features we would like to see embodied in any congressional act on the subject of voting rights. We have come to tell you of our earnest and urgent

concern for better civil rights legislation, along with something of the accumulated experiences which have led to this concern on our part.

The Student Nonviolent Coordinating Comimttee is a federated organization of student groups dedicated to the advance of civil rights throughout the South. The committee was called into being in the immediate wake of the mass student sit-in demonstrations against lunch-counter segregation, which spontaneously swept the South in the spring of 1960. At a South-wide convention of student leaders held in Raleigh, N.C., in April of that year, the committee was first chartered and an executive structure set out in a constitution that was unanimously adopted.

Since that time, the committee has variously devoted its efforts to the desegregation of public accommodations, the insurance of Negroes' rights to unintimidated interstate travel, the expansion of employment opportunities, and most recently to the extension of the right to vote to the Negroes of the rural South. It is out of our special concern for the latter that we come here today.

Currently our committee is engaged in the support of voter registration efforts in Maryland, Virginia, Tennessee, Kentucky, Arkansas, Alabama, Mississippi, Missouri, Georgia, South Carolina, and Louisiana. We have included brief descriptions of some of these projects as item A in the appendix to this statement.

In order to carry on this work we have recruited a team of some 70 college students, both Negro and white, to take either a semester or a year from their academic work to serve as full-time volunteer staff. These students have been assigned to various rural communities on a subsistence salary of $20 a week or less to explain the meaning of the Constitution, the importance of the voting process and the technique of voter registration.

The chronicle of their experiences during this short period of operation reads more like a chapter in the history of 19th century despotism than that of 20th century democracy.

During the past 2 years our staff of students has suffered every manner of abuse from constant villification in public, to attempted murder in private. They have repeatedly been arrested and physically abused by local law enforcement officers acting in open defiance of the Constitution. Time after time have they been tried, fined, and imprisoned on spurious charges to impede the success of their work. With very few exceptions, they had to carry on their work without the slightest semblance of police protection. We have collected an abbreviated list of these experiences under items C and D of the appendix.

It is our belief that the Federal Government has only weakly asserted its existing powers to act in our defense. Accordingly, we have initiated a Federal suit against both Attorney General Robert F. Kennedy, and J. Edgar Hoover, Director of the Federal Bureau of Investigation, to compel them to perform their duties on our behalf. The substance of our complaint in that action can be found as item B of the appendix.

In this light, we would like to urge this body to consider seriously the introduction of a declaratory resolution concerning the preventive powers of the Department of Justice in the defense of federally guaranteed rights to accompany any other proposals this committee reports out on voting.

In addition, we would urge that the bill introduced by Chairman Celler, H.R. 5455, be restudied in light of the enumerated criticisms set out in our "Comments on Legislation." We believe that the amendments we advance there add considerable strength and effectiveness to the substance of each of the four principal elements of that proposal.

In advancing these criticisms we want to impress upon Congress the need for much more stringent measures to deal with the kind of recalcitrance with which the South seeks to defy the rest of the Nation. It would appear that the accepted strategy of all forces seems to be to concede that we can best deal with this problem by being modest in our legislative proposals. We disagree. Indeed, of all the legislative proposals introduced on voting we are most impressed with the H.J. Res. 3 which proposes a constitutional amendment to establish a "free and universal franchise throughout the United States."

This is the kind of broad unequivocal enactment the struggle we confront might very well demand before we can effect the basic purposes for which this country was founded, in the face of the scope and magnitude of the southern conspiracy to injure, devastate and even murder before it will allow Negroes to vote as free men and women.

We, the 70 students, who make up the staff of the Student Nonviolent Coordinating Committee, and the thousands that make up its base, have staked our lives on the principle that an interracial democracy can be made to work in this country, even in the fields, bayous, and deltas of our Deep South.

We have not spared ourselves in attempting to make that faith good. We call on the Federal Government to do likewise. We would have it understood that we are not calling on the country for what she might do for us, but rather to inform her of what she must be prepared to do for herself.

President Lincoln perceived almost a hundred years ago:

> The fact is the people have not yet made up their minds that we are at war with the South. They have not buckled down to the determination to fight this thing through; for they have it in their heads that we are going to get out of this fix somehow by strategy. They have no idea that this war is to be carried on and put through by hard, tough fighting; that it will hurt somebody. No headway is going to be made while this delusion lasts.

We share a similar conviction when we look at both the South and the Nation today. We can see that the time has run out. It has run out both in terms of the patience of the Negro community, and it has run out in terms of our successful delusion that a moderate effort is enough.

We only trust that both the Democratic and Republican wings of Congress will be prepared to take this perception of our predicament in earnest.

Bob Moses will make comments based on his experience in Mississippi.

The CHAIRMAN. I want to compliment you on that statement. I do not agree with the purposes of your action against the Attorney General, but, aside from that, I think your statement betokens your organization's courage and forthrightness and I admire the faith the students of your organization have shown. Apparently you do not wear your faith as you would in the fashion of a hat. You agree some-

times with Browning that sometimes faith can move mountains. You should be encouraged in that thought.

Proceed, Mr. Moses.

Mr. MOSES. What I would like to do is to take several of the incidents, which are described in the latter part of the document, which occurred in the Mississippi campaign, and point up how they show various problems which we run into in connection with the voter registration program, particularly with respect to the 1957 and 1960 Civil Rights Acts as carried out by the current Civil Rights Division of the Justice Department.

First, on page 42 is a description of several events which occurred in the lower southwestern corner of Mississippi which was a voter campaign which began in 1961.

In Amite County, as a part of this campaign one day, I accompanied two people down to the courthouse to register and was beaten by a local white person in the streets. I was beaten to the tune of eight stitches. At that time, because it occurred in the streets and because there was some dispute as to interpretation, that is, the local white people were going to say that I was a northern Negro and agitator and did not move out the way of the white person as we were walking toward the courthouse, therefore they had a legitimate reason for this beating, and even though I did not strike them back at all, and even though the next day carried them into court and the local county attorney took our case, as it were, we argued it there in the justice of the peace court, and the person was convicted, the Justice Department did not take that case into Federal court because they felt, I think, that they didn't have a chance of winning it because there was this discretionary aspects as to the interpretation to be given to the event.

Mr. FOLEY. Was the prosecutor a State official?

Mr. MOSES. That is right. My attorney in that case was a local county attorney. They called in a district attorney to advise him but they felt, apparently, that the situation was such that they would have to go ahead with the trial which we requested.

As a part of this same campaign in an adjoining county and which is seen in the third paragraph, in Tylertown, one of our workers accompanied two people to the courthouse and was hit by the registrar with the gun butt aside his head.

Now, in this case it was a clear enough case so that the Justice Department intervened in the Federal district court and asked that the trial of this person, John Hardy, be stopped. They asked for a temporary restraining order. Now they had to go into court before Judge Cox, who was the first appointee of President Kennedy to the judicial bench. It is my opinion that the appointment was made with respect to what you call senatorial preference and that since Senator Eastland is the head of the Judiciary Committee that he obviously was having somebody appointed who was a very close friend of his and I think who shared his same views on racial matters.

Now, Judge Cox refused to give them a temporary restraining order. This was on a Thursday and the trial was set for Friday. They flew that night to Alabama and woke up, at 12 o'clock, a judge from the Fifth Circuit Court of Appeals and got a temporary restraining order.

In the meantime, John and I had to go back down to Walthall because, as far as we were concerned, John had to face trial. That next

morning before we heard about the issuance of the restraining order we were in court sitting upstairs in the segregated section and John was threatened by a group of white men as we were trying to leave. Now, that case was finally heard just this past year. It happened in 1961. The State of Mississippi appealed it. They did not get a final judgment on that case until this past year and in the meantime no Negroes from Walthall County have gone down to register because of the intimidation and the lapse between the time that the suits were filed and when they were finally heard in the courts.

The final incident goes back to Amite County where I was beaten up. On September 25, and that is the last paragraph on page 42, a farmer was killed. Now, he was killed by a State representative, Gene Hurst, and he was killed in broad daylight near the cotton gin.

Now, he happened to be a farmer who was very active in our voter registration campaign. Now, he was not killed at the courthouse and it happened that he did not go down to try to register. So there wasn't any attempt by the Justice Department to take this case into the Federal court even though, the very day before he was killed, I and the official from the Justice Department were in that area, were talking to some Negroes out there and one of the things they pointed out was that three people were in danger of losing their lives.

Mr. FOLEY. Who pointed this out?

Mr. MOSES. A man by the name of E. W. Steptoe, local head of the NAACP chapter in the county. He was discussing the drive with us and the facts, because we had been in there about a month, of the attacks on the voter registration workers.

It was his feeling that some of the people there were in danger of losing their lives. The next day this farmer was killed.

Mr. MCCULLOCH. Has there been any action in the Federal court by the Department of Justice to insure voter registration as provided by law without discrimination? Has any suit been tried in that county or in that district?

Mr. MOSES. Just last summer, a whole year after the killing and the beatings, the Justice Department only filed what they call a type A suit, which is a suit against the registrar. It was included in a statewide suit against the State of Mississippi to knock out the constitutional interpretation test. They did not file and have not filed a suit type B which they call an intimidation suit.

Now, in that county I believe that the main problem is fear, literally fear, on the part of the Negroes to go down to the courthouse. They own their own land. They are small farmers. They cannot be easily intimidated economically. It is not a question that they are afraid of mobs who come out to their homes, because they are willing to protect their homes. It is a question of simply being afraid to go down to the courthouse because they are exposed at the courthouse and they are subject to violence at the courthouse.

Now, in Amite County there has been no real further voter registration activity since 1961, primarily because of this fear. Last summer at one time I think about seven or eight more Negroes tried to go down but that has been over a period now of almost 2 years, and I think the fact is simply that the Negroes down there are just afraid and what they want is more protection.

Mr. KASTENMEIER. Is this a county in which Negro citizens outnumber white citizens?

Mr. MOSES. I think the official percentage is 54 percent Negro with respect to the total population but with respect to the voting age population the white citizens would outnumber the Negroes.

Mr. MCCULLOCH. How many Negroes are registered in that county?

Mr. MOSES. As I understand it, one was registered just this past winter.

Mr. MCCULLOCH. By that answer you mean that so far as you know in the county there has been only one Negro who has been registered and qualified to vote?

Mr. MOSES. That is right. That is since the Justice Department filed its suit.

Mr. MCCULLOCH. What is the population of that county, just roughly?

Mr. MOSES. I am not sure. I think the population is about 8,000 Negroes and about a comparable number of whites. I am not sure. The county seat I think has about 2,000 people. It is a rural county.

The CHAIRMAN. With reference to the suit that Robert Moses, Sam Block, Charles McLaurin, and others brought against Robert F. Kennedy, Attorney General, and J. Edgar Hoover, Director of the Federal Bureau of Investigation, that suit has been brought in the District of Columbia, has it not?

Mr. MOSES. Yes, it has.

The CHAIRMAN. What has happened to the suit?

Mr. MOSES. As I understand it, the Justice Department has asked for dismissal. I do not know if a date has been set for a hearing or not.

Mr. JENKINS. The district judge asked for further clarification. The complaint was amended to allow for summary or for a declaratory judgment. That is the state of the case right now. It is in the district court. It has the amendment to the complaint and it has the additional material requested by the trial judge.

Mr. FOLEY. Which judge has that case, do you know?

Mr. JENKINS. No, I don't.

The CHAIRMAN. This is just a curbstone opinion. I do not see how you can prevail in that case. I do not see how a judge can force the executive branch of the Government to act. I think if the executive branch does not do its duty, the Constitution provides for impeachment. I doubt very much whether you are going to be successful in that suit.

Mr. JENKINS. That is why the complaint was amended to allow for a declaratory judgment for relief short of mandamus.

The CHAIRMAN. Even so, I do not know how you can prevail in your petition for declaratory relief. However, I suppose you are at your wits end and you will try anything.

I have just gone through this very long statement. It is a compendium of some very harsh conduct, to say the least, on the part of police and local authorities against members of your group. It certainly shows clearly the need for legislation. You do not have to persuade me in that regard and I am sure you do not have to persuade most of the members of the subcommittee although I do not speak for them.

Are there any questions?

Mr. KASTENMEIER. Mr. Chairman, I have just one question.

I notice that your group has been doing an excellent job down there but I notice your group essentially is engaged in support of voter registration. I wonder whether the Student Nonviolent Coordinating Committee has concluded that voting has the highest priority, higher than educational integration or other aspects of the problem? At least it does appear that you place a great deal of your emphasis on voter registration.

Mr. SHERROD. I would say this is the case because that is one of the stands that the Federal Government has taken. It seems to us that the Federal Government has placed this as the highest priority as far as change concerning the southern social structure and in regard to the Negro situation in this country. If we can get protection and action from the Federal Government on its own priority this would seemingly be the best direction in which to go.

Mr. JENKINS. There is more to that. As I indicated in the opening statement, we have operated in these other areas. I could present a document equally thick if not more so on the other area of the direct action campaign. We have limited this presentation to voting rights because this is the particular legislation which we are most interested in. We believe it has the strongest constitutional base for legislation. Additionally, early in our group's undertaking in voter registration we had consultation with both the Justice Department and other figures in the executive offices and got the assurance that a massive program would be begun in voter registration and we recognized, also, that the students were best equipped for dealing with this kind of brutality in the rural areas. So, we began the recruitment aimed at getting a large group of students to operate in this area. But it does not mean by any means that we excluded from our attention some of the other areas of civil rights.

Mr. KASTENMEIER. My second question would be, having watched in action the 1960 civil rights law with respect to voting in the South, how would you describe it? Inadequate, or that it ought to be improved upon? That is existing legislation referring to voting in the South, machinery we passed in 1960.

Mr. MOSES. I think it has several weak points. One of the worst problems in the Deep South is the registrar. In many cases he simply refused to register people. Now, in Hattiesburg, Miss., in Forest County, the Justice Department has had a suit in against the registrar dating back from the Eisenhower administration. It has been in for 5 years. He has refused to register anybody in all that time, so far as I know. He is up now before a charge of contempt before the fifth circuit court. They have as yet to rule on that case. In the meantime no Negroes are getting registered.

Mr. SHERROD. The situation in Terrell County, Ga., is similar. You probably know Terrell County was the first time that the 1957 legislation was used. They have two injunctions in Terrell—no, one injunction with another possible injunction. Now, because of the burnings of the churches in Terrell County in the past year and the shooting and so forth which I know you are aware of, they are getting ready to file a type B suit. But at the same time—I believe it is in here on page 49, the *D. E. Short* case in which some of our workers were run out of the city of Sasser and the Justice Department brought the case to one of the Federal courts and they tried to use some laws—

I am not too well acquainted with the laws they were trying to use but according to the law, they had to show that the officials acted under the color of law and they had to show that they acted with intention.

Mr. FOLEY. Specific intent.

Mr. SHERROD. Right, specific intention. We lost that case. As a result, the effect on the community had just been frustrating to us. We had worked all year long and we got the community up to a certain pitch where we were ready to move. That happened four times. We got the community up to a level where the people were about ready to go down and register and whoom, then comes a suit and they are silenced by the disappointment. Then we got the community up again, but after this suit, this last time we had nothing to say to the people. Here the man was taken to court and the grand jury freed the man. What were we to say to the people? That is the situation as it is now. We worked in five counties in southwest Georgia.

Mr. MOSES. I would like to answer that, just this month, and it is on page 54, the bottom of the page, on May 7, 1963, about 3 a.m. in the morning in Holmes County several white men came out, threw a couple of Molotov cocktails into Mr. Turnblow's home, he was a Negro in the county and who had been down to register with the first group to go down in years. This is the county where the sheriff does not allow people to pay their poll tax. They fired into his house. He exchanged shots with them. He ran out. He had an automatic rifle and he exchanged shots with them. The next morning we were at his house early in the morning. The sheriff came out, arrested me for interfering with a fireman in his investigation and turned around later that day, arrested Mr. Turnblow and three other voter registration workers for setting fire to the house.

He wound up in jail, and had to stay in jail. The Justice Department went before Judge Cox again to get a temporary restraining order to get us all out of jail and Judge Cox would not hear the case right away. He said his docket was full, and that we had to wait. What happened was that they had a little justice of the peace trial about 4 days later, after we spent about 4 days in jail and Mr. Turnblow was let out on bond, and then they refused to drop the charge of interfering with the fireman against me and they bound Mr. Turnblow over to the grand jury.

Now the Justice Department is going before Judge Cox tomorrow for a hearing on the case. The point is that they are asking for a preliminary injunction. But probably what will hapepn is that Judge Cox will tell them after he has heard the case, "Well, the sheriff thinks that he will now behave and he has promised me that he won't intimidate Negroes any more. So I don't think I need to give you a preliminary injunction." Then they are faced with the decision of whether or not they should appeal that case all the way up to the fifth circuit and whether or not they can get that kind of preliminary injunction from the fifth circuit when, as I understand it, according to the law, it is a problem of judicial discretion or something, whether or not the judge is making the right kind of decision with respect to interpreting the facts in the case.

It is very hard to appeal these cases as I understand it. Maybe the counsel can help us on that question. But this is the kind of

problem that they are faced with. They have to go before these judges and they can't get the decisions right away. So maybe they settle for a higher court. The Negroes in Holmes County don't know anything about what is going on behind the doors in the court. If the judge resists and does not give them a preliminary injunction as far as they are concerned, the sheriff got away with it.

The existing law has no effect whatsoever on them and I think it is a very dangerous situation because they are not going to stand by much longer and have people shoot in their homes. This is in the delta of the Mississippi and they outnumber whites two to one. If they start shooting back and organizing you are liable to have a situation on the country's hands which will be 10 times worse than Birmingham.

Mr. SHERROD. The same thing is happening in the Terrell County situation. Refer to page 56 where the sheriff, along with other officials came into a church where we were having a voter registration meeting. A lot of people were shook up about it. Well, in response to that the Justice Department, as I said, filed this type B suit. The Justice Department officials told us, unofficially, I imagine, that there were negotiations going on behind the scenes, that the officials have promised not to harass us any more. But evidently they did not promise to make a public statement to the people saying that such atrocities or brutalities would not be the case in the future.

As Bob said, the people sitting outside the closed doors can only think of city hall as a symbol of oppression and brutality, and they need something, need some public statement. Some Federal official to come down and push them, some stand by the Judiciary Committee, maybe, publicly, would help us. It would help us if the Attorney General could come out with a strong statement, or come down and speak.

Mr. KASTENMEIER. As far as the purpose and organization of your own organization in part it was to implement the 1960 statute pertaining to voting. In cooperation with some extent, at least, one of you mentioned Federal officials, you went through various communities yourselves to try to get people to register and vote, as a result largely of what the Congress did in 1960. Of course, your account here is about the difficulties and desperation in trying to bring this about.

Apart from your difficulties, how about your successes? Have you had successes anywhere?

Mr. MOSES. I think that the greatest successes in the Deep South have come in Alabama and because in the middle district of Alabama, Judge Johnson is a good judge. But you don't have but one Judge Johnson across the whole Deep South. He is the only Federal district judge that I know of who has given orders to register thousands of people, say, at a time.

Mr. FOLEY. You have had some success in Louisiana?

Mr. MOSES. In the northern section of Louisiana.

Mr. FOLEY. I think it was over a thousand names restored to the voting rolls that had been stricken.

Mr. MOSES. Yes, but that is not a gain in registration. That is making up for lost time. They knock people out and then we got them back on but that is not getting new people on the rolls. In northern Louisiana, I think you just have token compliance.

Mr. McCULLOCH. Returning to your success in Alabama, do you have any statistics on any county that will indicate the number of Negroes who have been registered in the last year and in the last 2 years? If you wish, you take the whole State, if that is easier for you.

Mr. JENKINS. We don't have those statistics but they have been compiled fairly recently by the Civil Rights Commission, up until a year ago I believe they are currently reported by years back for the last 10 years, I believe. We are unable to keep a going account. The Southern Regional Council also has compiled a study of the changing voting patterns. I think that was up to date in 1962.

Mr. McCULLOCH. You say that is available?

Mr. JENKINS. Yes.

Mr. McCULLOCH. Do you have a recollection of the percentage of those who have been registered to vote and are therefore qualified to vote who followed it up by voting?

Mr. JENKINS. The only place where I think any substantive study has been undertaken has been again in Alabama. I think there is a considerable pattern of change around a couple of centers, one of the most important being Tuskegee, Ala., where there are a lot of educated Negroes and they have conducted a study themselves. I think that is the most ready source for that information.

Mr. McCULLOCH. There has been a substantial number of those who have registered to vote who exercised their right to vote after registration?

Mr. JENKINS. That is correct.

Mr. McCULLOCH. Would you say I could conclude that 75 to 80 percent of those who registered exercised their right to vote after they had been qualified to vote by registration?

Mr. JENKINS. I think you can.

Mr. McCULLOCH. Now, taking some other section of Alabama, away from a locality like Tuskegee, where the level of education is comparatively very high, do you have any figures or estimates of what percentage of the Negroes who were registered then exercised their right to vote?

Mr. JENKINS. I think there is information not on Alabama but on western Tennessee where favorable action was brought in Haywood and Fayette County against an economic boycott there. The Negroes have exercised their ballot in upward of 80 and 90 percent. That is a very depressed educational area. Most of those people are sharecroppers and agricultural workers.

Mr. McCULLOCH. Those figures are most impressive. I ask that question because a right to vote is an empty victory if it is not exercised. I think there was, if I remember correctly, a great European statesman who was interested in the universal franchise for those who qualified. In effect he said in a representative republic where there is the right to vote the people get as good a government as they deserve and oftentimes as bad as they will stand for. In the North in my State in the past there have been as few as 35 percent of the registered voters who exercised their lawful right to vote and that failure to exercise that right, which ultimately is the success of any representative republic, cuts across all lines of people, in some of the Northern States at least.

Mr. JENKINS. Mr. McCulloch, I think it is safe to say that where people are fairly satisfied they may not vote. But in areas where people are very much dissatisfied who have attempted to register at great peril it would not be the case, that the same kind of apathy would prevail. The first sermon on the subject was given by Franklin, "We have given you a Republic if you can keep it," or in substance that is what he said. So, when these rights are won if they are not exercised it will still not be an empty victory since the rights of the Constitution shall have been vindicated.

Mr. MOSES. I would like to comment on that. The administration has proposed that a sixth grade education be acceptable as proof of literacy. This runs into difficulty particularly in Mississippi where many Negroes have not been allowed to go to school. I think that the country has to go further than that.

In the first place, as the situation stands now, there is evidence that many illiterate white people in Mississippi do register and vote. The Justice Department has presented time and again on the stand white people who have testified that they cannot read and write and that they have gone down and registered and the circuit clerk has passed them.

Mr. MCCULLOCH. Yes. I think that point is well made. However, we have on the statute books now and have had for a number of years, legislation which might be used by the Justice Department whenever there be that pattern or policy or plan of discrimination by reason of color and, of course, from what you say ultimately the use of that kind of literacy test in the way you have described it is a discrimination because of color or race.

Further, I should like to say this. I have advocated no literacy test. In my home State, of which I am so proud, we have had no literacy test for so many years that if I can use the old phrase the memory of man runneth not to the contrary. And there are no people of any substance contending that we should establish the literacy test. In the hearings before this committee, either last year or 2 years ago, I said to the Attorney General when he was testifying that if that were the proof necessary a hundred years ago, Abraham Lincoln probably would not have qualified to vote. However, the successful completion of six grades of education is proof of literacy and it could be that it would be a proper test if it were applied to all people. It is only where it is applied for discriminatory purposes that it produces the results you mention.

Mr. MOSES. Mr. McCulloch, I would like to offer the following suggestion. Inasmuch as Negroes, particularly in Mississippi, have been and are still being deprived of the right to an equal education and even though Mississippi schools are entirely segregated and they say they are equal, they spend money at the rate of $4 per white student to $1 per Negro student, and inasmuch as for most of the Negroes who are adults now there were no schools when they were children that they could attend, that this country has an inescapable obligation either to register those people or to provide a massive adult education program for them so that they can attain this degree of literacy that you stipulate they need to have in order to vote.

Mr. MCCULLOCH. I should like to correct the record. I am not talking about the completion of sixth grade in an accredited school as a necessary test to determine whether one is qualified to vote or not.

I can return to my home State where we have had no such qualification and in most instances we are bound to think that the people used rather good discretion in the selection of their public officials.

The CHAIRMAN. I should like to say this on the question of voting. H.R. 5455, which happens to be a bill that I have offered, and others, provide among other things that, upon the application of the Attorney General when that application alleges that in the affected area—the word "affected" area is used—fewer than 15 percent of Negroes are registered—we do not use the word "Negroes"—15 percent of the total number of voting age persons of the same race as the persons alleged in the complaint to have been discriminated against are registered.

In other words, where less than 15 percent of the Negroes are registered in an affected area, then application can be made for the appointment of Federal registrars who would supplant the State registrars and they would register these Negroes. Now, that provision, according to the figures that you submit, for example, the figures on page 14 of your statement as to Georgia, would apply to the counties of Dougherty, Sumpter, Terrell, and Lee. The population of Dougherty County is 75,680. Negro population, 36 percent. Only 2,858 Negroes are registered. That is less than 15 percent. In that county a Federal registrar could be appointed. Similarly in Sumpter, Terrell, and Lee.

On page 15 you speak of the fieldworkers down in South Carolina and the population total, for example, in Orangeburg County, 68,559, the Negroes comprise 60.1 percent although only 11.6 percent are registered. So the act, if passed, would apply to Orangeburg County and I assume it would apply to other counties in South Carolina.

In Alabama, according to your figures, in Dallas County there was a total population of 56,667, only 0.9 percent of Negroes were registered.

In Wilcox County, not a single Negro is registered. So the bill would apply to those two counties in South Carolina, probably to other counties.

In Mississippi you set forth five counties, Leflore, Washington, Marshall, Holmes, Sunflower. In Leflore County Negroes comprise 64.6 percent and only 1.2 percent are registered. Similarly, with the other counties. So that the act, if passed, would apply to those counties in Georgia. I take it it would apply to many other counties in Georgia where the conditions are not dissimilar.

That bill would go a great way toward relieving the situation as far as voting rights are concerned.

Mr. MOSES. Mr. Chairman, I agree that would go a great ways toward alleviating the situation with two reservations. One, as I understand, you ask that the district judges be responsible for appointing Federal referees. Two, a sixth grade educational test is too high.

The CHAIRMAN. No; the judicial conference selects a panel——

Mr. MOSES. The Judicial Conference is composed not only of the fifth circuit but of the members of the Federal district courts and in that case you get the circuit outnumbered by local Federal district judges in terms of appointing the referee. It is my belief that you won't get fair appointments and that you run into the——

The CHAIRMAN. Is that the case in all these areas?

Mr. MOSES. Well, the Federal district judges I don't think are fair, and I don't think they are really facing this problem, otherwise it

would have moved. That is why it moved in Alabama because you have one Federal district judge, Johnson, who is willing to face the law.

The CHAIRMAN. Would you have a panel selected by somebody else?

Mr. MOSES. Just the Judicial Council.

Mr. JENKINS. Then only the judges from the circuit court would vote for the panel. That would allow the fifth circuit to control the selection of the people and they would be of much better quality. We have had bad experiences with a host of judges throughout the South, including Elliott, Ellis, Lynne, Clayton, Scarlett, Cox, Mize—all of these judges will be voting if the selecting body is the Judicial Conference. None of those judges will vote if it is a Judicial Council.

The CHAIRMAN. On page 6 of my bill, lines 11 and 12, strike out the words "Judicial Conference" and insert "Judicial Council"?

Mr. JENKINS. That is correct. A summary of all the amendments we would make is on page 10.

The CHAIRMAN. Of your statement?

Mr. JENKINS. Of our statement; yes.

Mr. FOLEY. Would the Judicial Council have the knowledge of whom to appoint?

Mr. JENKINS. I think they would, based on information supplied to them by the Civil Rights Commission's Advisory Committees of the various States, who have an intimate knowledge of the various people in their locale.

Mr. MOSES. Also, the members of the fifth circuit have had before them and still have before them numerous voting cases, more than anybody else they have been responsible for what progress has been made in the whole area of voting in the Deep South.

There is one other problem and that is that even though you have a Federal referee, he will be administering the literacy test and I still think that the country owes it to the Negroes who have been denied the right of an education to offer them an alternative. That either they be registered without a literacy test or they be provided with a massive education program because there is no adult education program in Mississippi.

The CHAIRMAN. I did not hear that last.

Mr. MOSES. I think that instead of offering a straight literacy test, that the Negroes should be provided with an alternative, that is, that the State be required to register them as illiterates or with the help of Federal funds be required to provide a massive adult education program for them because in any case these people are caught up in a general trend where they are being forced off their farms. They are small farmers, they are mechanizing the cotton crop in the Delta. They are moving into the cities. It is the cause of a great deal of unrest in the cities such as Washington, Chicago, New York, they are not equipped to handle jobs in these cities, they are unemployed and they are going to be unemployable unless there are some means provided for educating them. I don't think the duty stops simply at providing them a simple literacy test.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask Mr. Moses this question.

Do you think, Mr. Moses, that these adults would take advantage of and participate in adult education classes in view of the lack of interest we have had in job retraining?

Mr. MOSES. You know in Mississippi they tried last year to get a job retraining program through for tractor drivers. They were going to set up a training program for 400 tractor drivers. It got caught in a political scramble between James Whitten and the plantation owners and the whole retraining program was simply scotched before it got off the ground.

Mr. MCCULLOCH. Would it not take a very long time to make effective even a well-organized massive education program for adults?

Mr. MOSES. There has been effective work done on basic illiteracy by private groups with very limited funds. I think the main problem is motivation. These people are now motivated to learn. They want to learn. They want to vote. They feel that for once they have a chance at bettering their condition. The problem is who administers it, whether or not Negroes will be allowed to administer the program or whether it will simply be turned over to the hands of Southern whites and Negroes will be subjected to degradation as they administer it. These are the crucial problems, problems not so much of what laws are passed but who administers them. That is the problem now. The local people administer them and they find different ways of getting out of the provisions.

The CHAIRMAN. I will say, Mr. Moses, if we had a dictator, we could dictate all this stuff. But we are in a democracy where we have to go through not a simple legislative process but a rather complex, intricate legislative process. You just cannot hang on to the question of voting some sort of educational system for Negroes. What about the poor whites? Of course it just so happens that the committee would not have jurisdiction over a matter involving education. It would have to go to another committee. It is a little naive to ask for it. I do not mean to disparage you in any sense of the word. I want to compliment you on your desire to bring about perfection, but we cannot get perfection in the legislative process. It does not work out that way.

Mr. MOSES. Sir, as I see it, the problem is one of immediate national urgency. The Negroes are being forced off their farms in the rural South by mechanization and the general process of automation into the big cities. They are in the big cities without jobs and they don't have the training and this is why you have your big problems in Washington and Chicago and I don't know whose responsibility it is.

The CHAIRMAN. Of course in New York and Chicago, you don't have separate but equal schools. You have integration. We have very fine schools in New York where Negroes and whites assemble together and are taught together. We have pending in the Congress, however, numerous bills to improve the legislative system, providing for Federal aid to education and to give more moneys to southern communities and other places where they may be lacking in developing modern curriculums and so forth—to try to help them. We have some provisions in the bills here which provide that where there is to be integration we will offer moneys to the community that tries to integrate and give expert help to those communities that want to integrate. We are trying to bring all that about but we just cannot put it all in one bill.

Mr. MOSES. Sir, I realize that it cannot be put in one bill but certainly the problem has to be viewed in its entirety and some start has to be made on these other problems at the same time or else the voting

provisions will be for naught and the country will be faced with a real problem on their hands 5 or 10 years from now.

Mr. FOLEY. Approximately what percentage of your Negro population, say in Mississippi, Alabama, Louisiana, or Georgia, has not completed fifth grade school?

Mr. MOSES. That is very hard to say, because the statistics, I believe, really aren't accurate. Now, we took down over 500 Negroes in a period of a month and a half in Leflore County to register and over 400 of them were not sufficiently literate to fill out the form.

Mr. FOLEY. That is under the procedure of State law?

Mr. MOSES. That is under the procedure of State law, but I mean just the simple questions.

Mr. FOLEY. In other words, using your own judgment you would not consider them literate?

Mr. MOSES. That is right.

Mr. JENKINS. Our comment then goes to the provisions of the voting legislation. It is not the proposal of an educational program but the recognition that in any educational criteria that is established in the voting legislation, it has to be taken into account the broader picture of educational deprivation that these people are not only going through but have gone through and are likely to continue to go through in the future.

Mr. MCCULLOCH. Let me ask this question. Are there some educational facilities for every Negro in every State in the South?

Mr. MOSES. You mean for the children?

Mr. MCCULLOCH. Yes; for the children within school age.

Mr. MOSES. For the children there are but the adults are simply out of the educational process. Even the children in the delta area, their education is still based on the cotton crop. There is no minimum age at which the children are forbidden to work and you have children 7, 8, 9, and on up going out in the spring to chop the cotton and in the fall. They go to school in the winter and in the summer.

Mr. MCCULLOCH. Going to school in the winter and summer?

Mr. MOSES. That is right.

Mr. MCCULLOCH. But do they have a certain number of months or weeks or days that they must go to school?

Mr. MOSES. Not in Mississippi any more. After 1954 in Mississippi they struck out from the State constitution any provision for required attendance, so the Negroes don't have to go to school and the State officials couldn't care less.

Mr. CRAMER. Do you know any other State where there is no requirement of children going to school other than Mississippi?

Mr. MOSES. I don't.

Mr. CRAMER. Then in order to get at the Mississippi situation what would you suggest that the Federal Government do? Is it not a State responsibility to enact its own laws relative to school attendance? Would you suggest a national school attendance law?

Mr. MOSES. Well, as far as the Federal Government is concerned, it seems to me it has a duty to implement the 1954 Supreme Court decision; that is, that the schools simply must be integrated in Mississippi and around the country. There is no possibility for the Negro to get separate and equal education in Mississippi.

Mr. CRAMER. Let us assume they were integrated you still have the question remaining whether or not the Negro who wants to work or

whose parents want him to work rather than go to school, should be required to go to school.

Mr. MOSES. No; at this time the Negro schools are closed down when the chopping cotton season starts and he cannot go to school.

Mr. CRAMER. All right, then they open up; what does he do?

Mr. MOSES. If they were integrated they would not close the schools down. No white children chop cotton.

Mr. CRAMER. Assume you have an off-season schooling, the Negro still can attend the schooling when they are not picking cotton; can't they?

Mr. MOSES. That is true, and they do.

Mr. CRAMER. So you are talking about a State problem as it relates to school attendance requirements; are you not?

Mr. MOSES. Yes; but the main problem as far as the schooling for the children are concerned is that they get adequate equal schools and that the schools be integrated. The main problem that we brought up was schooling for the adults who have not had a chance to go to school and who do not have opportunities to go to school now.

Mr. CRAMER. I understand they are two separate problems but the question the gentleman asked was whether or not they wished to go to school or were required to go up to a certain age? I was addressing my remarks to that. If the gentleman will yield further. Now, with regard to southwest Georgia, South Carolina, cental Alabama, Arkansas, Mississippi, some problem areas; is it or is it not true that actually Negro registration in many, many areas throughout the South is presently underway at a more rapid pace than any time in recent history? Is it not?

Mr. MOSES. Yes, that is true.

Mr. CRAMER. Is it true that you are coordinated with the NAACP in your activity for registrations?

Mr. MOSES. Yes.

Mr. CRAMER. I know there is a very strong drive for registration and I have consistently taken the position that anyone in America ought to be given the right to vote, ought to be able to register and vote and have the vote counted regardless of race, color, or creed. It is fundamental. But I wonder if perhaps in your presentation you are focusing attention on certain problem areas while at the same time completely ignoring what progress is being made in many other areas.

Now, I know in Florida, for instance, there is a tremendous drive underway now, and it is being exteremely successful. That has nothing to do with the Justice Department. That has to do with NAACP and other activities where they are being encouraged to register, are registering and absolutely no opposition is being raised by anyone to their registration.

Mr. MOSES. The bill which is introduced here was introduced specifically to seek relief in these problem areas. Under the 1960 Civil Rights Act the Justice Department has filed suits primarily in Georgia, Alabama, Mississippi, and Louisiana. These are the problem areas and these are the areas which they are trying to make it possible for Negroes to register in. The bill which is introduced here is to gain relief in these areas.

Mr. CRAMER. I am fully aware of that. My question to you, however, is: Are there not many areas in which registration is succeeding

without opposition of any kind from any public officials? I mean is it not true in the vast majority of the areas Negro registrations are going on now in unprecedented numbers without opposition? As a matter of fact, they are even being encouraged in many areas.

The CHAIRMAN. Is not the answer——

Mr. CRAMER. I would like him to answer.

The CHAIRMAN. I want to answer, too. It is because of these trouble spots that we need this legislation. Those trouble spots cover a very wide area. Like a good many parts of South Carolina, Mississippi, Alabama, and Georgia. Everybody does not commit murder. Only a comparatively few people commit murder, but we have statutes against murder because of those who want to commit murder. Therefore, we have trouble spots and the only way to get rid of them is by legislation. The legislation will advance those States where the public conscience indicates the need to make the change.

Mr. JENKINS. We appreciate that in large areas of the United States registration to vote is not a problem. What we would have this committee appreciate is that in some areas it still is. It is for those areas that legislation is still needed; and we have enumerated both in our statement and in our documents as to how these recalcitrant southern registration systems have operated to limit the franchise. I believe it was the Attorney General in his cover letter for the administration's legislative proposal who specifically recognized the difficulty of all the existing statutes. I don't think it is a counterargument in any way to point out that there are other areas where the problem is not quite that acute.

Mr. CRAMER. I would like to know if there is available anywhere information, since this bill was passed in 1960, in particular, on how many Negro registrations have taken place, how great the increase in percentages have been throughout the South. I realize there are some problem areas and you know why the problem is there and I think everybody on this committee knows why the problem exists in certain areas and that is in areas, is it not, where you would have, if the Negroes registered, a majority registration of Negroes as compared to white. Are those not the basic problem areas?

Mr. JENKINS. They are not the only problem areas.

Mr. CRAMER. I realize that but are they not the hard-core problem areas?

Mr. JENKINS. They are are the worst, that is true.

The CHAIRMAN. I think the question is a good one and I think, if possible, the National Association for the Advancement of Colored People should provide this information. Mr. Mitchell is in the room and he might be able to supply that information for us. But this document that you have submitted is the clearest recital for the need of additional legislation. Here are pictures, for example, of those who tried to register and dogs were sicced on them and did violence to those attempts to register. Now, this whole document here is replete with violence and with heinous actions on the part of police to prevent people from voting. Under those conditions I do not care whether it is in a small number of places or in a large number of places, it is possible apparently, and, considering the temper of some of those in the South, and that probably excludes your own State of Florida, Mr. Cramer, I think we ought to address ourselves to this situation.

Mr. CRAMER. Mr. Chairman, the only point I was trying to make is that there seems to be some thought among people outside the South that this situation prevails throughout the South; that is, refusing to give the Negro the right to vote and exercise his franchise. The truth of the matter is that that is not true. In the vast majority of the areas there are many registrations, they are increasing in rapid numbers, they are being encouraged to register and they are, in fact, registering. I think, to make the record complete, a summarization of where registrations are taking place in unhampered fashion and the numbers that have registered recently will be very helpful.

The CHAIRMAN. I will instruct Mr. Foley to try to get as much information on that as far as possible.

Mr. Mitchell, you are here, perhaps you can enlighten us a bit.

'STATEMENT OF CLARENCE MITCHELL, ON BEHALF OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. MITCHELL. I will be glad with your permission.

I am Clarence Mitchell, for the National Association for the Advancement of Colored People.

I think it is important to point out that since 1957 there have been maybe 200,000 or 300,000 new voters gotten on the books but this is not because the resistance has dispersed and this is not because there is no need for more civil rights legislation.

I think if we look at each State in the South you will see that there are some areas where there is a minimum of resistance to voting and has been for some time. This would be in the metropolitan areas primarily of almost all of the Southern States with the exception of Mississippi and Alabama. For example, we would not encounter any difficulty in Metropolitan New Orleans. We would not encounter any difficulty in the large North Carolina cities and the South Carolina cities. But if you start with the State of Virginia where there is restriction on the right to vote because of the poll tax there is also in the State of Virginia a studied attempt to prevent the Negro vote from increasing by having them write out certain requirements on a blank piece of paper.

Well, it turned out that this hurt a lot of white people as well as colored people.

In North Carolina in the eastern part of the State, in those counties which are the so-called Black Belt area of North Carolina, there, too, we continue to have great difficulty in getting orderly registration. The same could be said of South Carolina, we have problems in the so-called Black Belt counties.

The CHAIRMAN. What is the situation in Florida?

Mr. MITCHELL. I was going down the coast. I will take it out of order in order to answer you.

The CHAIRMAN. No, go ahead.

Mr. MITCHELL. In the State of Georgia, in the case cited in the testimony, *U.S.* v. *Rains*, there in Terrell County, the judge documented—and it is a matter of court record—the judge documented the system that was used to keep the colored people from qualifying to register and vote so that there were a whole, long list of individuals who were

schoolteachers and that kind of thing who were disqualified when they attempted to vote. Now, the court has handed down an order saying that people shall be registered to vote but, as these witnesses point out, there still exists in Terrell County, Ga., a system of intimidation such as burning down churches and arresting people without cause, that prevents even those colored people who want to vote from doing so.

Mr. McCULLOCH. Now, may I interrupt at this point? What legislation do you suggest that this committee consider that would bring that kind of intimidation to an end?

Mr. MITCHELL. I would say, Mr. McCulloch, that my personal feeling is that the means of bringing this to an end already exists. It is my belief, and this is shared by a number of persons who have studied the question—

Mr. McCULLOCH. Why do you think it has not been used if the implements are there?

Mr. MITCHELL. I will say that I do not think, I know that it has not been used because of an administrative determination which has existed for many years in the Department of Justice that they will go at these things in a very moderate way giving the States the maximum opportunity to correct problems and get their own houses in order regardless of what the statutory basis for action might be. So that in these cases the Justice Department, starting under the Eisenhower administration when Mr. Rogers was the Attorney General and continuing through this administration, made an administrative determination that they would not go into court on cases unless they had great certainty of winning, because they wanted to establish the constitutional basis for action. As a matter of fact, that is how they got into court on the *Rains* case in Georgia.

Mr. McCULLOCH. I would like to ask this question: Would outstanding lawyers find fault with that course of action? What is wrong with that moderate yet firm and well-reasoned course of action?

Mr. MITCHELL. Well, I would not describe it in those generous terms. I would say that I think it has been excessively timid and needlessly slow. The reason I say that is that it is my opinion that if the Justice Department then and now would move with vigor in these cases, would have present Federal marshals, for example, in these areas when persons are being intimidated, this would have a salutary effect. For example, in the case of Mr. Moses, it was known to the Justice Department that he was going to be where he was and it was also known to the Justice Department that there was a possibility of injury when he got there.

Now, it doesn't seem unreasonable to me to ask that a Federal marshal also be there when he gets there so that when somebody tries to hit him over the head, as they did, or when the registrar hits somebody over the head with a gun butt, as he did, there ought to be the Federal presence there and that could be done under existing law to see that these people are not denied the right to vote.

The CHAIRMAN. Judging from the motives of some of these people, one marshal would not do very much good.

Mr. MITCHELL. I think there ought to be marshals in sufficient number to insure enforcement of the law. I don't think it would require very many in most of these instances. I have discovered in my personal experience in the South that a great many people in the community acquiesce to conditions of this kind and many of them would

rather have a condition where people could vote and where there would not be violence. I really believe that if there were sufficient Federal determination to see that the law is carried out there would be a large number of people supporting it.

The CHAIRMAN. There are many counties, are there not, in the States mentioned where the Negro population is beyond 50 percent?

Mr. MITCHELL. That is correct, Mr. Chairman.

The CHAIRMAN. Would that not give rise to considerable reluctance on the part of the whites to give them the vote. They would use all instrumentalities at their command to prevent them from getting the vote?

Mr. MITCHELL. I have had the good fortune in having lived more than a half century and I have seen what happens in this country in areas where people who have previously been denied the right to vote now get it.

It has been my experience that once you break down the barrier and the people begin to vote, then those who are seeking office actively seek that vote and it is North and South. The result is that we get a better type of Government all around.

The CHAIRMAN. There are any numbers of these cases in communities, towns, cities, counties where there is a preponderance of the Negro population.

Mr. MITCHELL. That is correct. I would say that I firmly believe that if we ever got enough people registered to vote so that colored people could be elected to office we would have the same kind of thing which has happened in the State of Georgia where a colored man has been elected to the Georgia Senate. He has been fully accepted, he is a part of the State government and respected in the State. There has not been a single unpleasant incident since he took office.

The CHAIRMAN. Concommitantly you have Negro mayors and Negro councilmen in several southern communities?

Mr. MITCHELL. That is true. In the city of Gastonia, in North Carolina, where you remember there was a good deal of violence during the organization of the textile companies, I was in that city and talked to a colored man who was treasurer of the city government. He was elected on a citywide basis and was the treasurer.

Mr. MCCULLOCH. Could I interrupt just once again for the purpose of getting your opinion in the record. Now, may we properly conclude that you think there is substantial Federal law now in full force and effect that could be used to bring about the ends which are so badly needed?

Mr. MITCHELL. I would say, Mr. McCulloch, a little stronger than think but in this case I will not support what I say with my own opinion. I will say that in February out at Notre Dame University a group of very distinguished law professors met and it was their conclusion, which I will be happy to submit to the committee that under existing law there is ample authority to clean up the voting problem in the South and that one of the things most needed is the Federal presence. Now, I would say——

Mr. MCCULLOCH. Again may I interrupt? Will you furnish for the committee, so that it may go into the record at its proper place that opinion or memorandum or treaties, whatever it was, from the professors assembled there at Notre Dame?

Mr. MITCHELL. I will be glad to do that.

The CHAIRMAN. You do not mean to imply that additional legislation is unnecessary?

Mr. MITCHELL. I do not mean to imply it, Mr. Chairman. I was just getting ready to add that from a strategy standpoint I think that it is very unwise to base the whole legislative proposal on a voting proposal as was done in the administration's suggestion but which I hasten to add you did not do, yourselves. I think with your permission at this point in the record and particularly since these gentlemen are here, I would like to say that you are in the presence of a distinguished chairman and his colleagues, all of whom have fought vigorously for civil rights legislation and I will say, and I am sure no one will dispute it, that had it not been for you, Mr. Chairman, we would not have had a 1957 Civil Rights Act.

If we had been able to follow your judgment and that of Mr. McCulloch and that of Senator Keating and others, we would have had a much stronger bill. So I am not in any sense unappreciative of all the wonderful things that have been done. But I have been around here long enough to know that if you start off with a program that emphasizes voter registration and legislation to protect the right to vote you will wind up not only with that but also it will be a watered-down version of what you started out with. So I would say such things as this literacy requirement and this 15 percent, all of those I believe Mr. McCulloch has pointed out, all of those are now possible under the existing law. If Congress wants to reinforce it by spelling it out, I don't see anything wrong with that but I don't think that should be the major purpose. In my opinion, the main thing that is needed is something like part III, which would give protection to these individuals who have gone down there.

The CHAIRMAN. We have part III in my bill.

Mr. MITCHELL. That is why I said in a program introduced by the administration, voting rights were emphasized but in your program you were in true character offering what I am sure is a strong and effective program.

The CHAIRMAN. Now, go on with your recital of States.

Mr. MITCHELL. I had stopped with the State of Georgia and I am on the brink of Florida.

I would say that our experience in the State of Florida has been, and there again in most of the metropolitan areas such as Miami and Jacksonville there is very little difficulty but where we have run into trouble in the State of Florida is in that part of Florida which is on the borders of Alabama and Georgia and there in those counties the conditions are every bit as bad as any place in Mississippi.

We had have had some awful sheriffs and we have had some awful incidents of depriving people of the right to vote. Of course, Florida has the unhappy history of being a State in which one of our leaders in registration in voting, Harry Moore, was killed in an explosion in his home on Christmas night and his wife killed as well, because they were active in registration voting. So I would not give Florida a clean bill of health. I would say we appreciate the cooperation of people who come from that State and are glad to hear them go on the record for things but we know in the northern part of Florida it is every bit as bad and maybe a little bit worse than some parts of Alabama and Mississippi.

The CHAIRMAN. That is not in your district?

Mr. CRAMER. I would like to have in the record every document of those incidents. What happened in the Harry Moore case? Was anyone prosecuted?

Mr. MITCHELL. No one was ever prosecuted in that case, Mr. Cramer. As I understood it, they had some evidence in the Justice Department but it never succeeded in convincing anybody.

Mr. CRAMER. Was anybody indicted?

Mr. MITCHELL. No; no one was ever indicted. So far as I know, no one was ever arrested.

Mr. CRAMER. Is it not true that under present law, section 1971(b), that anyone who interferes with a person's right to register in a Federal election commits a crime?

Mr. MITCHELL. That is true. I think we are well aware of the fact that the criminal statutes that are there are virtually meaningless in some parts of the South. This is why we had to get the 1957 act because there was no possibility of getting indictments under those criminal statutes. It was necessary always to go through the civil procedure.

Under the civil procedure the Attorney General does have the power to seek an injunction and having obtained that injunction, if anybody violates the terms of the court's order they could be subjected to imprisonment for contempt. That is a workable statute.

The CHAIRMAN. Following Mr. Cramer's thought a little while ago, it strikes me we should have, if possible, information as to what degree many of these States in the South have permitted Negroes to vote—particularly in the last few years.

Mr. MITCHELL. I was just going down the line and calling the roll. I would say that in the areas where they could already vote I think they are continuing to do so and the drive has stepped up. In the areas where they were previously denied the right to vote they are still in the same predicament with a few notable exceptions. Those notable exceptions would be, as I said, in Terrell County, where by court order people are registered but still there is this intimidation. In Tuskegee, Ala., because of court decisions, there have been some increases in the Negro registration. But not in areas that these witnesses are talking about. For example, in Forrest County, we had a witness, two witnesses up here from Forrest County. Both of them testified they had paid their poll taxes and that they were ready to vote but they still were denied the vote. They are still not voting in Mississippi.

Mr. FOLEY. Let me ask you this, Mr. Mitchell, and any of you other gentlemen, is the failure to take action on the local level that of the U.S. attorneys offices?

Mr. MITCHELL. No. I think I am qualified to answer that because it was my responsibility to try to get the Justice Department to move. I would say the responsibility is right here in Washington and if there is any failure to act it is because of administrative determinations in Washington not to act.

Mr. FOLEY. On these cases where you have had some criminal violations that could not possibly come within section 242 of title 18, have there not been any prosecutions at all?

Mr. MOSES. I pointed out earlier that the Justice Department has taken some cases into court, of intimidation, and they have run into the problem of the Federal district judges and they are very reluctant——

Mr. FOLEY. How about the jurors?

Mr. MOSES. The same thing. We had a case just last month, March 4, I and two other people were literally almost machinegunned on the highway outside of Greenwood. Three white men were in a car and they drove past us, followed us for 7 miles and drove past us and shot at us with a grease gun. They left a tattoo of 13 bullet holes along the car. The fellow who was driving got a 45 in his neck which lodged about an inch from his spine. Now, the local grand jury met and indicted two white people and then proceeded to—this is in Greenwood, Miss.——

Mr. FOLEY. This is a State prosecution?

Mr. MOSES. This is a State prosecution. Then they proceeded. The attorney asked for a delay in the case and the local judge granted it and it is off until November. The Justice Department has yet to move. They say that if they go into Federal Court at best it is a misdemeanor under Federal laws.

Mr. FOLEY. That is true. You have a possible homicide charge in a State court. It is more serious.

Mr. MOSES. Then it seems to me there is legislation needed.

The CHAIRMAN. I can only give you 5 more minutes and we will have to terminate this hearing.

This room is to be used for another meeting. Representatives of the Department of Defense and Members of the House are assembling here at 4 o'clock. So I have to terminate this proceeding at 4 o'clock. So I am going to ask you to be very brief. You have 5 more minutes.

Mr. MITCHELL. Could I just say one more thing? I think it is important that this committee know that the Justice Department does make decisions to handle things in a way different from what the law would require.

For example, there was a lynching in Mississippi on April 24, 1959. This was the *Mack Parker* case. In that case the FBI went down to Mississippi, they got enough evidence which would have been sufficient to place before a Federal grand jury. But the Justice Department made an administrative determination to turn this over to the State authorities. The State authorities turned it over to the county authorities and the county authorities apparently leaked the information with the result they didn't get any indictments. The same thing happens in many of these matters that come up.

The Justice Department seems to think that they can get a lot of cooperation from the State officials and usually when the State officials find out what the Justice Department has in the record they use it to prevent action in court.

The CHAIRMAN. Can you give me cases of that sort, specific cases?

Mr. MITCHELL. Yes, I can.

The CHAIRMAN. I will take that up with the Department of Justice.

Mr. MITCHELL. I can.

Mr. MOSES. Sir, I would like to sum up at least by saying, one, there is a very real problem with the registrars in the South and that the provision to provide Federal referees will provide some relief to this problem provided they are appointed by the Judicial Council and not by the Judicial Conference. I think that legislation is needed for that.

The other thing is that we do think that some relief is needed on this problem of protection because the fact is that they feel that with

the additional legislation which Congress gives them, they have more of a mandate to move and that it is a question between it being an inescapable obligation to do something as ordered by a recent Congress or simply being a question of whether or not they are going to take an old law from the Reconstruction era and use it now in the 20th century, and they are very reluctant to do the latter. What is needed is some new laws. I agree with Mr. Mitchell that it is not just in the voting field that it is needed but I still feel it is needed badly in voting.

Mr. FOLEY. You have a twofold problem as I see it. Let us take the criminal field.

First of all, because of the Supreme Court decision in the *Screws* case, proof of specific intent to deprive a man of a particular constitutional right is required—that statute was amended lessening the burden of proof on the prosecution—you still would be faced with two problems.

One, as you have described it, the problem of the judges and the problem of the jury. Both grand jury and petit jury, would you not?

Mr. JENKINS. Yes, we would be faced with those problems but there is a whol process that goes on before litigation. The whole substance of our suit against the Attorney General and J. Edgar Hoover is aimed at highlighting those preliminary powers that have not been exercised; that is, the use of marshals to implement even the criminal statutes. Those are the things that have been wanting. On page 2 when I made my initial statement I asked that the possibility to be considered by this committee of a declaratory resolution that would pull together on the books all these different civil and criminal provisions and make them relevant to civil rights to increase the Justice Department's mandate.

Mr. SHERROD. I have just one last point.

I would like to observe that the situation in Birmingham, the situation in Knoxville, the situation in Albany, the other situations where they exist, where there are mass demonstrations and protests, point out that the people, the black people of the country, are in a state of unrest. One way to control this unrest can be through better legislation to insure political expression. Now, what legislation ultimately will be up to our constitutional fathers, so to speak.

I would just like to present this as a matter of great urgency in an acute situation.

The CHAIRMAN. Gentlemen, I want to commend you for your intelligence and your intrepidity and certainly the confidence you have not only in yourselves but the aims and aspirations of your organization. I hope you will keep up the good work.

The hearing will adjourn until June 12, when we will hear the Attorney General.

Thank you, gentlemen.

(The following was submitted for the record:)

TESTIMONY OF THE STUDENT NONVIOLENT COORDINATING COMMITTEE, MAY 28, 1963

(See also Student Nonviolent Coordinating Committee supplementary testimony and statement of August 12, 1963, on full omnibus civil rights bill (H.R. 7152).)

Mr. Chairman, members of the committee, I am appearing on behalf of the Student Nonviolent Coordinating Committee whose central office is located in Atlanta, Ga., at 6 Raymond Street. I wish to express our appreciation to the committee for this opportunity to comment on the proposed voting rights legislation.

It should be appreciated that we do not pretend to come here as lawyers to analyze and comment on all the numerous legislative proposals before you, but rather to stress some of the special features we would like to see embodied in any congressional act on the subject of voting rights. We have come to tell you of our earnest and urgent concern for better civil rights legislation, along with something of the accumulated experiences which have led to this concern on our part.

The Student Nonviolent Coordinating Committee is a federated organization of student groups dedicated to the advance of civil rights throughout the South. The committde was called into being in the immediate wake of the mass student sit-in demonstrations against lunchcounter segregation which spontaneously swept the South in the spring of 1960. At a southwide convention of student leaders held in Raleigh, N.C., in April of that year, the committee was first chartered and an executive structure set out in a constitution that was unanimously adopted. Since that time, the committee has variously devoted its efforts to the desegregation of public accommodations, the insurance of Negroes rights to unintimidated interstate travel, the expansion of employment opportunities, and most recently to the extension of the right to vote to the Negroes of the rural South. It is out of our special concern for the latter that we come here today.

Currently our committee is engaged in the support of voter registration efforts in Maryland, Virginia, Tennesse, Kentucky, Arkansas, Alabama, Mississippi, Missouri, Georgia, South Carolina, and Louisiana. We have included brief descriptions of some of these projects as item A in the appendix to this statement.

In order to carry on this work we have recruited a team of some 70 college students, both Negro and white, to take either a semester or a year from their academic work to serve as full-time volunteer staff. These students have been assigned to various rural communities on a subsistence salary of $20 a week or less to explain the meaning of the Constitution, the importance of the voting process, and the technique of voter registration.

The chronicle of their experiences during this short period of operation reads more like a chapter in the history of 19th century despotism than that of 20th century democracy. During the past 2 years our staff of students has suffered every manner of abuse from constant vilification in public, to attempted murder in private. They have repeatedly been arrested and physically abused by local law enforcement officers acting in open defiance of the Constitution. Time after time have they been tried, fined, and imprisoned on spurious charges to impede the success of their work. With very few exceptions, they had to carry on their work without the slightest semblance of police protection. We have collected an abbreviated list of these experiences under items C and D of the appendix.

It is our belief that the Federal Government has only weakly asserted its existing powers to act in our defense. Accordingly, we have initiated a Federal suit against both Attorney General Robert F. Kennedy, and J. Edgar Hoover, Director of the Federal Bureau of Investigation, to compel them to perform their duties on our behalf. The substance of our complaint in that action can be found as item B of the appendix.

In this light, we would like to urge this body to consider seriously the introduction of a declaratory resolution concerning the preventative powers of the Department of Justice in the defense of federally guaranteed rights to accompany any other proposals this committee reports out on voting.

In addition, we would urge that the bill introduced by Chairman Celler, H.R. 5455, be restudied in light of the enumerated criticisms set out in our "Comments on Legislation." We believe that the amendments we advance there add considerable strength and effectiveness to the substance of each of the four principal elements of that proposal.

In advancing these criticisms we want to impress upon Congress the need for much more stringent measures to deal with the kind of recalcitrance with which the South seeks to defy the rest of the Nation. It would appear that the accepted strategy of all forces seem to be to concede that we can best deal with this problem by being modest in our legislative proposals. We disagree. Indeed, of all the legislative proposals introduced on voting we are most impressed with the House Joint Resolution 3 which proposes a constitutional amendment to establish a free and universal franchise throughout the United States. This is the kind of broad unequivocal enactment the struggle we confront might very well demand before we can effect the basic purposes for which this country was

founded, in the face of the scope and magnitude of the southern conspiracy to injure, devastate, and even murder before it will allow Negroes to vote as free men and women. We, the 70 students, who make up the staff of the Student Nonviolent Coordinating Committee, and the thousands that make up its base, have staked our lives on the principle that an interracial democracy can be made to work in this country, even in the fields, bayous, and deltas of our Deep South.

We have not spared ourselves in attempting to make that faith good. We call on the Federal Government to do likewise. We would have it understood that we are not calling on the country for what she might do for us, but rather to inform her of what she must be prepared to do for herself. President Lincoln perceived almost a hundred years ago:

"The fact is the people have not yet made up their minds that we are at war with the South. They have not buckled down to the determination to fight this thing through; for they have it in their heads that we are going to get out of this fix somehow by strategy. They have no idea that this war is to be carried on and put through by hard, tough fighting, that it will hurt somebody. No headway is going to be made while this delusion lasts."

We share a similar conviction when we look at both the South and the Nation today. We can see that the time has run out. It has run out both in terms of the patience of the Negro community, and it has run out in terms of our successful delusion that a moderate effort is enough.

We only trust that both the Democratic and Republican wings of Congress will be prepared to take this perception of our predicament in earnest.

[H.R. 5455, 88th Cong., 1st sess.]

A BILL To enforce constitutional rights and for other purposes

(Suggested changes as follows: Material to be deleted in black brackets; material to be added in italic)

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

SEC. 2. Section 2004 of the Revised Statutes (42 U.S.C. 1971), as amended by section 131 of the Civil Rights Act of 1957 (71 Stat. 637) and as further amended by section 601 of the Civil Rights Act of 1960 (74 Stat. 90) is further amended as follows:

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

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

"(A) in determining whether any individual is qualified under State law to vote in any Federal election apply any standard, practice or procedure different from the standards, practices or procedures applied to individuals similarly situated who have been found by State officials to be qualified to vote.

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

"(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual wholly in writing and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within [twenty] five days of the submission of his written request made within the period of time during which records and papers are required to be retained and preserved pursuant to Title III of the Act of May 6, 1960 (74 Stat. 88).

"(3) For purposes of this subsection—

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

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

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

(b) Insert immediately following the period at the end of the first sentence of subsection (c) the following new sentence: "If in any such proceeding literacy is a relevant fact it shall be *conclusively* presumed that any person who has not

been judged an incompetent and who has completed the sixth grade in a school accredited by any State or Territory or the District of Columbia where instruction is carried on predominantly in the English language, *or in a school maintained by any subdivision of the State,* possesses sufficient literacy, comprehension, and intelligence to vote in any Federal election as defined in subsection (f) of this section *and such person shall not be required to take any literacy test as defined in (a) (3) of this section.*

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

"(f) Whenever in any proceeding instituted pursuant to subsection (c) the complaint requests a finding of a pattern or practice pursuant to subsection (e), and such complaint, or a motion filed within twenty days after the effective date of this Act in the case of any proceeding which is pending before a district court on such effective date, (1) is signed by the Attorney General (or in his absence the Acting Attorney General), and (2) alleges that in the affected area fewer than fifteen percent of the total number of voting age persons of the same race as the persons alleged in the complaint to have been discriminated against are registered (or otherwise recorded as qualified to vote), any person resident within the affected area who is of the same race as the persons alleged to have been discriminated against shall be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State laws to vote, and (2) he has since the filing of the proceeding under subsection (c) been (A) deprived of or denied under color of law the opportunity to register to vote or otherwise qualify to vote, or (B) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any Federal or State election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote; provided that in the event it is determined upon final disposition of the proceeding, including any review, that no pattern or practice of deprivation of any right secured by subsection (a) exists, the order shall thereafter no longer qualify the applicant to vote in any subsequent election.

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

"An application for an order pursuant to this subsection shall be heard *and decided by the court* within ten days, and , *if less than ten days remain before an election,* the execution of [any] *the* order disposing of such application shall not be [stayed if the effect of such stay would be to delay the effectiveness of the order beyond] *delayed past* the date of [any] *this* election, *provided it is one* at which the applicant would otherwise be enabled to vote. *In no case under either subsection (f) or subsection (e) shall the court fail to finally decide an application for an order within twenty five days from the date of application. All such decisions shall be appealable forthwith.*

"*In hearing and deciding such applications* the court [may] *shall* appoint [one or more] *as many* persons *as are required,* to be known as temporary voting referees, to receive applications pursuant to this subsection and to *immediately* take evidence and *to immediately* report to the court findings as to whether at any election or elections (1) any applicant entitled under this subsection to apply for an order declaring him qualified to vote is qualified under State law to vote, and (2) he has since the filing of the proceeding under subsection (c) been (A) deprived of or denied under color of law the opportunity to register to vote or otherwise qualify to vote, or (B) found not qualified to vote by any person acting under color of law. The procedure for processing applications under this subsection and for the entry of orders shall be *as nearly as practicable* the same as that provided for in the fourth [and fifth] paragraphs of subsection (e).

"In appointing a temporary voting referee the court shall make its selection from a panel provided by the Judicial [Conference] *Council* of the circuit. Any temporary voting referee shall be a resident [and a qualified voter] of the State in which he is to serve. He shall subscribe to the oath of office required by Revised Statutes, section 1757 (5 U.S.C. 16) and shall to the extent not inconsistent herewith have all the powers conferred upon a master by Rule

53(c) of the Federal Rules of Civil Procedure. The *rate of* compensation to be allowed any persons appointed by the district court pursuant to this subsection *or subsection* (e) shall be fixed by the [court] *Judicial Council of the Circuit* and shall be payable by the United States. In the event that the district court shall appoint a retired officer or employee of the United States to serve as a temporary voting referee, such officer shall continue to receive, in addition to any compensation for services rendered pursuant to this subsection, all retirement benefits to which he may otherwise be entitled.

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

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

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

"(h) In any civil action brought in any district court of the United States under Section 2004 of the Revised Statutes, as amended, and Title III of the Act of May 6, 1960 (74 Stat. 88), wherein the United States is a plaintiff, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

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

"The Judicial Council of the Circuit is required to exercise its supervisory powers over the courts within its circuit to assure the prompt and effective disposition of all proceedings under this section."

SEC. 3. If any provision of this Act is held invalid, the remainder of this Act shall not be affected thereby.

COMMENTS ON PROPOSED AMENDMENTS TO THE CELLER VOTING BILL, H.R. 5455

(1) It is felt that the limitation in (a)(2)(B) restricting the errors and admissions to records and papers, etc., is an open invitation to the voting authorities to use other means of employing immaterial errors or omissions.

(2) In (a)(2)(C) the 25-day period is far too long for effective redress. Five days is sufficient and imposes no undue burden on the voting authorities.

(3) In the new sentence to be added to subsection (c) the addition of "conclusively" eliminates any procedural delay or difficulty. And the further language concerning the maintenance of a school by any State subofficial is needed to prevent the State from intentionally keeping Negro schools unaccredited. And the final clause added to subsection (c) makes it explicitly clear that a sixth-grade education is in lieu of any of the broad "literacy tests" as defined in (a)(3)(C).

(4) The amendments to the third paragraph of subsection (f) compel final action by the court and referee combination within 10 days or less, if an election is soon.

(5) The two new sentences to be added to paragraph 3 of subsection (f) effectively provide an overall limitation upon any delay by either a temporary or permanent referee and provide for immediate and unquestioned right of appeal.

(6) The additional language and amendments to the first sentence of paragraph 4 of subsection (f) makes mandatory the referee appointment and strongly emphasizes the requirement of immediate action.

(7) The amendments to the second section of paragraph 4 of subsection (f) give more flexibility and omit the unnecessary and dilatory requirements of the former paragraph 5 of subsection (e).

(8) The amendment to the first sentence of paragraph 5 of subsection (f) changes the selecting agency from the Judicial Conference which includes most of the district judges in the circuit, to the Judicial Council, which is smaller, more efficient, effective, and detached and is composed of all of the circuit judges in the particular circuit. The second sentence in said paragraph is amended to delete the "qualified voter" requirement for a temporary referee, since this may affirm discriminatory State action. The amendments to the fourth section put the rate of compensation of temporary or permanent referees in the hands of the Judicial Council and remove them from the control of the district judge.

(9) The amendments to the first sentence of pargraph 6 of subsection (f) greatly broaden the scope and effectiveness of the orders that are issued by the court and lengthen their time of effectiveness. The addition of the word "remedial" makes more precise the meaning of the second sentence.

(10) The amendments to the seventh paragraph of subsection (f) increase its scope to subsection (e) and have the net effect of allowing the State as a whole to qualify as an "affected area." This means that pending suits in Mississippi and other States against statewide officials would permit the entire States to qualify for the relief provided in the section.

(11) The proposed new paragraph to subsection (h) makes mandatory action by the Judicial Council of the circuit, composed of all the circuit judges of the circuit, to do whatever is necessary to assure prompt and effective relief under the section.

APPENDIX A

SURVEY: CURRENT FIELD WORK, SPRING 1963

FIELD WORK IN SOUTHWEST GEORGIA

This project—now operating in Terrell, Lee, Sumter, and Dougherty Counties—began in October 1961, after Charles Sherrod and Charles Jones went to Albany to set up a voter registration program. Albany is the only significant urban area in a predominantly agricultural section of Georgia which traditionally was the slave trading center for the State; it is in the Georgia Black Belt, a traditionally violence ridden area. Albany was seen as the center for operation in the rural areas around it and early activity there led to the events of violence and protest of last yea

Now the project in cives 12 full-time field secretaries who rotate from the central office in Albany to each county. The Albany office at 504 South Madison, houses four of the field secretaries, functions as the main communication and coordination center, and acts as a secretariat for production of field reports, financial reports and recordings, and other secretarial work. The house has four very small rooms, no hot water, and a kerosene stove. The other field secretaries, with the exception of the two who live at the interracial Koinonia Farm in Americus, live with local people in the counties.

Sherrod supervises the entire project from Albany, conducts voter-registration work in Dougherty County, and maintains communication between the counties. In addition to Sherrod, the other fieldworkers in this area are:

Prathia Hall, 22, Negro, from Philadelphia, divinity student at Temple University.
Jack Chatfield, 20, white, from Bradford, Vt., student at Trinity College
Carver Neblett, 19, Negro, student at Southern Illinois University
John Churchville, 21, Negro, from New York City, student at Temple University
Joyce Barrett, 24, white, from Philadelphia, graduate of Temple University
Don Harris, 21, Negro, from New York City, graduate of Rutgers University
Ralph Allen, 22, white, from Melrose, Mass., student at Trinity College
Eddie Brown, 20, Negro, from Albany, Ga., student at Monroe High School
Faith Holseart, 20, white, from Brooklyn, N.Y., student at Barnard College
Alphonzo Hubbard, 17, Negro, from Albany, Ga., student at Monroe High School
Joni Rabinowitz, 20, white, from New Rochelle, N.Y., student at Antioch

The techniques of operating in each county are much the same. All workers hold mass meetings at least once a week in local churches (and in tents, too,

where the churches were burned last summer) for several reasons: To initiate people in voter registration work, to bring speakers, to sing, to share fellowship, and often to mitigate fear. They hold voter registration classes at least once a week to teach people to answer the various questions which will confront them on the registration form and to fill out forms. They canvass from door to door, a time-consuming process of encouraging people to register—often spending afternoons with one or two individuals getting to know them and creating the feelings of trust and confidence which are the necessary first steps for registrants. And then going back again and again until the person will finally come to a meeting or a citizenship class or go to the registrar. As in nearly all SNCC projects, efforts are made to meet and organize young people, a particularly important job in Georgia where the voting age is 18. They are then recruited to help canvass and help with other aspects of the project. Special efforts are being made to reach the teachers, a group with a tradition of hesitancy because their jobs are directly dependent on the State and local officials (white) but a group which could register and could assume leadership if they could be reached. And, of course, the local ministers and other leaders are involved as much as possible in the day-to-day work of the project. All of these mean time and effort and more hope than the situation often seems to warrant.

Canvassing in rural areas was being done on foot; now cars are available in the counties. Workers often travel 200 miles a day, mostly on rural roads. A great deal of time is spent just getting people out of jail, documenting stories of threats and losses of jobs on the part of applicants, and dealing with the other problems of working in this part of the South on this kind of project. The staff hopes that harrassment will stay slow enough to allow expanding the staff and moving into Baker County in the summer.

Statistical outline of counties (1960)

	Dougherty	Sumter	Terrell	Lee
Population total	75,680	24,652	12,742	6,20
Percent nonwhite	36	52.8	64.4	62.
Eligible Negroes who are registered	2,858	501	51	2
Median family income:				
All	$4,401	$2,950	$2,057	$2,43
Nonwhite	$2,430	$1,598	$1,313	$1,64
Median school years completed:				
All	10.5	8.4	7.6	6.
Nonwhite	5.9	5.0	4.5	4.
Percent nonwhite families earning under:				
$1,000	20	28	40	
$2,000	40	64	70	
$3,000	60	84	87	7
Percent farmed land owned by:				
Whites	74	72	52	
Nonwhites	26	28	48	5
Percent of farmers who are tenants:				
White	8.7	13.5	17.4	15.
Nonwhite	44.5	62.5	77.7	63.

Sources for further information: Albany, Georgia, by Howard Zinn. An account of activities in Albany up to the middle of last spring. Available from the Southern Regional Council, 5 Forsyth Street, Atlanta Ga.

Albany, Georgia, by Howard Zinn. An updating of events there through last summer and an analysis of the role of the Federal Government in Albany. Same source.

U.S. Civil Rights Commission *Reports*, especially, the volume on Voting, ($1). Available from the U.S. Government Printing Office, Washington 25, D.C.

SNCC FIELDWORK IN SOUTH CAROLINA

In December 1962, Reginald Robinson, a Baltimore, Md., native who has been working with SNCC for 2 years in Mississippi, Maryland, and Georgia, went to Orangeburg, S.C., to help with voter registration in that city and to make contacts for SNCC in the State.

Orangeburg was a center for the sit-in movement in 1960 and 1961. The two colleges in that city, Claflin College and South Carolina State College, produced many young leaders, including SNCC Chairman Charles McDew. However, the State soon began to crackdown on South Carolina State, even building a fence between it and the more liberal and privately owned Claflin. Students did remain somewhat active in voter registration, however. This year a statewide program has been developed by various civic groups and clubs as part of the

emancipation centennial program of Negro groups in the State. Reggie went to work with this united effort at registering voters in Orangeburg.

Besides doing basic ward work and organization, Reggie has acted as campus contact in the State. Hopefully, the students he has reached can come together later for a statewide SNCC conference. The hope is that they will return to campuses which will then provide leadership for voter registration work in the areas where they are located and perhaps develop direct action campaigns.

Negroes register with little difficulty in Orangeburg, but the county has received little attention as yet. Funds are needed for an additional worker for the county.

Statistical survey of Orangeburg County

Population total	68,559
Percent Negro	60.1
Negroes registered	[1] 2,220
Percentage of Negroes registered	[1] 11.6
Median family income	$2,603
Percentage of population with income under $3,000	56.0
Urban	20.2
Rural farm	30.5

[1] 1958 figures.

Two additional facts of interest: The county is one of the traditionally Republican counties in the State.

The only union we have been able to discover is at Hygrade Food Products, a United Packinghouse Workers local. It is an integrated local.

SNCC WORK IN CENTRAL ALABAMA

In early fall of 1962, Bernard Lafayette went to Selma, Ala., to investigate the possibility of a voter registration workshop in Selma, a center of an agricultural district in central Alabama, a black belt area much like Southwest Georgia. The local community proved receptive and in February 1963, three field secretaries began work. Bernard Lafayette (an ordained minister, student at Fisk University, former freedom rider and leader of the Nashville movement), his new wife, Colia Liddell Lafayette (former voter registration worker in Mississippi and student at Tougaloo College, a native Mississippian), and Frank Holloway (a former leader of the Atlanta University students).

They set up shop and living arrangements in a small apartment and began biweekly voter registration classes. Thus far, about 150 local residents have attempted to register.

As with many SNCC projects, one of the most successful aspects of the project has been work with young people. Building on an already existing gang structure, the staff has developed a democratically controlled group of high school age students who have aided with registration and held their own weekly citizenship training meetings. With the help of these students and a group of interested adults, the entire town of Selma has almost been canvassed for the first time. Several of the students came to the SNCC conference for their first interracial group experience, an experience which in itself developed new leadership and new expectations.

Until recently, police harrassment was minimal. In fact, meetings were being held in a house directly opposite the police station. However, while the staff was at the SNCC conference, one local resident's house received a shotgun blast. A taxi driver was recently arrested for possessing a voter registration manual, and rumors of intimidation against Negroes interested in the drive have begun. It is likely that open violence will begin soon in this Negro majority area.

The project was envisioned as serving the town of Selma and, later Dallas and Wilcox counties, rural areas of high Negro concentration. Word of the arrival and work of the three SNCC staff members spread rapidly and Negro farmers in Wilcox County have asked for help. Bernard and Frank took six applicants to the county courthouse in Camden in late March; this was the first time Negroes had tried to register in this county in 50 years. Work will begin in the rural areas on a regular basis when canvassing in Selma has been completed. Visits to Wilcox County have already introduced the staff to many small communities, including some which have remained so isolated that living conditions and technical knowledge remain approximately the same as before

slavery was abolished. Rural area work has been hampered by the lack of a car, even though supporters in Selma have been generous in loaning theirs.

Selma houses several Negro schools (junior colleges and nursing schools) which will probably provide valuable leadership for the community when the heads of the schools can be convinced to risk some of their security for the benefit of the less fortunate Negroes in the area.

Statistical survey of counties

	Dallas	Wilcox
Population total	56,667	18,739
Percent nonwhite	57.7	77.9
Eligible Negroes	130	0
Percent who are registered	.9	0
Median family income:		
All	$2,846	$1,550
Nonwhite	$1,393	$1,081
Median school years completed:		
All	8.7	6.7
Nonwhite	5.8	5.5
Percent nonwhite families earning under:		
$1,000	37	45
$2,000	69	76
$3,000	83	87
Percent farmed land owned by:		
White	78	86
Nonwhite	22	14
Percent farmers who are tenants:		
White	15	11.3
Nonwhite	72.7	61.5

Sources for further information: U.S. Civil Rights Commission reports, especially vol. I, "Voting."

Since 1958 the NAACP has been under injunction in Alabama, so there has been little ongoing action or information gathering. Other groups, also, have maintained little program there. We hope to make more information available as the project progresses.

SNCC FIELDWORK IN ARKANSAS

In October 1962, the Arkansas Council on Human Relations requested that SNCC send a field secretary to Little Rock. They felt there was a need for someone to organize the students there who had done nothing since their unsuccessful sit-ins in 1960. Bill Hansen, a student at Xavier and a veteran of the direct action campaigns in Albany and on the Eastern Shore of Maryland, was sent.

In November, students from Philander Smith College and Shorter Junior College formed the Student Freedom Movement with Bill's help. They began sit-ins at Woolworth's, Walgreen's, and McClellan's lunch counters. The racial crisis surrounding the integration of Central High School in 1957 had led to a marked decline in the economic development of Little Rock. An active white citizens council was threatening violence. These factors led to the city being willing to talk with the students. However, the city was not willing to yield, and sit-ins began again in December. Worth Long (SNCC executive committee member and chairman of the Student Freedom Movement) and Hansen were arrested. They chose to stay in jail and the white powers finally agreed to work out a plan for the opening of lunch counters and other facilities and the increased employment of Negroes if the two would leave jail. On January 2, 1963, three lunch counters, one restaurant a bowling alley, and several hotels desegregated. The Student Freedom Movement is continuing negotiations.

With Little Rock reactivated, Hansen moved to Pine Bluff, where he met with students at Arkansas A. M. & N. University, a Negro State school. Sit-ins began in Pine Bluff on February 1 at the local Woolworth's. Eight days later 15 students were expelled from A. M. & N.

Eight of these fifteen, with Hansen and Ben Grinnage (a SNCC staff member and former student at Philander Smith College), formed the Pine Bluff Student Movement. As adult and community support increased, the Pine Bluff Movement was formed. This communitywide organization developed an all out-attack on segregation. Their projects have included private restaurants as well as lunch counters, two movie theaters, and hotels. Over 50 people have been arrested during demonstrations there since February 1, 1963.

Hansen, Grinnage, and the eight expelled students live cooperatively in two houses in Pine Bluff. They hope funds will be available this summer to continue

the direct action program and begin a voter registration drive in Pine Bluff. Poll taxes can be paid through August for the November election. If the staff can be maintained, including the students who were expelled and would like to continue with the movement, and if a car can be found, work can begin in surrounding counties which will lay the groundwork for the development of voters leagues and voter registration programs in the winter. The abolition of the poll tax will pave the way for a strong program in registration in Arkansas.

Jefferson County (Pine Bluff)

Population, 81,373; percent of Negroes, 43.6 percent; distribution, 57.4 percent urban, 10.8 percent rural farm; eligible Negroes registered, 6,589 (37.6 percent).

SNCC FIELDWORK IN MISSISSIPPI

Approximately 20 Negro students are working now as full-time secretaries for SNCC in Mississippi. They are distributed unevenly in six counties: Holmes (Lexington), Leflore (Greenwood), Bolivar (Shaw), Marshall (Holly Springs), Sunflower (Ruleville), and Washington (Greenville). Unevenly because since the shooting of James Travis most of the workers have come to Greenwood to maintain a concentrated program in the city.

The program started in the summer of 1960 when Robert Moses, a Harvard educated teacher, left his work in New York and went to Mississippi. Moses was instrumental in initiating voter registration programs in Amite and Liberty counties. In June 1961, under Moses' directorship, several organizations coalesced to form the Council of Federated Organizations (COFO). Moses is director, and most of COFO's staff are SNCC field secretaries.

The SNCC workers in Mississippi are:

Robert P. Moses, 27, graduate of Hamilton College, M.A. from Harvard.
Samuel Block, 25, Cleveland, Miss., student at Mississippi Vocational College.
Willie Peacock, 25, Charleston, Miss., graduate of Rust College.
Cleveland Banks, Greenwood, Miss.
Lawrence Guyot, Jackson, Miss.
Jesse Harris, 20, Jackson, Miss.
Curtis Hayes, 21, McComb, Miss., student at Tougaloo College.
James Jones, 22, Jackson, Miss.
Curtis Hayes, 21, McComb, Miss., student at Tougaloo College.
Landy McNair, Jackson, Miss.
Lafayette Surney, 19, Ruleville, Miss.
James Travis, 20, Jackson, Miss., student at Tougaloo College.
David Vasser, Greenwood, Miss.
Hollis Watkins, 21, McComb, Miss., student at Tougaloo College.
Diane Nash Bevel, 24, Chicago, Ill.
Frank Smith, 20, Atlanta, Ga., student at Rust College.
Charles McLaurin, 22, Jackson, Miss.
Charles Cobb, 20, Springfield, Mass., student at Howard University.
Emma Bell, 19, McComb, Miss., student at Campbell Junior College.
John Ball, Greenwood, Miss.

The number of native Mississippians on this list is one of the most encouraging aspects of our work thus far in the State, for it shows that indigenious leadership can be developed in even the most difficult areas.

Many of the registration work activities in Mississippi are the same as those in southwest Georgia; especially similar is the need for tedious canvassing—a job whch is not just leafletting, but spending hours with potential registrants convincing them that being a citizen is worth risking one's life for. Similar, too, is the need to deal with harassment calmly and patiently as part of the day's work. Certain differences, of course, pertain: At this point it is too dangerous for whites to participate in the project in Mississippi—too dangerous for them and too dangerous for the Negroes who would be working with them. Also, the terror here is at a much higher pitch. This means not only more outright violence, but more difficulty in obtaining a place to meet and more difficulty in convincing local leaders (ministers, teachers, doctors, and other professionals) to take an active stand.

SNCC's Greenwood headquarters are located at 708 Avenue N., Greenwood. Individual staff members who are working in several smaller communities live in Greenwood and travel by car to adjoining counties. Other staff members live in the communities where they work, but are often forced to move from home to home. The Greenville workers have secured a small house where they hope

to house summer workers. Each town where SNCC is working has some kind of office, often just part of the staff member's room. Each of these is currently in need of office equipment.

Statistical outline of counties (1960)

	Leflore	Washington	Marshall	Holmes	Sunflower
Population total	51,813	70,504	25,106	33,301	56,031
Percent nonwhite	64.6	55.2	70.4	72.0	67.8
Percent eligible Negroes	163	2,563	607	61	161
Percent who are registered	1.2	12.4	.2	.5	1.2
Median family income:					
All (average white and nonwhite)	$2,285	$3,112	$1,784	$1,453	$1,790
Nonwhite	$1,400	$1,597	$1,183	$1,095	$1,126
Median school years completed					
All	7.7	8.4	7.7	7.5	6.9
Nonwhite	5.1	5.2	6.3	5.8	4.7
Percent nonwhite families earning under:					
$1,000	36	31	45	55	44
$2,000	71	60	70	84	80
$3,000	89	80	84	90	91
Percent of the farmed land owned by:					
Whites	90	92	70	88	88
Nonwhites	10	8	30	12	12
Percent of farmers who are tenants:					
White	30	19	29	17	19
Nonwhite	92	72	76	54	80

Sources for further information: "Revolution in Mississippi," by Tom Hayden, available from Students for a Democratic Society, 112 East 19th Street., New York, N.Y. An account of SNCC work in South Mississippi. (25c.)

"Report on Leflore County" by Constancia Romilly, available from the Northern Student Movement, Box 404A Yale Station, New Haven Conn. An outline of the status of the Negro in Leflore prepared for distribution in support of food and clothes drives for that area.

"Mississippi Violence and Human Rights," a reprint of a Southern Regional Council release documenting 64 acts of violence in Mississippi over the course of the last year. Available from Committee for the Distribution of the Mississippi Story, Box 564, Atlanta, Ga. (7c per copy.)

"Reports of the United States Civil Rights Commission, 1961," especially "Voting, Volume 1." Available from U.S. Government Printing Office, Washington, D.C. ($1.)

SNCC FIELDWORK AT LARGE: THE FREEDOM SINGERS

Besides periodic mail appeals, SNCC has two main sources of support for its direct attacks against segregation. These are the Friends of SNCC groups in several northern cities and on college campuses, and the Freedom Singers. The Freedom Singers are four young people who sing the freedom songs that typify the southern antisegragation struggle. Because their work is as important and as difficult in many ways as that of the students working in the South and because we consider their work of educating the North so important to the movement, we consider them part of the field staff.

Each of the Freedom Singers played a vital role in the movement even before they began to sing together for SNCC.

Cordell Reagon, 19, Nashville, Tenn., was one of a group of Nashville students who took up the freedom rides after other groups had abandoned the trip in Montgomery as too dangerous. He was one of the first two SNCC workers—with Charles Sherrod—to go to Albany in 1961, and he worked in Albany throughout the crises there.

Rutha Harris was jailed during the Albany movement's demonstrations, as was Bernice Johnson. Both are natives of Albany.

Chuck Neblitt, a former leader of student protests in Carbondale, Ill., worked in SNCC's Mississippi project before joining the group.

The Freedom Singer's fund-raising efforts are indeed necessary. But just as important are the personal contacts they make during their tours of northern college campuses. They communicate, through their songs, the urgency, immediacy, and sincerity of the student movement in the South.

They debuted February 1, 1963, at Carnegie Hall, and since then have appeared on television, radio, and in scores of concerts. They have recorded an album of their songs which will be ready for release in the fall.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

NO. —

ROBERT MOSES, SAM BLOCK, CHARLES MCLAURIN, CHARLES COBB, JESSE HARRIS, HOLLIS WATKINS, LAFAYETTE SURNEY AND WILLIAM HIGGS, PLAINTIFFS, V. ROBERT F. KENNEDY, ATTORNEY GENERAL OF THE UNITED STATES AND J. EDGAR HOOVER, DIRECTOR OF FEDERAL BUREAU OF INVESTIGATION OF THE UNITED STATES OF AMERICA, DEFENDANTS

COMPLAINT

JURISDICTION

1. Jurisdiction is based upon Title 28, Sect. 1344(3), U.S. Code, and Title 28, Sect. 1361, U.S. Code.

NATURE OF CAUSE OF ACTION

2. This is an action in the nature of mandamus to compel the defendants, the Attorney General of the United States and the Director of the Federal Bureau of Investigation, to perform duties owed to plaintiffs and to the class which they repersent; i.e., to protect plaintiffs and their class from deprivation of their constitutional rights, by the investigation, arrest, and prosecution of offending law enforcement officers of the state of Mississippi and of its political subdivisions and offending residents of the state of Mississippi acting individually or collectively and/or in concert and conspiracy with said law enforcement officers. By failing and refusing to perform such duties, defendants have in effect sanctioned and perpetuated a consistent pattern on the part of the law enforcement officials of the state of Mississippi and/or private and public citizens thereof inimical to plaintiffs' civil rights and liberties.

PLAINTIFFS

3. Plantiff Robert Moses is a citizen of the state of New York, is a member of the Negro race, and resides at 901½ Nelson St., Greenville, Mississippi.

4. Plaintiff Sam Block is a citizen of the state of Mississippi, a member of the Negro race, and resides at 807 Rear Miller St., Greenwood, Mississippi.

5. Plaintiff Charles McLaurin is a citizen of the state of Mississippi, a member of the Negro race, and resides at 909 Reden St., Ruleville, Mississippi.

6. Plaintiff Charles Cobb is a citizen of the State of Massachusetts, is a member of the Negro race, and desides at 901½ Nelson St., Greenville, Mississippi.

7. Plaintiff Jesse Harris is a citizen of the state of Mississippi, is a member of the Negro race, and resides at 909 Reden St., Ruleville, Mississippi.

8. Plaintiff Hollis Watkins is a citizen of the state of Mississippi, a member of the Negro race, and resides at 714 Rose St., Jackson, Mississippi.

9. Plaintiff Lafayette Surney is a citizen of the State of Mississippi, a member of the Negro race, and resides at 901½ Nelson St., Greenville, Mississippi.

10. Plaintiff William Higgs is a citizen of the state of Mississippi, a member of the Caucasian race, and resides at 951, Terrace Court, Jackson, Mississippi.

DEFENDANTS

11. Defendant Robert F. Kennedy, the Attorney General of the United States, is a resident of the District of Columbia, with offices in the Department of Justice Building, Washington, D.C.

12. Defendant J. Edgar Hoover, the Director of the Federal Bureau of Investigation, is a resident of the District of Columbia, with offices in the Department of Justice Building in Washington, D.C.

13. Defendants are being sued in their official capacities.

THE FACTUAL SITUATION

14. All plaintiffs have been and are at present actively working in a voter registration drive in the state of Mississippi, to register Negro citizens of the United States and of Mississippi. In order to prevent the said voter registration drive from being successful, and to thereby knowingly deny plaintiffs and

those similarly situated of their civil rights, white law enforcement officers and private citizens of the state of Mississippi have, and are continuing to, harass, intimidate, threaten, attack, arrest, jail, and unconstitutionally convict the plaintiffs and others similarly situated. A few of the typical incidents in which Mississippi law enforcement officers and/or private citizens of the state of Mississippi knowingly have deprived and are depriving plaintiffs and others similarly situated of their constitutional right to carry on a voter registration drive and other constitutionally protected activities in the area of race relations are set forth in paragraphs 15 through 28, inclusive.

15. In the fall of 1961, plaintiff Robert Moses was beaten in Liberty, Mississippi, by a group of citizens which included county officials acting under the color of law while taking two Negro farmers to the courthouse to register. This act resulted in severe injuries to plaintiff's head and in the intimidation of prospective Negro voters in Amite County.

In the summer of 1962 plaintiff Moses passed out leaflets in Indianola, Mississippi, urging Negros to register to vote. Plaintiff was arrested by local law enforcement officers. He was prosecuted and unconstitutionally convicted for this activity under the charge of passing out handbills without a permit.

16. Plaintiff Sam Block, while enaging in Negro voter registration activity in Greenwood, LeFlore County, Mississippi, has been repeatedly threatened, arrested, and jailed by the local law enforcement officials for this activity. During the summer of 1961, plaintiff Block and two other voter registration workers barely escaped from a white lynch mob, early on the morning of August 16, 1962, by leaping out of a second-story window. The mob was guided by and assisted by the local law enforcement officials. Plaintiff Block immediately contacted Mr. John Doar of the Civil Rights Division of the United States Department of Justice, who told plaintiff Block that the Justice Department could not act until someone was hurt and therefore denied plaintiff Block's request for help. Plaintiff Block has continued to suffer at the hands of the local law enforcement officers. The Department of Justice and the Federal Bureau of Investigation, although continually requested by plaintiffs and others to prevent these actions by local law enforcement officers, has failed and refused to do so.

17. Plaintiff Charles McLaurin was recently arrested by local law enforcement officers in Clarksdale, Coahoma County, Mississippi, for taking Negroes to the courthouse to register. The voter registrar pointed out plaintiff to the police.

Plaintiff McLaurin was also unconstitutionally arrested, prosecuted, and convicted for passing out leaflets urging Negroes to register to vote in Indianola, Sunflower County, Mississippi, by local law enforcement officers under the charge of passing out handbills without a permit.

Plaintiff McLaurin, while peacefully picketing against segregation and while petitioning the government of the United States to redress his grievances, was also arrested and dragged off the steps of the Federal Building in Jackson, Mississippi, on or about July 1962, by city policemen, taken unconstitutionally to jail, and subsequently convicted of breach of the peace on evidence which failed to show the commission of any unlawful acts. United States marshals, agents of the Federal Bureau of Investigation, and United States Attorneys were in said Federal Building but made no effort to prevent his arrest. During all this time plaintiff McLaurin was on property under the exclusive jurisdiction of the United States government.

18. Plaintiff Charles Cobb has been unconstitutionally arrested, threatened, and harassed during the last three months by the Mayor and other law enforcement officials in Rulesville, Sunflower County, Mississippi, to prevent plaintiff from continuing to register Negro voters. Some of plaintiff Cobb's associates have been ambushed with firearms and have barely escaped being killed. One associate was shot in the head, but survived. Attention has been called to this latter incident by the President of the United States.

19. Plaintiff Jesse Harris on June 20, 1962, was arrested and charged with contempt of court for sitting on the white side of the courtroom of the Hinds County Court in Jackson, Mississippi. Plaintiff was sentenced to pay a $100 fine and to serve 30 days at the Hinds County Penal Farm, where he was beaten by guards because of his participation in voter registration and other civil rights activities. The Federal Bureau of Investigation has investigated this incident, but both it and the rest of the Department of Justice have failed and refused to take any action.

20. Plaintiff Hollis Watkins, while peacefully carrying a sign protesting segregation and the arrest of Brenda Troois, a fellow student, was arrested in Pike County, Mississippi, along with 115 other Negro public school children on October 4, 1961, and charged and unconstitutionally convicted of breach of

peace. Plaintiff Watkins is currently engaged in Negro voter registration and segregation protest activity and is being intimidated by local law enforcement officers.

21. Plaintiff Lafayette Surney has been working for the last five months in Negro voter registration activity in the Delta region of the state of Mississippi. Plaintiff Surney has been and is being unconstitutionally arrested, threatened and intimidated by local law enforcement officers for his participation and his activity.

22. Plaintiff William Higgs was arrested by the city and county police in Clarksdale, Coahoma County, along with four college students, one of whom was a Negro girl, in June, 1962. Plaintiff Higgs was in Clarksdale in the capacity of legal counsel to the congressional campaign of Merril W. Lindsay, the first Negro congressional candidate in this area in this century. Plaintiff Higgs, together with the four students, was arrested without charges, was not taken before any magistrate, had his life threatened and was held incommunicado for more than twenty hours.

23. The defendants' agencies, the Department of Justice and the Federal Bureau of Investigation, have investigated and have been fully informed through plaintiffs and many others to deprive Negroes of their constitutional rights. The defendants' agencies have been repeatedly requested by plaintiffs and by others to arrest and prosecute the offending local and state law enforcement officers and/or any private citizens acting individually or collectively and/or in concert and conspiracy with said law enforcement officers, but have, in all cases, failed and refused to do so. In most cases, defendants' agencies were notified in advance by plaintiffs and others preparing to exercise their constitutional rights under threat of action by local law enforcement authorities depriving plaintiffs and others of their constitutional rights. On the spot action by defendants' agencies, particularly the United States Marshals and the agents of the Federal Bureau of Investigation, could have prevented and can prevent these incidents.

Plaintiffs are informed and verily believe that defendants' agencies have systematically refused to take action not only in connection with the incidents alleged in the complaint but with similar incidents occurring in the state of Mississippi generally.

STATEMENT OF CAUSE OF ACTION

24. The defendant Robert F. Kennedy, Attorney General of the United States, is the chief executive officer of the United States Department of Justice and directs the activities of United States Marshals, United States Attorneys, and the Civil Rights Division of the Department of Justice (Title 28 U.S.C., 547(c) and 507(b)). Defendant J. Edgar Hoover, Director of the Federal Bureau of Investigation, directs the activities of the agents of said Bureau.

United States Marshals, agents of the Federal Bureau of Investigation, and United States Attorneys, are authorized and required by law to arrest, imprison, and institute prosecutions against all persons who willfully subject any inhabitant of any State to the deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States. (Title 42, U.S.C., 1987, 1986, 1988; 18 U.S.C. 242, 241, 3052, 3053; 28 U.S.C. 549).

Defendants and their agents have been repeatedly requested by plaintiffs and others to perform the statutory duties stated in the preceding paragraph, in order that they be protected in carrying on the constitutionally guaranteed activities described in paragraphs 14–23, supra, but they have refused and failed to do so. Plaintiffs bring this action in the nature of mandamus to compel defendants to perform their above statutory duties, with all of the diligence and vigor with which they perform their duties with respect to the enforcement of other laws of the United States.

Defendants and their agents are in possession of the results of extensive investigations by the Federal Bureau of Investigation and other Federal agencies describing in great detail the incidents set out in paragraphs 14 to 23, supra. Defendants are therefore able to perform their above statutory duties.

Plaintiffs and their class have no adequate remedy other than that sought herein.

PRAYER FOR RELIEF

25. Plaintiffs hereby request of the Court an order:

(A) directing the defendant Robert F. Kennedy, Attorney General of the United States, to

(1) direct the United States Attorneys for the Northern and Southern Districts of Mississippi to institute immediately criminal prosecutions against those state and local law enforcement officials and any other persons, public or private, responsible for the deprivations of plaintiff's rights as described above;

(2) direct said United States Attorneys to continue to institute prosecutions against said local state law enforcement officials and any other persons, public or private, who are responsible for the deprivation of the constitutional rights of plaintiffs and other citizens of Mississippi similarly situated;

(3) direct appropriate United States Marshals to arrest and cause to be imprisoned those Mississippi state and local law enforcement officials and any other persons, public or private, responsible for the deprivation of plaintiffs' rights as described above;

(4) direct appropriate United States Marshals to continue to arrest and cause to be imprisoned Mississippi state and local law enforcement officials and any other persons, public or private, who are responsible for the deprivation of the constitutional rights of plaintiffs and other citizens of Mississippi similarly situated;

(5) direct appropriate United States Marshals to arrest and cause to be imprisoned those Mississippi state and local law enforcement officials and any other persons, public or private, who are in the act of depriving plaintiffs and other citizens of Mississippi of their constitutional rights under circumstances similar to those described above, so as to effectively stop the arrests and prosecutions of plaintiffs and other citizens of Mississippi by state and local law enforcement officials and their persecution and harassment by other persons, public or private, which prevent plaintiffs and others from exercising their constitutional rights;

(B) directing defendant J. Edgar Hoover, Director of the Federal Bureau of Investigation, to direct forthwith the appropriate agents of the Federal Bureau of Investigation to arrest and cause to be imprisoned those state and local law enforcement officers of the State of Mississippi, or any other persons, public or private, who deprive or who are in the act of depriving plaintiffs and other citizens of Mississippi of their constitutional rights;

(C) directing defendants to perform their law enforcement duties and to cause those serving under their supervision to perform their respective law enforcement duties, with respect to those laws which are intended to protect individuals from the kind of violations herein complained of, with all of the vigor, diligence and effort devoted to their enforcement of other laws of the United States; and

(D) granting such other and further relief as is appropriate and necessary.

WILLIAM L. HIGGS,
Jackson, Miss.
WILLIAM M. KUNSTLER,
New York, N.Y.
Attorneys for Plaintiffs.

APPENDIX C

REPORT ON LEFLORE COUNTY

VOTER REGISTRATION IN THE DELTA OF MISSISSIPPI

The Mississippi Advisory Committee to the U.S. Commission on Civil Rights in their report of January 1963, "Administration of Justice in Mississippi," as quoted in the Congressional Record (Senate, 1963, pp. 2653–2557) states: (Aspects of discrimination) "include(s) the denial of the fundamental right to vote and have that vote counted in elections. Sixty-five sworn voting complaints from 13 Mississippi counties have been received by the Commission. This is the third highest in the Nation." The voting problem remains serious

in the State of Mississippi. Activity by the Justice Department in Mississippi promises some slow relief in counties where suits have been initiated. (In 1961, the U.S. Commission on Civil Rights reported that voting suits were brought by the Federal Government in Clarke, Forrest, Walthall, and Jefferson Davis Counties, Miss. None of these are in the delta region.) "Yet the State government continues to erect all possible barriers to equal access to the franchise by our Negro citizens. In 1962, the Mississippi Legislature enacted a new law requiring the publication of the names and addresses of all new voting registrants for 2 weeks in a newspaper of general circulation. This law is ostensibly designed to facilitate challenges of registrants on moral grounds. In fact, it can be used to facilitate reprisals against Negroes who seek to register." This was consistent with the trend begun in 1954 when the Mississippi constitution of 1890 was amended to impose more stringent registration qualifications. (See the U.S. Commission on Civil Rights Report on Voting in 1961.)

A further difficulty encountered by the Commission was the lack of figures on voter registration. The Commission found that Mississippi compiles no official records by race on a statewide basis, although, since the registration process requires racial identification, these figures are available to the local officials having charge of voter registration. But local officials have been discouraged from releasing these figures to the Commission. In spite of this difficulty, the Civil Rights Commission revealed some very significant figures in its 1961 report. First, however, we present some general background, especially on Leflore County, the center of the current crisis. This information is also to be found in the 1961 Civil Rights Commission Report on Voting.

In 1961, it was reported that there existed in Leflore an active white citizens council, an NAACP group and a Negro Voters League. These last two were, of course, part of the statewide vote promotion efforts of several organizations, later organized into the Council of Federated Organizations, with Aaron E. Henry as its president and Robert Moses, director. The need seen by SNCC for a voter registration effort in Mississippi which prompted them to join the NAACP in August 1961, will be easily understood after an examination of the facts presented below on Leflore County. Again, these figures are taken from the report on voting issued by the U.S. Civil Rights Commission in 1961.

Mississippi is one of the States to retain the poll tax. Mississippi election laws provide for permanent registration, and require that an applicant "be able to read any section of the Constitution * * * (and) give a reasonable interpretation thereof." That such clauses can be flexibly applied by local registrars to deny the applications of Negro registrants, and have been thus used, can be deduced from the evidence presented here.

Mississippi ranks third as a source of sworn complaints received by the Commission, 43 complaints from 10 counties (as of 1963 this figure had grown to 65 from 13 counties as reported earlier). Five of those counties are in the delta (Bolivar, Hinds, Leflore, Sunflower, and Tallahatchie). The Commission also found strong indications of disenfranchisement of Negroes in these delta counties: Carroll, De Soto, Issaquena, and Tate. There are at least nine Mississippi counties where no Negroes are registered, although they are a large proportion of the population. In Mississippi as a whole, 36.1 percent of the total voting age population (1,170,522) is registered. However, only 6.1 percent of the Negro voting age population (25,921 out of 422,256) is registered. This is a slight, but not encouraging, increase over the 4.4 percent of voting age Negroes registered to vote reported in 1954 by the then Attorney General James P. Coleman.

In Leflore County 56.9 percent of the total voting age population is registered to vote, while only 0.9 percent of the Negro population of voting age is registered. This is even more disturbing when one notes that this figure represents a decrease of 0.7 percent from 1950, or in actual numbers of people, a drop from 297 Negroes registered in 1950 and only 163 registered in 1960. It must also be remembered that Negroes in Leflore represent 64.6 percent of the total county population. It must not be thought that Leflore is atypical in this respect. Looking at neighboring Sunflower County, the home of Mississippi Senator Eastland, we find a similar picture—60.6 percent of the total voting age population is registered, while only 1.2 percent (161 out of 13,524) of the Negro population of voting age is registered.

Obviously something more than the oft-cited voter apathy must account for these extreme figures. The Commission has indeed found other causes.

There is evidence of widespread fear in the Negro community of economic and physical reprisals for attempted registration. They can hardly be blamed for such an attitude, considering the history of lawless violence perpetrated against Negroes in Mississippi. Indeed, Leflore County itself was the locale of the brutal murder of 14-year-old Emmett Till in 1955 for alleged advances made to a white woman. Emmett Till's self-confessed murderers are still free in Mississippi. And in 1959, occurred the 538th lynching of a Negro in Mississippi since 1883. This was the infamous case of Mack Charles Parker, in Poplarville, Pearl River County, in southern Mississippi. Mississippi holds the national record for lynchings.

In addition, there has been constant harassment of voter-registration workers and participants. The form of such intimidation ranges from economic or physical reprisals, or threats of such reprisals, through arbitrary application of the literacy and constitutional interpretation requirements. The complete absence of local justice afforded these people is amply documented in both the Justice section of the U.S. Civil Rights Commission report of 1961 and the more recent report of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights cited earlier.

VIOLENCE STALKS VOTER-REGISTRATION WORKERS IN MISSISSIPPI

The latest outbreak of violence came less than 12 hours after President Kennedy delivered his 6,000 word civil rights message to Congress calling for increased protection of Negro rights and less than 2 weeks after Samuel Block appealed to the Justice Department to send Federal marshals into the area to protect citizens trying to vote.

Staff members of the Student Nonviolent Coordinating Committee (SNCC), working on voter registration in Leflore County, Mississippi, have been the object of a new wave of violence in the past few weeks. The town of Greenwood has been the scene of these recent efforts to terrorize student workers who have also helped to secure food for Negro sharecroppers denied Federal surplus food relief.

On February 25 and 26, over 150 Negroes attempted to register to vote in Greenwood, Miss. This is the largest number of Negroes who have attempted to register in Greenwood or any Black Belt county. Hunger and violence are apparently being used to curtail voter-registration efforts.

Since February 20, 1963:

Four Negro businesses destroyed by fire;
SNCC field secretary sentenced to 6 months in jail;
Student worker shot in the neck when attacked by a passing car; and
Second shooting injures four voter-registration workers.

Four small business places, located on the same street as the Greenwood office of SNCC, were destroyed by fire early Wednesday morning, February 20.

The belief that the real target was the SNCC office finds support in the call reported by Mrs. Nancy Brand, worker in that office. She received an anonymous phone call the morning of the fire from a man who asked if she ever went to the office. When she answered "Yes", the caller said, "You won't be going there any more. That's been taken care of."

The destroyed businesses were Jackson's Garage, George's Cafe, Porter's Pressing Shop, and the Esquire Club.

On February 22, Samuel Block, SNCC field secretary, was arrested in front of his office in Greenwood, Miss. He was taken to an unknown jail and charged with "circulating breach of the peace." When tried on Monday, February 25, the charge was changed to "issuing statements calculated to breach the peace," and Block was sentenced to 6 months in jail and fined $500.

The judge who pronounced sentence told Mr. Block that he would reduce the fine to $250 and suspend sentence if he would leave Mississippi for good. Samuel Block was born and reared in Mississippi.

Samuel Block is 1 of the 20 young Mississippi Negroes working with the Student Nonviolent Coordinating Committee voter-registration program.

Block has been arrested seven times, beaten twice, and was forced to jump from a second story window last August to flee a lynch mob of white men carrying chains, ropes, and iron pipes.

James Travis, 20-year-old SNCC staff member, narrowly missed death when the car which he was driving was shot into by three white men 7 miles outside Greenwood on Thursday evening, February 28.

Travis was accompanied by Robert Moses, director of SNCC's statewide Mississippi registration program, and Randolph Blackwell, field director of southwide voter education project. An untagged 1962 white Buick passed Travis' car on the highway to Greenville, Miss., and fired several blasts into his car. Both front windows were demolished, seven bullets pierced the side of the car, and a bullet passed through Travis' shoulder and lodged at the back of his head, behind the spine. He was operated on the next day at University Hospital in Jackson, Miss.

Four voter registration workers were cut by flying glass when the car in which they were sitting was fired into on Wednesday night, March 7. This was the second such shooting in Greenwood in less than 10 days.

Those cut by the shattered front window of their car were Sam Block, 23, Willie Peacok, 25, Miss Peggy Marye, 19, and Miss Essie Broome, 24. The four young people had just left a church meeting dealing with food and clothing needs of the county.

POPULATION AND ECONOMY

Leflore County is in the center of the delta region of Mississippi. While the Negro population of the State as a whole represents more than 40 percent of the total and in the delta more than 50 percent in Leflore the white population is 16,609 and the Negro population 30,443, or 64.6 percent. It is primarily a rural area with a one-crop economy based on cotton, surviving on a tenant-sharecropper system. Like many such Black Belt counties, the population has been steadily dropping. The discrepancy between opportunities for the white and Negro segments of the population are glaring. An analysis of median family income follows:

Median family income

	Total	White	Nonwhite
United States	$2,619	$3,135	$1,569
Mississippi	1,028	1,614	601
Leflore	918	2,784	595

It is clear from the foregoing that while the Negro population has a median family income not only lower than the national average, but even lower than the Mississippi average, the white population has an average which exceeds the national overall median family income. In 1959, 310,080 acres of land were owned by whites and only 24,116 by Negroes, while it is reported that the only land available for building by Negroes is located on the outskirts of town.

Less than 50 percent of all accommodations in Leflore, occupied and vacant, were tallied by the census as "sound with all plumbing facilities." Of the remaining livable dwellings, Negroes occupy 21.4 percent, while whites, who represent only 35.4 percent of the population, occupy 78.3 percent of these livable dwellings. Of all Negro housing, 82.8 percent has been classified as "substandard," and it has been noted that only 13.4 percent of Negro dwellings are owner occupied (a symptom of the tenant-sharecropping system mentioned above.)

EDUCATION

Another area where we find glaring inequalities is that of education. In Leflore County, of the 68 elementary schools for Negroes, 41 are run on the inadequate 1- or 2-teacher system. None of the five high schools for Negroes in the county are accredited by the regional association, whereas both the white high schools are. The teacher-pupil ratio is 1 to 28 in the Negro schools and 1 to 23 in the white schools. Informants report that the Negro schools were physically equal to or newer than the white schools, but the Commission points out that this is a pattern frequently found in communities which are attempting to avoid integration in educaiton. Even in these new schools, it is reported that adequate library, recreation, and laboratory faciilties are sorely

lacking. An analysis of median years of school completed by persons age 25 or over follows:

Median years of school completed by persons age 25 or over

	Total	White	Nonwhite
United States	9.3	9.7	6.9
Mississippi	8.1	9.9	5.1
Leflore	6.4	11.9	4.3

Again we find, as in the case of median family income, that the white population exceeds the total U.S. average, and in this case even the white median for the United States as a whole, while the Negro population falls under both the U.S. and the Mississippi median for nonwhites.

PUBLIC FACILITIES

Community facilities for Negroes in Leflore are totally inadequate. There is no library in Leflore for Negroes, public beaches and municipal pools are strictly for the use of whites, all theaters, restaurants, hotels, and motels are segregated, and the facilities in both the bus terminal and the airport are separate.

On March 15, a staff lawyer for the Civil Rights Commission was arrested for disobeying racial segregation rules at the bus depot.

There is no Negro clerk, baliff, or prosecutor in any court in Leflore County. No Negro judge sits on any bench and there is no local Negro attorney. There has never been a Negro juror in Leflore. No Negro holds a job in any portion of the law enforcement agency, and the quarters in the Negro parts of the jails are inferior. The post office has employed Negroes as letter carriers restricted to delivering in Negro neighborhoods. Through the State employment agencies Negroes are offered only unskilled jobs (these agencies are aided with Federal funds).

The Armed Forces Reserve unit and the National Guard component in Leflore are both restricted to participation by whites only.

PROPOSED RECOMMENDATIONS

We heartily concur with the findings of the Mississippi Advisory Committee to the U.S. Commission on Civil Rights, especially as outlined in items 4 and 5 quoted below:

"4. This Committee finds that the Federal Government has not provided the citizens of Mississippi the protection due them as American citizens. The Department of Justice has acted in good faith, but the present interpretation of the function of the Civil Rights Division of the Justice Department is unduly and unwisely narrow and limited. This may be due to the inadequacy of funds available to the Division for staff and the like, and it may be due to a reluctance to bring cases to trial under existing civil rights acts in view of the prospect of facing an all-white jury likely to return a verdict in favor of a white law enforcement official accused by a Negro. Whatever the reason, the fact that police officers are rarely tried on civil rights charges has led the public to believe that few serious charges are ever made, and has reinforced the belief among offending peace officers that they may treat or mistreat Negroes as their whims direct them.

"5. We also find that the Commission on Civil Rights itself continues to have an unfulfilled obligation in regard to Mississippi. It is our opinion that a formal civil rights hearing, such as only the Commission can conduct, is more urgently needed in Mississippi than in practically any other State in the Union. Yet the Commission has never met in this State in the course of its 5-year existence."

We would like to add some recommendations of our own:

"Recommendations: That the President direct the Department of Justice to investigate every allegation of physical abuse of authority by State or local officials in Mississippi, and institute criminal proceedings in all cases in which such action appears to be warranted, regardless of the prospects for conviction; that the Commission on Civil Rights hold formal public hearings in Mississippi on charges of equal protection of the law on account of race, and that these hearings be held periodically so long as the present situation exists and the Commission remains in force; and that the Commission on Civil Rights make recommendations to the Congress for the passage of further legislation designed to protect American citizens from being physically abused by persons acting under the color of governmental authority at any level."

We also particularly emphasize the recommendation of the Commission in 1961, No. 3: "That Congress amend subsection (b) of 42 U.S.C. 1971 to prohibit any arbitrary action or (where there is a duty to act) arbitrary inaction, which deprives or threatens to deprive any person of the right to register, vote, and have that vote counted in any Federal election."

In addition, we would recommend that Government action be taken to insure the sharecroppers of Leflore County surplus food and that if present rules prevent distribution of Government surplus food to the needy, that the rules be changed with a stroke of the Secretary of Agriculture's pen.

APPENDIX D

CHRONOLOGY OF ABUSES

February 1, 1961, Baton Rouge, La.: SNCC Field Secretary Dion Diamond was arrested and charged with "criminal anarchy." Mr. Diamond was arrested when he appeared on the campus of Southern University in Baton Rouge to fulfill a speaking engagement.

February 16, 1961, Baton Rouge, La.: Criminal anarchy charges were brought against two additional SNCC personnel. Charles McDew, chairman of the committee, and Robert Zellner, field secretary, were arrested and charged with criminal anarchy when they visited Dion Diamond, held in the Baton Rouge jail on the same charges.

[From the Atlanta Journal, Mar. 14, 1962]

ANARCHY TRIAL SLATED FOR TWO INTEGRATIONISTS

BATON ROUGE, LA.—Two Atlantans, one Negro and one white, were arraigned Tuesday on charges of vagrancy and criminal anarchy.

Trial for John R. Zellner, 22, and Negro Charles McDew, 22, was set for May 28. Both are identified as officers of the Student Nonviolent Coordinating Committee in Atlanta.

The two were arrested when they tried to deliver pamphlets advocating integration to Dion T. Diamond while he was in jail for taking part in demonstrations at Southern University.

Zellner and McDew were freed on bonds of $7,000. Their attorneys were given until April 18 to file preliminary motions in the case.

The proceedings were delayed temporarily when Zellner sat in the Negro section when he entered the court. A bailiff asked if he was white, and Zellner replied, "I am a member of the human race."

Zellner was told to be seated in the white section. He complied with the order after consulting with his attorney.

[From the Times-Picayune, New Orleans, La., Mar. 14, 1962]

SIT-IN IS HELD AT RFK OFFICE

FASTER ACTION WANTED RIGHTS CASES

WASHINGTON.—An interracial group staged a sit-in at the Justice Department Tuesday, but changed its tactics after 4½ hours outside the office of Attorney General Robert F. Kennedy.

The group was pressing for faster Federal action in civil rights cases. William Mahoney, 20, acting as spokesman for the dozen demonstrators, said

they planned to remain outside Kennedy's door until he issued a "positive statement" of plans for action.

But as the Department closed the day the group abandoned its vigil and said it would return Wednesday to seek an appointment with the Attorney General.

Earlier, Mahoney had turned down an offer by Kennedy's administrative assistant to arrange a meeting with the Attorney General, saying "this is an act of civil disobedience. It's a sit-in."

The Attorney General left for a meeting with Secretary of Defense Robert S. McNamara shortly after the arrival of the student group, an aid said.

But the group talked at length with Assistant Attorney General Burke Marshall about civil rights legislation and its enforcement.

Mahoney, a Howard University junior majoring in sociology, said the demonstrators wanted from Kennedy a statement outlining what his Department plans to do about what they called 50 or so violations of civil rights in the South.

Mahoney said the demonstration was sponsored by the Student Nonviolent Coordinating Committee and the Committee To Free Dion Diamond. Diamond is a Petersburg, Va., Negro arrested in Baton Rouge.

The sit-in group was protesting the arrest of Diamond and the latter arrest of two others during a visit to Diamond in jail.

The others, Charles McDew, 22, chairman of the student group, and John Robert Zellner, 22, a field secretary, pleaded innocent to criminal anarchy charges at their arraignment. Their trial was set for May 28.

[From the Atlanta Journal and Constitution, Mar. 11, 1962]

RACIAL SEGREGATION SIDES TO EYE BATON ROUGE FIGHT

(By Fred Powledge)

Proponents and opponents of southern racial segregation will watch closely a legal battle to be fought soon in Baton Rouge, La.

The fight will be over a State's right to employ extraordinary legal means to enforce segregation. It is the question of whether a Negro or a white can be charged legally with "criminal anarchy" because he espouses racial views which conflict with those of the State.

Four young civil rights leaders, one a white, have been charged with that offense in Baton Rouge. One, Dion Diamond, a field secretary of the Student Nonviolent Coordinating Committee, was arrested, charged, and placed under $13,000 bond on February 1 after a visit to the campus of Southern University.

Two others, SNCC Chairman Charles McDew and Field Secretary Robert Zellner, a white, were charged when they went to the jail to deliver fruit and books to Mr. Diamond.

The books, said Chairman McDew in Atlanta Saturday, were "Scottsboro Boy" by Heywood Patterson, "Eight Men" by Richard Wright; and "The Ugly American" by William Lederer and Eugene Burdick.

Mr. McDew said jailers told them the books were contrary to Louisiana's public policy of segregation of the races.

Also charged was Ronny Moore, Baton Rouge civil rights leader.

A preliminary hearing has been set Tuesday on the criminal anarchy cases. As the date nears, several civil rights organizations are mounting what they hope will be a widespread public protest of the charges.

Telegrams went out Friday night to more than two dozen national leaders urging either protest or attendance at the hearing.

The wires were signed by A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters; James Farmer, national director of CORE; Roy Wilkins, executive director of the NAACP; Whitney Young, executive director of the National Urban League, and Reinhold Niebuhr, internationally known theologian.

The civil rights leader, while confident that a Federal court would quickly set aside an anarchy conviction on a lower State court, said Saturday they had been advised that there was "no possibility of release on bail while appealing."

Alex Wall, assistant district attorney in East Baton Rouge Parish, said Saturday that a judge could specify bail if he wanted to. "He would probably let them stay in jail," he said.

Thus the case rises as an important one in the segregation-integration struggle. If the charges stick, segregation-minded southern governments will have another weapon in their arsenal.

But some Negro leaders are hoping the matter will be serious enough to warrant direct action on the part of the Justice Department.

Burke Marshall, an Assistant U.S. Attorney General, was asked about that in a telephone interview Saturday.

Usually, he said, the Federal Government must wait until the appeal procedure carries a case through the State courts. There is one way, he said, in which this procedure may be circumvented.

"It is a Federal misdeameanor," said Mr. Marshall, "for anyone acting under color of law to deprive someone of his constitutional rights. I'm not saying that's the situation in the criminal anarchy cases, but that is a law which we have to go on."

March 30, 1961, Jackson, Miss.: Club-swinging police and 2 police dogs chased more than 100 Negroes from a courthouse when 9 Negro students were convicted for staging a sit-in demonstration. Several were struck by the clubs and at least one person was bitten by the dogs.

Ten voter registration workers from the Student Nonviolent Coordinating Committee, including SNCC's executive secretary, James Forman, were arrested and charged with "inciting to riot" and "refusing to move on" after police turned a dog loose in a crowd of 150 Negroes on their way to register to vote at the Leflore County Courthouse. (Greenwood, Miss., Mar. 27, 1963.)

April 30, 1961, Jackson, Miss.: A field secretary of SNCC, 5 months pregnant, was arrested on contempt of court charges as she sat in the "white" section of the Hinds County Courthouse. She was in court to surrender herself to serve a 2-year sentence imposed in 1960 for "contributing to the delinquency of minors" after she conducted nonviolent workshops in Jackson, Miss., preparing youths for freedom rides.

August 22, 1961, Amite County: Robert Moses went to Liberty with three Negroes, who made an unsuccessful attempt to register to vote. A block from the courthouse, Moses was attacked and beaten by Billy Jack Caston, the sheriff's first cousin. Eight stitches were required to close a wound in Moses' head. Caston was acquitted of assault charges by an all-white jury before a justice of the peace.

September 5, 1961, Liberty, Miss.: Travis Britt, SNCC voter registration worker, was attacked and beaten by whites on the courthouse lawn. Britt was accompanied at the time by Robert Moses. Britt said one man hit him more than 20 times. The attackers drove away in a truck.

September 7, 1961, Tylertown, Miss.: John Hardy, SNCC registration worker, took two Negroes to the county courthouse to register to vote. The registrar told them he "* * * wasn't registering voters" that day. When the three turned to leave, Registrar John Q. Wood took a pistol from his desk and struck Hardy over the head from behind. Hardy was arrested and charged with disturbing the peace.

September 25, 1961, Liberty, Miss.: Herbert Lee, a Negro who had been active in voter registration, was shot and killed by a white State representative, E. H. Hurst, in downtown Liberty. No prosecution was undertaken, the authorities explaining that the representative had shot in self-defense.

October 5, 1961, McComb, Miss.: Charles Sherrod was arrested on the street, thrown into a police car, and charged with resisting arrest. Cordelle Reagan was also arrested and charged with contributing to the delinquency of a minor. Both were fieldworkers for SNCC voter drive.

November 18, 1961, McComb, Miss.: Persons unknown fired a shotgun blast into the bedroom of Dion Diamond and John Hardy at 702 Wall Street. Investigating officer Frank Williams found shotgun pellets embedded in the window frame. Diamond and Hardy are both fieldworkers for SNCC engaged in voter registration.

January 26, 1962, Americus, Ga.: Voter registration workers for the Student Nonviolent Coordinating Committee decried the acquittal of a Sasser policeman, who had shot at them and chased them out of Terrell County last summer.

Charles Sherrod, director of SNCC's southwest Georgia voter registration drive, stated:

"A man was brought before a Federal court to stand trial after shooting, threatening our lives, jailing us, running us out of town at gunpoint, and now in 30 minutes goes free. What are we to tell the people down here? Must we die before the Federal Government stops compromising with bigots in political governments? I speak to the President of the United States and to his brother, the Attorney General: Your failure to throw the full weight of your offices behind our attempts, black and white together, to make real the tenets of democracy by attempting in the Deep South to build community leadership in voter registration, is a black mark for your administration. If we are murdered in our attempts, our blood will be on your hands; you stand in the judgment of God and of our people."

March 8, 1962, Albany, Ga.: A total of 353 Negroes have been registered since SNCC field secretaries came to Albany in October 1961. At this rate of registration, the percentage of Negro voters to the total number of registrants approaches 32 to 35 percent. At the level of 40 percent of the Negro electorate, Negroes would hold the balance of political power in Albany.

March 18, 1962, Americus, Ga.: Two SNCC field secretaries, working as part of SNCC's voter registration program, were held over an hour by Sumter County law enforcement officials. The two, Donald Harris and John Churchville, were fingerprinted and threatened with arrests for vagrancy.

July 10, 1962, Dawson, Ga.: Ralph Allen of Trinity College, Conn., and Joseph Pitts of Albany reported that a white man, Frank Nichols of Dawson, Ga., hit them with a stick while they were talking to Negroes about voting in a Federal housing project in Dawson. Allen, who is white, said that Nichols, an employee of a filling station in Dawson, drove up, hit him and ordered them off the housing project property. When they stepped into the street, Nichols slapped Pitts and drove away. The Justice of the Peace, Daniel English, shouted to Allen and Pitts as they approached to take out a peace warrant, "Get off my porch, nigger."

July 11, 1962, Jackson, Miss.: Two veteran sit-inners were released from Hinds County Prison Farm after spending more than 40 days in jail for refusing to move from a bench in the Jackson courthouse reserved for whites. Luvaghn Brown and Jesse Lee Harris faced beatings and intimidation from the moment they left the courtroom. While en route to a cell in the county jail, a deputy sheriff beat Harris about his head with his fists. At the county farm, they were singled out as freedom riders, and made to dress in striped uniforms, unlike other prisoners. Fellow prisoners were forbidden to associate with them. When prison officials learned that Harris had been arrested previously while testing Mississippi's segregation laws, a guard named Keith ordered other prisoners to hold him while the youth was whipped with a length of hose. Threatening "Nigger, I'll kill you," Keith later struck Harris repeatedly with a stick when the youth was unable to move a heavy log while working on a road gang. That night Harris was handcuffed and removed to the county jail where he was placed in a chamber called the "sweat box" and given a bread and water diet for 30 days.

Luvaghn Brown was twice beaten with heavy sticks by guard Douglas Wright. On both occasions, he was held by fellow prisoners.

July 27, 1962, Lee County, Ga.: Miss Penny Patch, SNCC volunteer worker in voter registration, and her companion, Miss Joan Maxwell of Albany, Ga., were stopped in the midst of a door-to-door canvassing program by Lee County Sheriff Dick Forster. In an affadavit to the Justice Department, they testified that the sheriff had questioned Miss Patch as to who she was and why she was "driving around with these nigger gals." The group was stopped later by a State patrol car. State troopers alleged that they had gone through a stop sign. They were taken to the police station where they were fined $50.

August 21, 1962, Liberty, Miss.: Sam Wells and Tommy Weathersby went to the courthouse to register. While they were waiting to get into the registrar's office, they stood on the front porch of the courthouse. Deputy Sheriff Daniel Jones told them, "Get your * * * off the front porch, and don't come back on." Weathersby and Wells got off the porch. A few moments later, rain began, and the two wanted to take shelter in the courthouse, but Deputy Sheriff Jones would not permit it.

August 21, 1962, Liberty, Miss.: Dewey Greene, Jr., Mississippi Free Press reporter, was taking pictures of Negroes waiting to register at the courthouse.

An unidentified young man working in the office down the hall from the registrar's office snatched Greene's camera away, and refused to return it. Greene was told to leave town by three white men, one of whom was flourishing a length of lead pipe. He left.

August 22, 1962, Charleston, Mo.: John Lewis, a SNCC field secretary, and Dorothy Davis, Youth Chapter President, were charged with interfering with a police officer at a hearing after a stand-in demonstration August 20.

August 29, 1962, Clarksdale, Miss.: Seven Negroes were arrested after attending a voter registration meeting. David Dennis, CORE field secretary, was charged with "failure to yield right-of-way" after a police officer had forced him to submit to a long harangue of threats and abuse. Samuel Block, John Hodges, J. L. Harris, Richard T. Gray, and Albert Garrer, SNCC fieldworkers, and Dewey Greene, Jr., reporter for the Mississippi Free Press, were forced by Clarksdale Police to alight from their car, and were charged with loitering in violation of the city curfew.

August 30, 1962, Indianola, Miss.: SNCC workers, C. R. McLaurin, Albert Garner, J. O. Hodges, Samuel Block, and Robert Moses were arrested by Indianola Police on a charge of distributing literature without a permit. The registration workers had been taking leaflets announcing a registration mass meeting door to door in the Negro community. Lafayette Surney, 17, another SNCC worker, was arrested and then released to Rev. James Bevel, of the Southern Christian Leadership Conference (SCLC).

August 31, 1962, Indianola, Miss.: During the trial of Samuel Block on charges of distributing literature without a permit, the municipal judge informed Block that he could cross-examine the arresting officer. Block asked the officer, "Did you actually see me hand out a leaflet?" The judge turned to the officer and said, "He can ask you anything he wants to, but you don't have to answer." The judge told Lafayette Surney if he was caught in Indianola "agitating" again, he would be sent to the penal farm.

September 3, 1962, Ruleville, Miss.: Following a mass meeting of whites on September 2, two Negro cleaners were closed (allegedly for violating city ordinances), a Negro citizen was fired from his city job, and a group of Negro laborers were reportedly turned away from the fields because they were from Ruleville.

Lenoard Davis, 49, a Negro working for the city sanitation department was told by Mayor Charles M. Dorrough, "We're going to let you go. Your wife's been attending that school." (He referred to a voter registration school conducted by SNCC workers in Ruleville.)

Fred Hicks, 46, a Negro man who drove fieldworkers out to the plantations, was told he could no longer use a bus without a commercial license. The bus owner said that because Hicks' mother had gone down to register that "We gonna see how tight we can make it. Gonna make it just as tight as we can. Gonna be rougher and rougher than you think it is." He said that the pressure would be taken off Hicks if his mother withdrew her name from the voting rolls.

September 6, 1962, Terrell County, Ga.: Nightriders shot into the home of voter registration workers and injured three students. John Chatfield, of Vermont, was shot in the lower and upper arm. Prathia Hall, a young Negro student from Philadelphia, and Christopher Allen, a student from Oxford, England, were both grazed by bullets.

October 27, 1962, Bronwood, Ga.: Three field secretaries for SNCC, Jack Chatfield, Larry Rubin and Carver Neblett, were arrested at Bronwood as they attempted to speak to Negro citizens urging them to register to vote.

December 6, 1962, Sumter County, Ga.: An unidentified white man set fire to the home of Trim Porter, 57, a leader in the Student Nonviolent Coordinating Committee's southwest Georgia voter registration drive.

December 28, 1962, Clarksdale, Miss.: Two students from Michigan State University were arrested by Clarksdale Police while they slept in the truck they used to transport 1,000 pounds of food and medicine to Delta Negroes. Both were charged with "illegal possession of narcotics" and bail was set at $15,000 each. Two doctors in Louisville, Ky., who had donated the medicine, said that the shipment included bandages, vitamins, and that physicians and a drugstore had checked the materials to make sure there were no objectional drugs. The students arrested were Ivanhoe Donaldson and Benjamin Taylor. Donaldson is a fieldworker for the Atlanta-based Student Nonviolent Coordinating Committee. He was in the process of delivering food to the people stricken from the public assistance rolls for attempting to register to vote.

SNCC Chairman Charles McDew, sent a telegram to President John F. Kennedy asking him to "take immediate steps to halt harrassment of potential Negro

voters in Mississippi and threats and intimidations made against them who try to aid them."

January 2, 1963, Washington, D.C.: A suit was filed in the U.S. district court by seven fieldworkers of the Student Nonviolent Coordinating Committee asking the court to force Attorney General Robert F. Kennedy and FBI Director J. Edgar Hoover to act against local authorities in Mississippi whom the plaintiffs said had failed to protect the rights of Negroes. The plaintiffs of the suit were William Higgs, a Jackson, Miss., lawyer; William Kunstler, New York lawyer; Robert Moses, New York; Samuel Block, Greenwood, Miss.; Charles McLaurin, Ruleville, Miss.; Charles Cobb, Greenville, Miss.; Jesse Harris, Ruleville, Miss.; Hollis Watkins, Jackson, Miss.; and Lafayette Surney, Greenville, Miss. The plaintiffs, all Negro except Higgs, charged that Mississippi law enforcement officials have been intimidating, harassing, and physically attacking them and other Negroes who have been attempting to register to vote in Mississippi.

[From the Atlanta Daily World, Jan. 4, 1963]

VICTIMS PUSHED VOTER REGISTRATION: TERRELL MARSHALL CHARGED WITH RIGHTS "VIOLATIONS"

AMERICUS, GA. (UPI).—Denver Edgar Short, Sr., deputy town marshal of a Terrell County community, was charged Thursday with violating the constitutional rights of two Negroes and a white man who were urging Negroes to register as voters.

Short of Sasser was charged with arresting the three "knowing that he had no lawful authority to do so," and with running them out of town.

In a six count criminal accusation filed by U.S. Attorney Floyd M. Buford in U.S. district court, the Government said Short arrested Willie Paul Berrien, Jr., Prathia Lauraann Hall, and Ralph Waldo Allen, III, the white man, on August 30, 1962. He allegedly forced them to flee Sasser September 3.

Short violated "the Constitution and the laws of the United States by depriving the three named persons of their liberty without due process of law," the Government charged.

WORKING WITH SNCC

Buford said the charges could bring penalties of up to $1,000 fine and 1 year in prison on each of the six counts.

Berrien, 26, of Atlanta, Miss., Hall and Allen were working with the Student Nonviolent Coordinating Committee (SNCC) in a Terrell County voter registration drive when the alleged arests were made. Four churches were burned during the campaign and Negroes claimed several persons were arrested and some were beaten.

In an affidavit attached to the Government charges, Berrien said he and his companions were driving from Dawson to Albany when "In the vicinity of Sasser I heard an unexpected bang," apparently meaning a shot.

He claimed Short drove up in a green panel truck and, holding a pistol, accused the driver of speeding. All in the car were arrested and taken to Sasser, Berrien said, after Short "pinned a police badge on himself." Berrien charged that they later were taken to Dawson and held in jail for about 3 hours, then released without charges.

"GET OUT OF TOWN"

On September 4, Berrien said, the group was talking to Dawson Negroes about registering to vote when Short again appeared and questioned Allen about his license tag.

They were driven back to Sasser and "when we got there Mr. Short told all of us to get out of town and stay out," Berrien said. He said "he did not want to catch us in Sasser anymore and if we came back he would put us in jail."

The affidavit charged that Short followed the three out of town and, when they stopped to make a telephone call, ordered them with gun drawn, to leave.

As they drove away, Short allegedly fired his pistol into the ground and yelled "get." He then followed to Dawson, Berrien said.

[From the Atlanta Constitution, Jan. 4, 1963]

UNITED STATES ACCUSES SASSER OFFICER OF HARASSING IN RACIAL CASE

AMERICUS (AP).—The Federal Government Thursday stepped into Negro voter registration troubles again in Terrell County, charging a Sasser, Ga., policeman with harassing and chasing out of town three persons who tried to help register Negroes.

Alleged discrimination against Negro voters in Terrell brought the first voting suit under the 1957 Civil Rights Act. A Federal court enjoined registrars there in 1960 from denying registration to qualified Negroes.

In the lastest action, the Justice Department filed a criminal information against Denver Edgar Short, Sr., Sasser officer. He was charged on six counts with depriving three workers for the Student Nonviolent Coordinating Committee of their constitutional rights and forcing them to leave Sasser. Short was released under $1,000 bond.

The complaint filed in Federal court here included an affidavit by Willie Paul Berrien, 26, Negro, who is a student at Clark College in Atlanta.

Berrien, a fieldworker for the Student Committee, told of being arrested, along with Prathia Hall and Ralph Waldo Allen on August 30, 1962. Miss Hall, a Negro of Philadelphia, is a graduate of Temple University, Allen, a white youth of Melrose, Mass., is a student at Trinity College, Hartford, Conn.

Berrien, Miss Hall, and Allen worked during the summer on voter registration in Terrell County.

Berrien said Short took the three of them to jail after accusing the driver of their car of speeding. They were released after the driver was told he would have to pay a speeding fine or serve time.

The trio was jailed again the same day in nearby Dawson but Berrien said no charges were placed against him and he was released after being held 3 hours.

Five days later, Berrien charged, the same trio was talking to Negroes about registering to vote when Short drove up and questioned Allen about the license plates on his car. Berrien, Miss Hall, and Allen were taken back to Sasser and, the affidavit said, Short ordered them to get out of town or go to jail. Berrien claimed Short shot a pistol into the ground in the direction of their car and ordered them to "git." The officer followed their car to the Negro section of Dawson, Berrien said.

Dawson is the county seat of Terrell County. Sheriff Z. T. Matthews of Terrell, and his deputies, visited a Negro church in Sasser last July where a voter registration meeting was in progress. Matthews said at that time that he had been asked by community officials to investigate a secret meeting of Negroes and white persons.

He termed two of the persons at the meeting "agitators from outside Georgia who are in our county and section to stir up trouble and create tension." Matthews said he advised the group he thought it would be to the best interest of both Negroes and white persons "to discontinue such secret meetings."

January 7, 1963, Louisville, Ky.: Following the arrest of the two Michigan State University students in Clarksdale, Miss., on charges of "illegal possession of narcotics," the Louisville Defender started a campaign to send "food, medicine, and clothing to the thousands of Negroes * * * who face starvation for registering to vote." The Defender said on January 3 that "at least 200,000 Negroes are possible victims of reprisals by plantation owners and public officials who fear the power of the ballot * * *."

January 14, 1963, Greenwood, Miss.: SNCC field secretary, Willie Peacock, reported in a letter to the Justice Department of his difficulty registering and paying his poll tax in Greenwood. "Twice I've tried to pay my poll taxes and twice I've been denied the right to do so. It was in January of 1962 when I tried to pay my poll tax the first time. At this time I filed a complaint with the FBI" stated Peacock.

January 21, 1963, Belzoni, Miss.: Samuel Block, field secretary of the Student Nonviolent Coordinating Committee in Greenwood, Miss., requested the U.S. Department of Justice for Federal protection of the voter registration effort in Belzoni, Miss., because of the recent incidences of violence in that county. The violence referred to primarily was the shooting of Rev. Herbert Lee in October 1961, by State Legislator E. H. Hurst. Hurst was never arrested, or jailed, and was acquitted by a coroner's jury.

February 20, 1963, Greenwood, Miss.: Four Negro businesses located on the same block as the SNCC office in Greenwood were burned to the ground. Nancy Brand, a worker in the SNCC office reported an anonymous telephone call re-

ceived on the morning of the burnings. Mrs. Brand said she was asked if she ever visited the SNCC office, and when she replied affirmatively, a male voice interjected, "You won't be going down there no more. That's been taken care of." The businesses burned were Jackson Garage, George's Cafe, Porter's Dressing Shop, and the Esquire Club. It is believed that the intention of the arsonist was to burn the SNCC office. Field secretaries had been sleeping in the office up to this time.

SNCC chairman, Charles McDew, protested the burning in a telegram to Attorney General Robert F. Kennedy on February 21, 1963.

February 28, 1963, Greenwood, Miss.: Shots were fired into a car carrying three SNCC voter registration workers. Several shots were fired by three white men riding in a white Buick. James Travis, driver of the SNCC car, was most seriously injured by a bullet wound in his neck. The others in the car, Bob Moses and Carver Neblett, escaped injury.

March 6, 1963, Greenwood, Miss.: Samuel Block and three others were fired on from a station wagon which pulled up beside their car as they were parked in front of the SNCC voter registration office. Both front windows were shattered.

March 20, 1963, Jackson, Miss.: Three shots were fired through the windshield of a car belonging to Mrs. Mattie Dennis while it was parked in front of the home of Mrs. Dennis' cousin, whom she was visiting. Mrs. Dennis is the wife of David Dennis, CORE field secretary for Mississippi. Both have been active in voter registration.

March 20, 1963, Greenwood, Miss.: Over 100 Negroes tried to register to vote, but all were unsuccessful.

March 21, 1963, Greenwood, Miss.: Surplus food distribution was resumed for 1 month by an action of the Leflore County Board of Supervisors. The board had discontinued the surplus food program after SNCC began a voter registration program in Leflore County. An estimated 22,000 Negroes, primarily seasonal workers, were affected.

March 25, 1963. Greenwood, Miss.: A fire in the Greenwood SNCC office almost destroyed all registration records. About midnight, March 24, Curtis Hayes SNCC field secretary, and Joe Lee Lofton, a Greenwood high school student, drove by the SNCC office at 115 E. McLourin Street and noticed a light on. Both tried to enter the office but were stopped by someone holding the door on the other side. As Hayes and Lofton left they noticed smoke and went to call the fire department. Negroes in the neighboring building said they heard glass break and saw two whites slip out of the building and run down an alley.

The records which were almost destroyed were lists of names of persons who received surplus food and others who had been trying to register. All the office equipment, including typewriters and a mimeograph machine, were destroyed, and the telephone had been ripped from the wall. Greenwood police said there was no evidence of arson.

March 26, 1963, Greenwood, Miss.: A shotgun blast ripped into the home of Dewey Greene, Sr., father of the latest Negro applicant to the University of Mississippi. Another of Mr. Greene's sons and a daughter have been active in the Leflore County registration project. Greenwood police said they were investigating.

March 27, 1963, Greenwood, Miss.: Ten voter registration workers from the Student Nonviolent Coordinating Committee, including SNCC's executive secretary, James Forman, were arrested and charged with "inciting to riot" and "refusing to move on" after Greenwood police turned a dog loose in a crowd of 150 Negroes on their way to register to vote at the Leflore County Courthouse.

Robert Moses, SNCC field representative and director of the group's Mississippi project, was bitten by the dog once on his leg. Another man, Matthew Hughes, was also bitten by the dog and required treatment at a local hospital.

The crowd of Negroes, dispersed by the dog, regrouped at Wesley Chapel Methodist Church. While entering cars to make a second attempt at registration, Greenwood police with their guns drawn arrested eight other SNCC workers and an elderly man in front of the church. They were charged with "inciting to riot."

The SNCC office in Atlanta protested the arrests and "intimidation of prospective Negro voters" to the U.S. Department of Justice, the Civil Rights Commission, the Federal Bureau of Investigation, and with several U.S. Congressmen.

May 7, 1963, Mileston, Miss.: Bob Moses, head of SNCC's voter registration project in Mississippi, was arrested when he came to take photographs of a Negro's home which had been bombed by a gang of white terrorists. Witnesses

said that 3 fire bombs were thrown into the home of a leader of the Holmes County vote drive, and that unidentified white men had fired 13 shots into the house.

May 21, 1963, Albany, Ga.: Five SNCC voter registration workers were jailed on charges of violating a municipal ordinance against distributing handbills on the streets. (New York Times, May 23, 1963, p. 27.)

[From the New York Times, July 27, 1962]

SHERIFF HARASSES NEGROES AT VOTING RALLY IN GEORGIA

(By Claude Sitton)

SASSER, GA., July 26.—"We want our colored people to go on living like they have for the last hundred years," said Sheriff Z. T. Mathews of Terrell County. Then he turned and glanced disapprovingly at the 38 Negroes and 2 whites gathered in the Mount Olive Baptist Church here last night for a voter registration rally.

"I tell you, Cap'n, we're a little fed up with this registration business," he went on.

As the 70-year-old peace officer spoke, his nephew and chief deputy, M. E. Mathews, swaggered back and forth fingering a hand-tooled black leather cartridge belt and a .38 revolver. Another deputy, R. M. Dunaway, slapped a five-cell flashlight against his left palm again and again.

The three officers took turns badgering the participants and warning of what "disturbed white citizens" might do if this and other rallies continued.

MANY ARE DISTURBED

Sheriff Fred D. Chappell of adjacent Sumter County, other law enforcement officials and a number of the disturbed white citizens clustered at the back of the sanctuary. Outside in the black night, angry voices drowned out the singing of the crickets as men milled around the cars parked in front of the little church on the eastern edge of this hamlet in southwestern Georgia.

On the wall was an "All-American Calendar" advertising a local funeral home. It displayed pictures of President Kennedy and past Presidents.

The concern of Sheriff Zeke Mathews, "20 years in office without opposition," is perhaps understandable.

Terrell County has 8,209 Negro residents and only 4,533 whites. While 2,894 of the whites are registered to vote, only 51 Negroes are on the rolls, according to the secretary of state's office.

On September 13, 1960, Federal District Judge William A. Bootle handed down the first decision under the Civil Rights Acts of 1957 and 1960, which guarantee Negro voting rights.

The judge enjoined the Terrell County Board of Voter Registrars from making distinctions on the basis of race or color, illegally denying Negroes their rights under State and Federal laws and administering different qualification tests for the two races.

Judge Bootle refused a request from the Justice Department that he appoint a voter referee to oversee the registration. But he retained jurisdiction in case further court directives might become necessary.

Nevertheless, Negroes contended that because of fear and intimidation, subtle and not so subtle harassment and delaying tactics, they still found it difficult to register. Many of them are illiterate. This presents a further barrier since they are required, by State law, to pass a difficult qualification test.

Another source of the sheriff's concern is the fact that field secretaries for the Student Non-Violent Coordinating Committee, an Atlanta-based civil rights organization, began a voter registration drive in the county last October.

WORRIED BY "AGITATORS"

Sheriff Mathews said the racial crisis in nearby Albany also has aroused local whites and had brought the "agitators" to Sasser.

Two workers of the student committee active in Terrell County were present as the meeting opened with a hymn, "Pass Me Not, Oh Gentle Savior."

They are Charles Sherrod, 25, from Petersburg, Va., a Negro, who took part in the sit-in demonstrations in 1960 against lunch-counter segregation, and Ralph Allen, 22, a white student at Trinity College, from Melrose, Mass.

Some of the participants said they had driven here from adjoining Lee and Daugherty (Albany) Counties to encourage others by their presence. Among them were two other workers, in the student committee, Miss Penelope Patch, 18, of Englewood, N.J., a white student at Swarthmore College, and Joseph Charles Jones, 24, a Negro from Charlotte, N.C.

After the hymn, Mr. Sherrod, standing at the pine pulpit on the rostrum, led the "Lord's Prayer." The audience repeated each line after him.

Overhead, swarms of gnats circled the three light globes and now and then one of the audience would look up from the pine floor to steal a fearful glance at the door.

READS FROM SCRIPTURES

Mr. Sherrod then read from the Scriptures, pausing after completing a passage to say:

"I'm going to read it again for they're standing on the outside."

The sound of voices around the automobiles parked beside the church could be heard as license numbers were called out. And the faces of the audience stiffened with fear.

A group of 13 law officers and roughly dressed whites clumped through the door at this point. One pointed his arm at three newspaper reporters sitting at the front and said:

"There they are."

"If God be for us, who can be against us," read Mr. Sherrod, "We are counted as sheep for the slaughter."

With the exception of Deputy Dunaway, who stood smoking a cigarette at the rear, the whites withdrew to confer among themselves.

PRAYS FOR WISDOM

Mr. Sherrod began another prayer.

"Give us the wisdom to try to understand this world. Oh, Lord God, we've been abused so long; we've been down so long; oh, Lord, all we want is for our white brothers to understand that in Thy sight we are all equal.

"We're praying for the courage to withstand the brutality of our brethren."

And, in this country where Negroes have frequently fallen under the club, the blackjack, and the bullet, no one appeared to doubt that the brutality of which he spoke would be long in coming.

Nevertheless, the audience swung into a hymn with gusto, singing "We Are Climbing Jacob's Ladder." The deputy in the doorway swung his flashlight against his palm and looked on through narrowed eyes.

Lucius Holloway, Terrell County chairman of the voter registration drive, stood up.

"Everybody is welcome," he said. "This is a voter registration meeting."

Sheriff Mathews trailed by Deputy Dunaway burst into the sanctuary and strode to the front. Standing before the reporters, but looking away from them, he began to address the audience.

"I have the greatest respect for any religious organization, but my people is getting disturbed about these secret meetings," he said.

"I don't think there is any colored people down here who are afraid. After last night the people are disturbed. They had a lot of violence in Albany last night."

The sheriff and chief deputy introduced themselves to the reporters and shook hands. Negroes had said they had been warned that the rally would be broken up, but the law officers seemed taken aback by the presence of the newsmen.

Sheriff Mathews then turned to the Negroes, saying that none of them were dissatisfied with life in the county. He asked all from Terrell to stand.

"Are any of you disturbed?"

The reply was a muffled, "Yes."

"Can you vote if you are qualified?"

"No."

"Do you need people to come down and tell you what to do?"

"Yes."

"Haven't you been getting along well for a hundred years?"

"No."

The sheriff then said he could not control the local whites and that he wanted to prevent violence.

DISLIKES PUBLICITY

"Terrell County has had too much publicity," he said. "We're not looking for violence."

Chief Deputy Mathews then expressed his viewpoint. "There's not a nigger in Terrell County who wants to make application to vote who has to have someone from Massachusetts or Ohio or New York to come down here and carry them up there to vote," he said.

The sheriff turned to Ralph Allen.

"Ralph," he said, "I'm going to have to ask you to stay out of this county until this thing quiets off."

"I don't appreciate outside agitators coming in here and stirring up trouble and it's causing us a lot of trouble. I've helped more colored people than any man in the South, I reckon."

"Would you mind telling me who pays you?" he asked Mr. Allen.

The student replied that he received a subsistence allowance from the committee.

"They give you your orders?"

"They place me."

The chief deputy took over the questioning: "Then you got Terrell County—that's your project, huh?"

A long exchange of forceful questions followed. After that, Deputy Mathews turned to the others and told them:

"There is a prohibit to register between now and December."

Under Georgia law, registration goes on throughout the year, although only those registered at various specified times prior to the primaries and elections may vote in them.

Sheriff Mathews then pointed to the crowd of whites at the back of the sanctuary.

"Gentlemen," he said to the reporters, "those are all of them.

"These people have lost faith and respect in the coordinating bunch. They don't have to have it, Cap'n. They don't have to have it."

Deputy Mathews informed the Negroes that it would not be "to your interest" to continue the meeting.

"You don't have to have nobody from Massachusetts to come down here and help you the way to the courthouse," he said.

In another reference to Mr. Allen, he commented: "I don't think he's got any business down here, to tell you the damn truth."

Deputy Mathews turned to Deputy Dunaway and ordered him to take the names of all those present.

"I just want to find out how many here in Terrell County are dissatisfied," explained Sheriff Mathews.

Turning to a local Negro and pointing at Mr. Allen, the chief deputy then said:

"He's going to be gone in 2 weeks, but you'll still be here."

As the names were collected, Deputy Mathews began pressing questions on Mr. Sherrod and interrupting him sarcastically as the Negro tried to reply.

He turned to Mr. Allen again. Shaking a finger in his face, he said:

"You couldn't get a white person to walk down the street with you."

REFUSE TO GIVE NAMES

When Deputy Dunaway asked the names of five Negro youths sitting on a bench with Miss Patch, they refused to give them.

"I wouldn't either," said Deputy Mathews.

As the sheriff walked away, he said to reporters:

"Some of these niggers down here would just as soon vote for Castro and Khrushchev."

The Negroes began humming a song of protest popularized during the sit-in demonstrations, "We Shall Overcome." And as the law officers withdrew to the outside, the song swelled to a crescendo.

The business meeting then got underway. Miss Patch reported on her work in Lee County. Mr. Allen told of having been knocked down twice last Saturday, beaten and threatened with death by white men in Dawson, the county seat.

Charles Jones asked Mr. Holloway if anything had been heard from the Justice Department regarding an investigation into the dismissal of a Negro teacher.

"No," replied the chairman.

Shortly after 10 o'clock, the Negroes rose and joined hands in a circle. Swaying in rhythm, they again sang, "We Shall Overcome." Their voices had a strident note as though they were building up their courage to go out into the night, where the whites waited.

DENIES URGE TO DESTROY

Lucius Holloway prayed.

"Our concern is not to destroy," he said. "Our concern is not to displace or to fight, but to build a community in which all our children can live and grow up in dignity."

The Negroes then filed out the front door past the group of law officers.

"I know you," said one officer to a Negro. "We're going to get some of you."

Flashlight beams slashed through the darkness to spotlight the face of Miss Patch as the white student climbed into an automobile with some Negroes from Lee County. The whites standing by cursed but made no move toward the car.

Miss Patch and her companion pulled out behind the station wagon in which the newsmen were riding. But the air had been let out of the right front tire of the wagon, forcing it to stop close to the church. The other car stopped, too.

[From Jet, Feb. 21, 1963]

STEP UP DRIVE TO AID HUNGRY MISSISSIPPI NEGROES: ECONOMIC PRESSURE AGAINST 5,000 FAMILIES AFFECTS 22,000 PEOPLE

(By Larry Still)

After months of protesting and pleading, thousands of Negroes are being saved from starvation in the Mississippi Delta by the voluntary distribution of tons of food and supplies donated from all over the Nation.

Aaron Henry, chairman of the Mississippi Council of Federated Organizations, which is handling the distribution of aid from Clarksdale, estimated that some 5,000 families or more than 22,000 persons, were destitute in the area as a result of being denied work or State welfare aid because of increasing economic pressure against Negro voting efforts.

Henry said nine county COFO chairmen were aiding and distributing the food throughout the State under the direction of Mrs. Vera Pegues, a Clarksdale beautician. In nearby Cleveland, the Reverend James Bevel, a representative of the Southern Christian Leadership Council said the food problem is a statewide action which would drive 500,000 Negroes out to other sections of the country.

Although State and county officials denied the charges, a survey of the area by Jet found many families who had been denied aid without reason or after they became actively involved in the voter education project conducted by the combined organizations (the NAACP, Student Non-Violent Coordinating Committee, Southern Christian Leadership Conference, and the Mississippi Voters League) which make up COFO. In some instances, officials voted not to distribute surplus food to the needy in areas like LeFlore and Madison County, where efforts were being made to register more Negroes.

Answering the plea of SNCC and COFO, privately gathered supplies poured into the area from places like Iowa City, Louisville, Detroit, Los Angeles, Ann Arbor, and Lansing, Mich. The drive to aid the hungry families was climaxed by plans to airlift some 10 tons of supplies into Mississippi by the Chicago friends of SNCC to dramatize the plight of the average Mississippi Negro.

Conditions in the terror-stricken State were best described by P. D. East, noted white editor of the Petal (Miss.) Paper, who said: "If I were a Catholic in Mississippi, I'd be worried. If I were a Jew, I'd be scared stiff. And if I were a Negro, I would really be gone."

Faced with embarrassment over the manner in which thousands of needy Negro families have been denied aid, officials in several counties announced a stepped-up welfare and surplus commodities food program. The Mississippi Civil Rights Advisory Commission also held a quick half-day hearing on the

problem in Jackson, then urged the Federal Government to take immediate steps to provide more aid and protection for the State's Negro citizens.

Casting aside all fears for the first time in recorded history, Negro witnesses appeared before the nine-man interracial Civil Rights Advisory Commission (eight white and one Negro) and boldly testified on the creeping reign of terror behind the "Cotton Curtain." Take the case of Mrs. Fannie Lou Haymer, who told how she was run off a plantation away from her husband and children, forced to flee to Chicago and finally decided to return to terror-stricken Ruleville (Jet, Sept. 27, 1962) "to live or die here because this is where I'm supposed to be." Here is Mrs. Haymer's story:

"I was a timekeeper on Bee Marlow's plantation for the past 18 years. On August 31 I went down to Indianola and attempted to register. When I got back to the farm, my oldest girl ran to meet me and told me Mr. Marlow was raising lots of cane. About 20 minutes after I got in the house, Mr. Marlow came and started talking to my husband, Pat. Then he told me I'd have to go down and withdraw my registration. He said that Mississippi 'wasn't ready for Negroes to register.' I told him: 'Mr. Marlow, I thought I registered for myself.' He got mad then and told me I would have to withdraw or leave. And he said even if I withdrew it, I still might have to leave, depending on how he felt. I had no other choice so I came to Ruleville. He told my husband he could stay if he left me. I went to Chicago right after that, but I decided to come back and live here.

"I figure somebody's got to sacrifice for us—they still pester me at night but I am not afraid. I could not get any food or welfare aid until Mrs. Diane Nash Bevel wrote the Agriculture Department in Washington."

Mrs. Haymer was one of scores of Negroes returned to the Sunflower County Surplus Commodity Food rolls after appeals to Washington.

The Rev. Mr. Bevel said Mrs. Haymer is an example of hundreds of Negroes who are becoming really nonviolent in the Delta area * * * "not by demonstrations and sit-ins, but just by not being afraid." Another example was Willie and Rosalee Stewart on the Avon Plantation in Leflore County. The Stewarts have 17 children, a 1962 income of $300. Stewart said he lived "by the luck of the Lord."

In Greenwood, Mrs. Nancy Brand, a 36-year-old mother with two marriages and nine children, told the Commission she has been refused aid since 1956 because she wrote the Justice Department asking for help. Mrs. Brand said she was told there was a "mixup in her marriages," as she displayed two mulatto children. Another current victim of Leflore County practices was Mrs. Laura McGhee, sister of former Belzoni grocer, Gus Courts, who was shot in the head and chased out of the State (to Chicago) in 1956.

Mrs. McGhee, who owned 58 acres on the main highway, said she was committed to Whitfield Mental Institution, denied welfare aid, and threatened with foreclosure on her land because a local merchant wants it for a new housing development. Living with four teenaged children, Mrs. McGhee has been able to keep going with loans from SCLC and "Operation Freedom," a group of Cincinnati ministers organized to help Negroes facing economic reprisals.

Notorious Leflore County, locale of the Tallahatchie River and the infamous Emmett Till case, voted not to distribute surplus food commodities this year because it was "too expensive."

[Greenwood Commonwealth (Greenwood, Miss.), Mar. 20, 1963]

PRESSURED SUPERVISORS VOTE FOR COMMODITIES

THIS WAS A TIME TO RESIST

At an unheralded and hurriedly called meeting yesterday the Leflore County Board of Supervisors voted to surrender one of its prerogatives to the Federal Government.

The meeting was called at the behest of State Welfare Commissioner Fred Ross of Jackson who today refuses to comment on the meeting except to say that he cooperates with individual boards of supervisors in the State in welfare matters.

Also at the meeting were two U.S. Department of Agriculture officials, one out of Washington and one out of Atlanta.

In effect the USDA told Leflore County to furnish commodities to the masses of welfare cheats or "we will do it for you."

What the Commonwealth wants to know is why the board didn't tell the USDA and State Welfare Commissioner Fred Ross to distribute the commodities direct if they wanted to, "but our original decision stands"?

Yesterday was the second time that Welfare Commissioner Fred Ross has come into Leflore County sticking his nose into business better left to local people. The first, you remember, was when CBS carried on national news an interview from a white family which wasn't able to get commodities here this year, either.

This morning Mrs. Hermine Copeland, director of the county welfare department, who attended the meeting for the last few minutes, refused to tell the people anything about the department's position in the matter.

She wouldn't say how many people were given the commodities last year or whether the procedure for the enforced distribution will be changed from last year's policies.

Ross refused to agree that anything had been forced on the county saying that the program is strictly voluntary with the counties involved. When asked why, then, Leflore wasn't permitted to stay out of the program his comment was that stock-in-trade of the professional doler: "No comment."

In other words, dole officials have cooperated with the Federal Government to apply pressure to the county board of supervisors and now refuses to be involved in the matter further. That is for the supervisors to worry about, of course, but we thought we'd give welfare officials a chance to reveal their role in the matter.

It may be that the people of Mississippi might want to consider getting out of the welfare business altogether, because nowhere do the strings attached to Federal money show up clearer than in that particular area which has become strictly an activity of the Government, divorced entirely from the control of the people.

The supervisors take the position that they are saving Leflore County from an invasion of Federal marshals.

This, they say, justifies a vote to go back into the program for 30 full days at a time when all other Mississippi counties in the program from the start will be getting out of it.

Can anyone fail to see the political strings that have been pulled from Washington? Who is going to believe that Leflore County runs its own affairs now?

It is argued that the reason for getting out of it was that the board of supervisors couldn't afford to spend the local money involved and that now the Federal Government is going to spend it for us.

Again we say that the money has come at a time when the need, if there was such great need, is dissolving because of increased labor opportunities with the coming of spring.

This tends to prove that a naked political sword from the Kennedy arsenal in Washington has flashed into Leflore County to encourage the groups of racial agitators now operating here, and the move had nothing to do with the welfare of any people of the county.

This was a time when resistance would have been not only morally right, but easy to defend.

The power move by the Federal Government should have been resisted.

T. W.

[From the Jackson Daily News, Mar. 21, 1963]

INEQUITIES IN LUNCH PROGRAM CHARGED

Civil Rights investigators charged here yesterday that Negroes are being discriminated against in administration of federally financed free school lunch program in Jackson and Greenwood.

The charges came at a meeting of the Mississippi Advisory Committee to the U.S. Civil Rights Commission. The committee also heard complaints of mistreatment of Negroes in transportation terminals in several cities of the State and charges that police in Jackson and Sumrall had mistreated prisoners.

A doctor member of the committee charged that the life of Negro convict Clyde Kennard was shortened, "perhaps radically," for lack of medical aid at the State penitentiary.

Chester P. Relyea, an attorney for the Civil Rights Commission in Washington, told the committee he is in the midst of an investigation of school lunch administration in Greenwood and Jackson public schools.

He charged that while Greenwood school enrollment is 43 percent Negro, only 23 percent of the free lunches go to Negro students.

He presented Levorn Vassal, 15, Negro, of Greenwood, who testified she went home for lunch daily because she couldn't afford the 25-cent price of a school cafeteria meal.

Relyea did not ask her if she had applied for lunch aid.

Relyea said Dr. W. D. Driven superintendent of Greenwood school, had told him that every person who is marked by the county welfare department as "needy" gets free food at school with discrimination.

Relyea said Dr. Kirby Walker, superintendent of Jackson schools, declined to give him information regarding administration of the lunch program.

But Dr. A. B. Britton, a member of the advisory committee, told the group he has conducted an investigation of his own and learned that Negro students are doing without food because they lack funds to pay for meals.

In one Negro school, he charged, teachers have students who bypass lunch and wait in an auditorium while other students eat.

Negroes complained to the committee of mistreatment in bus and rail terminals in McComb, Jackson, and Clarksdale.

Carolyn Thompson, 18, of McComb, claimed she and three other Negro girls were beaten by unidentified persons when they refused to leave the Illinois Central Railroad Depot's white waiting room at McComb February 24. She said a white man threatened her with a knife and the group was attacked by white men armed with brass knuckles and chains.

CLAIMS ATTACKED

Hollis Watkins, 21, of Summit, claimed he was attacked by a white man last October as he bought a ticket in the waiting room normally used by whites at the Jackson Greyhound bus station.

Howard T. Jones, 29, of Jackson, told the committee he received similar treatment at the Greyhound station last August. Vera Pigee led a delegation of witnesses who protested they were mistreated when they used the "big old spacious" waiting room for whites at Clarksdale.

Joining her in the protest were Carolyn Redd and J. J. Mason. Curtis Hayes, 20, of Greenwood, charged he was beaten at the McComb Bus Station in August.

Relyea told the committee he was detained by a Leflore County deputy sheriff when he went into what he assumed was the Negro waiting room at the Greyhound station in Greenwood last week.

He said the deputy released him after learning he was a civil rights investigator.

Relyea said he rode a bus from Clarksdale to Greenwood to check a report that a plainclothes deputy was stationed outside the station to direct Negroes and whites into separate rooms. He said he and Commission Attorney Roland Natalie were investigating Greenwood complaints.

The Interstate Commerce Commission last summer forced all transportation systems to eliminate segregation practices and remove signs designating separate waiting rooms.

Jones recommended to the committee that closing of one of the two waiting rooms at terminals might eliminate difficulty by forcing all passengers into one room.

Dr. Britton dictated into the committee's record a complaint of the treatment of Kennard at Parchman.

Kennard, who tried to integrate the University of Southern Mississippi several years ago, was sentenced to 7 years in Parchman and was released last winter due to illness.

Britton charged that prison officials refused to allow Kennard to keep appointments at University Medical Center in Jackson and thereby "shortened his life, perhaps radically."

Georgia Edmonds claimed her husband was hospitalized by fumes from a gas heater located just outside the cell which held him in the Sumrall jail last winter. She said he was arrested on charges of closing a street but that after 2 weeks he was released.

She said her husband has been hospitalized since the incident.

Andrea J. Bradley, an elderly Jackson Negro, claims Jackson police struck him on the head with a blackjack. He told the committee he was arrested after

he stopped a postman and asked if he had a package of medicine for him. He said he is a World War I veteran who receives medicine and a monthly check for $273 from the Government.

Natalie said Bradley was charged by police with disturbing the peace and resisting arrest but the attorney claimed the postman later told him Bradley did not resist the officers.

DO IT OR ELSE, AGRICULTURE OFFICIALS TELL THE COUNTY

The Leflore County Board of Supervisors did a turn about yesterday on the question of commodities and voted to go along with the Federal Government on the large program for 1 month.

The board, in a statement, said its decision was based on the fact that if it had refused to go along with the program the Federal Government would move in and do it for them.

Board members said they felt it would be far better to have the program under their control than to surrender the control of the program to the Federal Government.

Under the agreement reached yesterday by the board with James A. Hutchins Jr., deputy director of the distribution branch of the U.S. Department of Agriculture and Russell H. James, area field superintendent of Atlanta, and Fred Ross, State director of public welfare, the Federal Government will pay for the entire cost of giving the commodities for the month of April.

The agreement yesterday was for a one time program, however, the Federal people could not promise what would happen this fall.

Last year over 26,000 people received commodities in Leflore County. Out of this number 5,000 are still at this time receiving them under the program. The remaining 21,000 were taken off the rolls when the board after a public meeting voted not to enter the large program because of the financial burden it placed upon the county.

During the previous years when the county did take part in the program workers at the commodity distribution point were furnished by the county from the county farm truckdrivers, and road workers.

However, it was disclosed this morning that the Federal people had given the board of supervisors the authority to hire the necessary personnel for the distribution during April and this cost will also be borne by the Federal Government.

Before making a decision on the question of commodities last fall the supervisors called for a public meeting at which time the question of distribution of commodities was discussed. At this meeting a vote was taken and it was the sentiment of those attending that Leflore County should not enter the large commodity program.

Since this decision was made the county has been harassed by Negro agitators from within and without the State. Food was collected in Chicago and other northern cities for what the professional Negro agitators called the starving people of Leflore County.

Members of the board of supervisors said they made the decision to go ahead with the program because they feared the Federal Government would move into the area with troops and marshals. However, it was learned that the USDA officials stated only that they would take over the program if the county refused to go along on a voluntary basis.

It was also disclosed this morning that the old rules will be used in certifying the persons to receive the commodities in April. One member of the board said because of the speed of the program, it will be impossible to use the new rules for April.

"The old rules and old certifications will be used and brought up to date," he said.

Another member of the board said it appeared from the way the proposal was made at the meeting yesterday the machinery for the direct Federal program was already set up and that if the county refused, the Government was "ready to move in."

THE BOARD'S STATEMENT

EDITOR'S NOTE.—Here is the full statement of the Leflore County Board of Supervisor's in regard to yesterday's decision to go back into the full commodity program for a period of 1 month at U.S. Department of Agriculture expense.

STATEMENT

Yesterday morning the Board of Supervisors of Leflore County, Miss., was called into session at the request of Mr. Fred Ross, commissioner, State department of public welfare, to hear a proposal by the Department of Agriculture in Washington to reinstate the distribution of surplus food commodities on the expanded program which was stopped by the board in September 1962, on account of the financial inability of the board to continue the same, and because the program was unnecessary.

Accompanying Mr. Ross were Mr. James Hutchins, Jr., Deputy Director of the Distribution Branch of the U.S. Department of Agriculture, Washington, and Mr. Russell H. James, Area Field Supervisor of the Department from Atlanta, Ga. Mr. Hutchins stated that he had been sent to Leflore County, Miss. by the Department of Agricultuure to request the board of supervisors to reinstate the distribution of commodities on the expanded program for one additional month only at the sole expense of the Federal Government. In discussing this proposal, the board of supervisors stated that in their opinion there was no actual need for food distribution other than that now being carried out through the welfare department. Mr. Hutchins stated that the Department of Justice had reported to the Department of Agriculture that its agents had found need for surplus food. The board of supervisors replied that this report was most likely made by professional agitators who had issued public releases that many Negroes were starving and hungry in the county. This, the board branded as utterly false and repudiated any such statements.

Mr. Hutchins was asked by a member of the board, if the board of supervisors refused to accept the proposal of the Department of Agriculture what would be the result. He very frankly stated that the Federal Government would move in, take charge of the program and distribute the commodities whether the board of supervisors agreed to it or not. The board, therefore, was confronted with the proposition of accepting the offer of the Department of Agriculture to permit it to make the distribution at the sole expense of the Federal Government or to decline and subject the people of Leflore County, Miss. to an invasion by Federal agents and probably marshals. Under this direct statement by Mr. Hutchins, that the Federal Government would by force distribute the commodities, the board reluctantly yielded and agreed to administer the commodity program for an additional month even though the board is of the opinion that it is unnecessary and will have adverse effect upon the economy of the county and its general welfare.

The board of supervisors calls upon all citizens of the county to cooperate in its action in being forced to make this decision and assures its citizens that it was done only in order to prevent Leflore County, Miss., and its citizens from being subjected to the ruthless invasion by Federal agents.

The board directs attention to the citizens and taxpayers not only of the State of Mississippi, but the entire Nation of the unnecessary use of public funds for political domination by the present administration and urges all to join with the board in resisting such forceful measures.

LEFLORE COUNTY, MISS.,
BOARD OF SUPERVISORS.

[From the Times-Picayune (New Orleans, La.), Mar. 21, 1963]

BEATEN, OUSTED, SAYS STUDENT

WITNESSES ARE HEARD BY MISSISSIPPI RIGHTS UNIT

(By W. F. Minor)

JACKSON, MISS.—An 18-year-old McComb Negro high school girl told the Mississippi Civil Rights Advisory Committee here Wednesday she and several girl companions were beaten and thrown out of a white waiting room in the McComb railroad station.

The Negro girl, Carolyn Thompson, was one of several witnesses who told of altercations with white persons in passenger terminals several places in the State in recent months.

Miss Thompson said the incident occurred February 24, when she entered the waiting room at the train station formerly designated for whites. Her sister and another Negro girl accompanied her, she said, to buy tickets to New Orleans.

She told the committee that she observed the ticket agent make a telephone call and 10 minutes later a white man, whose name she gave the committee, arrived.

She said he pulled her sister and the other girl out of their seats and pushed them out of the waiting room, then grabbed the telephone she was using, "and hit me on the head, and told me to get out."

After the man left, she said, "we reentered the waiting room, and then four other white men came back with chains and brass knuckles."

EJECTED, IS REPORT

One of the other girls was hit, she said, and all of them pushed out of the station.

The girl said she had called the city police before boarding the train to New Orleans, but she heard no report from it.

Two Negroes, Howard T. Jones, Jackson, and Hollis Watkins, Summit, told of being struck by white men in a Jackson bus station when they sat down in the waiting room occupied by white persons.

Watkins said he had previously bought bus tickets on the white side of the bus station, but on one occasion last October when he took a seat, a white man told him to move to the other side.

He said the man began striking him until he got out of the bus station doorway. He said he called the police, but when they arrived a half hour later, the man who assailed him had left.

Jones said he was set upon by a white man while he was buying a ticket at the counter and pushed out of the station. Police arrived about 20 minutes later, he said, and asked him to make a complaint.

LUNCH PRACTICES

Jones said he did not believe "either the bus station or the police" should be blamed for such incidents. "I think what we need is to close one of the two waiting rooms in the bus stations so there won't be any doubt in anybody's mind," he said.

Chester F. Relyea, fieldworker for the U.S. Civil Rights Commission in Washington, said he had made an investigation of the practices of using Federal surplus foods and funds in the school lunch program at Greenwood and found many needy Negro children are not being provided free lunches as required under the program.

Relyea said that while Negroes represent 43 percent of the average daily school attendance in Greenwood, he found that only 23 percent of the free lunches served under the hot-lunch program were Negroes, "yet whites have three times as much income as Negroes in the county."

The Civil Rights Commission worker said the contract under which Federal funds and surplus commodities are made available to the public schools provides that lunches must be provided to children unable to pay.

He said he also attempted to get the figures from the Jackson city school system through Dr. Kirby Walker, superintendent of schools, on the number of free lunches served in Jackson, but Walker declined to give them to him.

A Negro student from Greenwood, 15-year-old Levorn Vassal, testified that she goes home for lunch every day, "because I don't have any money."

She said the lunches at school cost 25 cents, and that "just about all" of the 70 students in the school also go home for lunch.

[From Newsweek, Mar. 25, 1963]

INTEGRATION: OFFICIALLY UNOFFICIAL

Peach and wild-plum trees were blooming pink and white under a balmy sky in Albany, Ga., last week, and to the Negroes of that racially tense community it seemed for a while that things were really thawing out. After more than a

year of futile integration efforts by the Negro coalition group, the Albany Movement, the city council suddenly announced it was junking a whole slew of segregation ordinances.

At first the Negroes of Albany (pronounced "all-benny") were jubilant. "We are overjoyed at the decision," said Charles Sherrod, director of the Student Nonviolent Coordinating Committee's voter registration project in southwestern Georgia. "Albany can now show the way to the country and the world." Dr. W. G. Anderson, osteopath and president of the Albany Movement, proclaimed "a great moral victory."

Doused: But the jubilation was short lived. The arch-segregationist Albany Herald doused it with a city commissioner's explanation: "This action simply lets the city out of the business of attempting to compel any action of any individual operating a business. Now the decisions on integration and segregation rest solely with individual citizens and not with the city of Albany. In our view this will strengthen the existing social pattern of segregation."

Negro leaders determined to learn just how much integration—if any—abolition of the Jim Crow ordinances meant. The answer came swiftly.

When four Negro teenagers sat down at a lunch counter at the rear of the Lee Drug Store, the manager produced a sign reading, "We reserve the right to refuse service to anyone," and ordered them out. City police suddenly appeared and arrested the four for trespassing. The same day, two Negro youths were arrested for sitting on "white" benches in recorder's court; two Negro leaders were refused service in a Howard Johnson restaurant.

The next day five Negro girls tried to buy tickets at the Albany movie theater and were told: "Go away. We don't want your business." A pair of teenagers who tried to enter a "white" cab received this brusque response from the driver: "I'm sorry. I can't haul niggers."

Albany's Negroes found one crack in the color wall. The city's Carnegie Library, which along with the parks and playgrounds had been shut down since August, reopened for a 30-day trial period of "vertical" integration: Negroes could borrow books—but reading room chairs and tables had been removed.

By the middle of the week, Negro leaders had clearly established that abolition of Albany's segregation laws was only a legal tactic by stubborn foes; a stronger, unwritten law prevailed. Yet members of the movement kept testing the use of public facilities with small groups. "We must show the Nation that segregation is not suddenly dead in Albany," explained Dr. Anderson.

No one was in more agreement with that conclusion than Police Chief Laurie Pritchett, flanked by the United States and Confederate flags in his city hall office. When a reporter asked what the situation was now that the city was out of the segregation business, Pritchett laughed heartily and replied: "You look around and see if you can find anything integrated. If you do, call me."

Supplementary Statement of the Student Nonviolent Coordinating Committee, August 12, 1963

(Supplementing earlier testimony of May 28, 1963, and expanding scope to consideration of omnibus civil rights bill (H.R. 7152).)

Mr. Chairman, members of the committee. The Student Nonviolent Coordinating Committee (SNCC), whose central office is in Atlanta, Ga., at 8½ Raymond Street NW., would like to express its appreciation for this opportunity to make known its views on proposed civil rights legislation. As indicated on May 28, 1963, when we testified before this committee on proposed voting legislation, the Student Nonviolent Coordinating Committee is a federated organization of student and local protest groups dedicated to the advance of civil rights. Since its inception in April 1960 the committee has directed its efforts in general toward the molding of a society in which man walks with dignity, and more particularly, toward desegregation of public accommodations, the elimination of racial impediments to unintimidated travel, the expansion of employment opportunities, and the fulfillment of the constitutionally guaranteed rights to vote to the Negro of the South.

In these efforts, the Student Nonviolent Coordinating Committee's staff has, on numerous occasions, encountered opposition of a violent character, amounting at times to brutal assault and attempted murder. Greatly enhancing the effectiveness of this lawless opposition has been the virtually unexcepted absence of police protection. SNCC experience with local authorities has not, however,

been confined to a finding of mere police reluctance to protect the person and property of the committee's staff and local Negro residents from unlawful acts. On the contrary, it has been the experience of the committee that local authorities have gone to great lengths to impede the success of its work. Fines and imprisonment on spurious charges have been commonplace; police brutality at the hands of law officers have been the everyday fare.

The requests the Student Nonviolent Coordinating Committee makes are, therefore, not based on abstract principles or even general statements of policy. Our requests and the arguments in their favor, grow out of continuous and direct contact in precisely the areas where the civil rights bills now before Congress are designed to operate. It is for this reason we feel eminently qualified to testify and that we have a contribution to make to this committee and Congress in their deliberations on civil rights legislation.

BRUTALITY

We would like first to direct our attention to what we consider the most pressing problem before the Congress at this moment—the elimination of brutality in the South. Brutality occurs in various forms; violence by white citizens against Negroes who are asserting their rights, indifference to that violence by local authorities, and brutality by the local authorities themselves. Any legislation Congress passes which fails to deal with brutality but deals only with voting, public accommodations, public schools, and employment opportunities, will be to a large extent ineffective in the South, since the southern Negro will be afraid to avail himself of the rights that that legislation might afford him. Therefore, asking for the elimination of violence or strong protection against its use, is a most logical request. It is based on the recognition that a condition precedent to effective legislation is the creation of an environment in which such legislation is to operate.

There are several additional reasons why a bill aimed at the elimination of racial violence should be passed at this time. First, every day Negroes in parts of the South are the victims of physical terror. It is as much an integral part of their lives as the air they breathe, the food they sometimes have in reasonable abundance, and the jobs they less frequently have. The validity of this observation is attested to by Civil Rights Commission reports, newspaper accounts, and the actual scars of the vicitims themselves. It needs no further statement, for the starkness of it is its own testimonial. We refrain from listing the chronology of terror not only because the record is already replete with it, but because anything short of full narration, a task as herculean as it is terrifying, would be misleading as to the seriousness of the problem. Since there is little hope for relief from local authorities, unless Congress acts, a situation in which millions of Americans live in constant fear of bodily danger and psychological and social depletion, would be allowed to continue. Violence feeds upon itself, and with each instance in which it goes unchecked, the human being deteriorates and the perpetrators gain strength. This alone should be reason enough for Congress to act.

A second reason lies in the ever-present possibility that at some point the Negro will tolerate the abuse no longer and will himself resort to violence. Neither we nor anyone else knows if or when this will happen. Until now the southern Negro has channeled his protest into nonviolent activity. If there is no alleviation of existing conditions, he may decide to resort to other means. We simply state as a matter of realistic observation that resorting to violence, up to now the exclusive property of white southerners, is an increasingly viable possibility. Avoidance of such violence is in the paramount interest of the Nation. The surest way to avoid it is to eliminate the social-economic conditions upon which it is bottomed, and most immediately, to root out existing conditions of brutality.

There is a third reason why Congress should act immediately to eliminate terror in the South. As long as the likelihood of violence attends attempts by the Negro to assert his rights, little will ever be accomplished. Even if Congress were to pass a strong voting bill, What good would it do the man justifiably afraid to utilize its benefits? The passage of one ineffective bill will be followed, in a few years, by the passage of a stronger but still ineffective bill. To avoid this parade of nullities and the greater involvement of the Federal Government in the various substantive areas—an involvement some fear so much—violence should be eliminated. There can then be a maximum effort by individuals and private organizations and not a chronic, hopeless resort to Washington.

We are not impressed with the argument that Federal legislation in this area is an unjustified invasion of States rights. To us the ultimate value is always the welfare of the individual. The States rights-Federal action issue is relevant solely for purposes of determining whether the local or the Federal Government is better suited to protect the individual. In those areas of the South where most Negroes live, the local authorities have not only done little to protect the Negro, they have gone out of their way to injure him. It would indeed be ironic if the argument that States can better protect the individual were to defeat legislation designed to assist the very individual the States have refused to help. If the Federal Government does not act to stop brutality, it is fairly certain that no action from the State or local level is forthcoming. It is as simple as that.

Existing legislation has proved inadequate for dealing with racial violence in the South. It is therefore astounding that the administration bill contains no provisions designed to deal with the problem. We urge the passage of broad authorization for the Attorney General to ask for injunctions against those seeking to deprive any individual of the rights guaranteed by the equal protection clause of the fourteenth amendment. Such a bill has been introduced by Representative Ryan, H.R. 6031, and is embodied in the omnibus civil rights bill introduced by Representative Kastenmeier, H.R. 7702.

Passage of such a provision may not, however, be enough. What we are concerned with is the creation of a deterrent to violence. If violations of injunctions are not followed with contempt suits, then the deterrent effect of the injunction is largely lost. There have, under existing statutes, been a number of injunctions in school desegregation cases. In none of these cases have the violations of the injunctions been followed with successful contempt suits. Knowing full well that without the existence of such a deterrent to violence the southern Negro is still in danger, we are wary of the passage of a Civil Rights Act which attempts to solve the problem of terror in the South through the exclusive means of the injunction. Moreover, the Attorney General may not be inclined to bring the suits or fail to do so for some other reason. Consequently we are gratified that Representative Kastenmeier's bill, H.R. 7702, contains provisions under which both the perpetrators of acts of violence and local authorities which allow such acts, would be civilly liable to the victim as well as criminally liable. The passage of such a provision complementing a provision giving the Attorney General power to institute injunctive suits would be a meaningful beginning to the emancipation of the southern Negro.

MALADMINISTRATION OF JUSTICE

The Negro in many parts of the South has not only been the victim of terror, but also the victim of a total maladministration of justice. This means that the judicial system has not served as the impartial arbiter of civil and criminal cases but instead has actively been cooperating with efforts directed at preventing the Negro from obtaining the rights which are legitimately his. This willingness to cooperate is manifested in a number of ways. Perpetrators of crimes against Negroes are very often not indicted and even fewer are convicted—and this occurs even where the crime on its face has been committed. The entire value of the deterrent upon which in large part the criminal law is based, is lost as white and Negro communities are told that no sanctions will be imposed on those that violate the law in instances where such violation is incident to and directed against a Negro's attempt to assert his rights. Violence is in that way encouraged.

The aid of the judicial system has on the other hand, been successfully invoked in obtaining the conviction of civil rights leaders on spurious charges. Spurious arrests occur at times when leadership is most needed. Thereafter, a fair trial frequently is not forthcoming, thereby paralyzing the entire Negro community. The United States Government is an amicus curiae brief in *City of Danville* v. *Bruce Baines*, noted that the judge in the local court who was to hear pending contempt charges was himself involved in attempting to disperse crowds of demonstrators. The Government went on to observe that: "the judge had prepared, in advance of trial, a written memorandum of his decision, finding the first two defendants guilty of contempt; * * *

* * * * * * *

"The combination of a trier of fact who has apparently prejudged the issues and was a participant in the events culminating in the very charge to be tried, considered together with the general atmosphere of the proceedings and its

inevitable results, makes it quite clear, it seems to us, that a fair trial cannot be had in the corporation court."

Another device used by local courts is to disallow any bail, or demand it in such excessive amount that it is on its face not commensurate with the alleged offense. The release of defendants either is thereafter moot, or an inordinate and unreasonable financial drain on the Negro community. Often, property bonds are not acceptable, even if the property is real property located in the same county where the arrest occurred. Cash must therefore be obtained. If trial is delayed, as often happens, bail money is tied up with the local authorities. Through a combination of these devices, municipalities in the South can obtain the equivalent of interest free bonds from civil rights groups almost any time they desire.

An existing statute allowing for removal from State to Federal courts (28 U.S.C. 1443), contains very broad language but has been narrowly construed by Supreme Court decisions of the last century. Removals to the Federal courts are therefore difficult. Not facilitating matters any is 28 United States Code, section 1447(d) which declares that decisions to remand are not reviewable, on appeal or otherwise. Consequently the Supreme Court has not even had the opportunity to reconsider its past decisions.

The administration has introduced no legislation in this area, despite the position of the Justice Department in *City of Danville* v. *Bruce Baines*. Under the Kastenmeier bill, H.R. 7702, both suits against private individuals for unlawful acts involving infringements of the equal protection clause of the 14th amendment and suits by the State or any subdivision of the State where there is an abridgement of equal rights can either be brought in or removed to the Federal courts. The enactment of such provisions would go a long way toward eliminating one of the more egregious aspects of southern society and at the same time help in a small way to foster the confidence of the southern Negro in the American judicial system.

VOTING

Once the threat of violence and the maladministration of justice have been eliminated, we have perhaps arrived at the situation where the Negro stands unintimidated at the local registrar's office, requesting that he be authorized to vote in local and Federal elections.

Under existing voting legislation, less than 40 suits have been filed by the Justice Department, in none of which has the district court judge exercised his discretion to appoint a voting referee. In only one case, *U.S.* v. *Manning*, May 1962 (East Carroll Parish, La.), has the district judge consented to hear the application of Negroes other than the immediate applicant. In that case, 41 of approximately 60 applicants were found qualified. The result has been that in the 6 years following the passage of the 1957 Civil Rights Act, inconsequential gains in voter registration, if any, have been made in those parts of the country where a minute percentage of the Negroes were registered to begin with.

We feel that this failure of existing law is attributable to several causes. Some have already been mentioned, and, as indicated, receive no attention at all from the administration. The administration has, however, introduced a bill dealing with voting rights specifically. We feel that as it now stands, this bill will not constitute that effective legislation needed to reenfranchise the southern Negro, even assuming that no other problem existed. Rather than repeat in toto our comments made before this committee on May 28, we would prefer to summarize our statement. We criticized the administration bill, H.R. 7152, on four major grounds.

1. Although the district courts under H.R. 7152 would be obligated to hear voting cases within a prescribed period of time, there is no requirement that the decision be made as quickly as possible. Voting cases could then, under the administration bill, as in the past, continue on the court calendar for a discouragingly long period of time. We recommended that cases be decided as well as heard within 10 days from the initiation of the proceedings.

2. In view of the complete failure of district court judges to appoint voting referees in the past and in view of their importance to the effective administration of a voter registration statute, H.R. 7152 is of no aid in that it only repeats existing law on that question. We therefore recommended that the appointment of voting referees be made compulsory.

3. To insure the appointment of voting referees by a more detached source, we recommended that the judicial council rather than the judicial conference select the panel of referees from which appointments were to be made.

4. In a similar vein, and for analogous reasons, we recommended that the judicial council of the circuit exercise supervisory powers over the courts within the circuit to secure the prompt and effective disposition of all voting proceedings.

We are gratified that in H.R. 7702, introduced by Representative Kastenmeier, the substance of our suggestions was followed. To the extent that our suggestions are not embodied in H.R. 7702, we reaffirm them. To the extent that H.R. 7702 expands H.R. 7152 on voting beyond our suggestions, we endorse those expansions. We would in particular like to direct attention to subparagraph D of section 101 of H.R. 7702. That subparagraph prevents any person from administering any test whose purpose and effect are to discriminate on account of race. Where Negroes have not received a sixth-grade education, the local registrar would, under H.R. 7702, not be allowed to refuse Negroes while registering white persons of comparable qualifications. Since approximately 50 percent of the Negroes in certain areas of the South have not received a sixth-grade education, this addition by Representative Kastenmeier is of great significance.

PUBLIC ACCOMMODATIONS

Today when any of the 20 million Negroes in this country plan to travel through the South, to avoid even greater humiliation and insult, an inordinate amount of preparation must go into the trip. Unlike his white neighbor who merely stops to eat when he is hungry and stops to sleep when he is tired, the Negro must plan to reach a certain point by mealtime; to reach one of the few motels catering to Negroes, or the residence of a relative or friend, or a friend of a relative or friend, by the time he intends to go to sleep. The burden of this excessive planning and the degradation attending it is placed upon the Negro for no reason other than his race. When not in the process of travel but simply in the routine incident to everyday life, comparable insult is suffered by the Negro when he attempts to avail himself of the goods and services offered by establishments ostensibly open to the entire public.

The effect of this discrimination is staggering. At one time, occasionally very early in his life, the Negro American learns that race is among the many fortuitous factors that contribute to his chances of obtaining that which he, or society, deems desirable. Unlike other discrimination based on factors such as good health, or general competence, which have at least a rational basis, racial discrimination knows no legitimate justification; it is the consequence solely of the meanness or at best thoughtlessness of one's fellow citizens. Truly it is as barbaric and unfair as the ancient customs of assigning great importance to letfhandedness or red hair. Yet unlike those ancient customs, racial discrimination is no historical relic which we ponder with the question: "How could they have been so ignorant?" It exists today, and the thought that future generations will view us with the same disdain we have for those who practiced the barbarisms of the past does little to mitigate its effects.

Fittingly enough, the total harm done to our country by racial discrimination is greater than the sum of the individual hurts sustained by its citizens. It is elementary economics that the wealth of a nation is predicated on the efficient use of its natural and human resources. We are blessed in that we have extraordinary natural wealth. We are cursed in that we place 10 percent of our human resource in a position where its contribution to our national effort is seriously impaired. How long we continue this waste is up to us. This committee and this Congress can do something. They can let the Negro American know that racial discrimination is not to exist because his Government allows or enhances it. A crucial first step toward the elimination of this very serious sickness in our society is the passage of a public accommodations bill.

The Student Nonviolent Coordinating Committee is not fortunate enough to have a legal staff to prepare an extensive memorandum on the constitutional issues involved. We would, however, request that this committee rely on the broadest possible range of constitutional powers for a public accommodations bill. Once this basis has been established, it should be fully utilized.

H.R. 7702, the Kastenmeier bill, expands the administration bill by eliminating the requirement that certain practices have a substantial effect on interstate commerce; the full commerce power is used. H.R. 7702 also utilizes the due process clause of the 14th amendment more throughly. The Kastenmeier bill exempts from its operation private boarding houses where less than six rooms are rented. Such an exemption makes no sense to us.

If Mrs. Murphy opens a boarding house to the public, she ought not to be allowed to refuse access to her boarding house to anyone for reasons of race. If Mrs. Murphy operated a beauty salon in her living room, then during those hours of the day the living room is used for business purposes, she ought not to be allowed to refuse access to it on racial grounds. The reasons for the passage of a public accommodations bill are applicable with equal authority to all instances where a business is open to the public. To exempt from the operation of the bill businesses solely because they are small is to impliedly condone those same practices which the passage of the bill condemns on a larger scale. Size is not relevant to the quality of the act being regulated. We do not think Congress should follow such an inconsistent course of action.

Because we feel that our testimony should be confined to those areas in which our experience during the past 3 years has given us competence, we have emphasized brutality, removal, voting, and public accommodations. The demands we have made are the demands of the southern Negro.

It should not be forgotten that the southern Negro is largely voiceless in the political process. This is precisely his dilemma. It would therefore be the saddest of ironies if because of his powerlessness, the southern Negro were lost in the shuffle and were to remain without a channel for effective expression.

Although the southern Negro has no spokesmen integrated into the legislative process, he speaks as one man with the moral authority of generations of privation and struggle as his sword. His voice must be heard and his need fulfilled.

June 11, 1963, Selma, Ala.: SNCC Field Secretary Bernard Lafayette was brutally beaten by a white man who had asked Reverend Lafayette to give his car a push. Lafayette, who with his wife had been working since February trying to get Negroes of the county registered to vote, required hospitalization for injuries. Six stitches were needed to close the wound in his head.

June 17, 1963, Selma, Ala.: A young voter registration worker for SNCC was punched and bodily thrown into the sheriff's office. The 19-year-old Negro, Bossie Reese, had only been watching Negroes register. The incident was protested to local FBI agents. Reese was charged with "failure to obey an officer of the law" and "resisting arrest."

June 18, 1963, Albany, Ga.: Three workers for SNCC who have been active in the voter registration drive, were arrested for "passing out handbills" in a Negro residential neighborhood in East Albany. The three, Ralph Allen, Vera Giddens, and Robert Cover, had been passing out SNCC's newsletter, the "Student Voice," and a leaflet announcing a mass meeting.

June 20, 1963, Albany, Ga.: Ten SNCC workers were arrested in several groups. One group was canvassing in Negro neighborhoods for voter registration; the other young people were in groups trying to obtain service at four downtown restaurants.

June 24, 1963, Canton, Miss.: Five Negroes, returning to their homes from a voter registration meeting, were shot. None were seriously injured, but all required hospital treatment.

June 25, 1963, Greenwood, Miss.: Ten Negroes were jailed in front of the Leflore County Courthouse where they were eating their lunch. The Negroes were waiting for a chance to take Mississippi's voting test. County supervisors decided that Negroes could not eat their lunch on the courthouse lawn. Among the 10 arrested were SNCC workers, James Pruitt, Hollis Watkins, McArthur Cotten, Will Henry Rogers, and Mary Booth.

July 5, 1963, Selma, Ala.: A 30-year-old father of seven lost his job because of his participation in a voter registration drive. Sheron Powell was told by Charles White, manager of the Cleveland Table Co., in Selma, that "circumstances beyond our control," made his firing necessary.

July 8, 1963, Tuscaloosa, Ala.: A voter registration worker for SNCC was jailed for "vagrancy" for the second time in a month. Wilson Brown, held illegally in Tuscaloosa since July 2, asked Attorney General Robert F. Kennedy to protect his rights.

July 20, 1963, Clarksdale, Miss.: Six SNCC fieldworkers were jailed for "distributing leaflets." The literature dealt with the Negro voter registration campaign in Clarksdale.

[News release, July 3, 1963]

STUDENT NONVIOLENT COORDINATING COMMITTEE,
Atlanta, Ga.

BERL BERNHARD,
Staff Director, U.S. Commission on Civil Rights,
Washington, D.C.:

Urgently request that the U.S. Commission on Civil Rights hold a full-scale hearing on civil rights in Mississippi immediately. It is now apparent that the Department of Justice lacks the necessary manpower and legal equipment and support from the judiciary to fulfill its obligations to the State of Mississippi and the country in the minimum area of voter registration. You cannot, without selling out your responsibility to Congress, the President, and the country, delay a full-scale hearing by the Commission any longer. The fact that the murderer of Medgar Evers comes from Greenwood is not insignificant by any means. It strongly supports the theory that a ring of killers operates out of Greenwood with an official wink from the police and other law enforcement agencies in Mississippi. Apparently the Department of Justice and the FBI are unable to operate in any manner with these people. The fact that three Negroes have been killed in the past 6 weeks by officers of the law in Holmes, Tallahatchie, and Panola Counties, is also not insignificant. The Department of Justice has voting in all three counties and it is the unattached Negroes that the law officers are the most likely to take vengence on.

The Department of Justice has an inescapable obligation to guarantee voter registration rights to the Negroes in Mississippi and the South. Yet it admits its inability to provide protection for the applicants for registration and for voter registration workers, to say nothing of the ordinary citizen who is an innocent victim. In this case the Commission has an inescapable obligation to expose the full range of Mississippi's contempt for the laws of this country. The country cannot demand the strong legislation needed from Congress because it does not understand and cannot connect the stray facts which drift through Mississippi's cotton curtain. Only a hearing of the full Commission can command the authority to present these facts to the country. The argument that such a hearing would seriously impede the suits filed by the Justice Department in Mississippi can no longer be seriously considered. The Federal judiciary in Mississippi has demonstrated that it is by no means able to respond to these suits and to the emergencies of our times with intelligent constructive judicial action.

ROBERT MOSES,
Director, Mississippi Voter Registration Project, Student Nonviolent Coordinating Committee.

APPENDIX E

CHRONOLOGY OF ABUSES (PUBLIC ACCOMMODATIONS)

August 26, 1961, McComb, Miss.: Two SNCC workers, Hollis Watkins, and Elmer Hayes, were arrested while attempting to get lunch counter service at the F. W. Woolworth store and charged with "breach of the peace." They spent 36 days in jail.

August 27 and 29, 1961, McComb, Miss.: Five Negro students from a local high school were convicted of "breach of the peace" following a sit-in at the lunch counter of a variety store and bus terminal. They were sentenced to a $400 fine each and 8 months in jail. One of these students, 15 years old, was turned over to juvenile authorities, released, subsequently rearrested, and sentenced to 12 months in a State school for delinquents.

August 29, 1961, McComb, Miss.: Two Negro leaders were arrested as an aftermath of a sit-in protest march on the city hall. They were charged with "contributing to the delinquency of minors." They were Cordelle Reagan, of SNCC, and Curtis C. Bryant, of McComb NAACP. Each arrest was made on an affidavit signed by Police Chief George Guy, who said he had information that the two" * * * were behind some of this racial trouble."

August 30, 1961, McComb, Miss.: SNCC workers, Brenda Travis (16 years old), Robert Talbert (19 years old) and Isaac Lewis (20 years old), staged a sit-in in the waiting room of the McComb terminal of the Greyhound buslines. They were arrested on charges of "breach of the peace" and "failure to obey a policeman's order to move on." They spent 30 days in jail.

October 4, 1961, McComb, Miss.: The five students who were arrested as a result of the August 29 sit-in in McComb returned to school, but were refused admittance. At that, 116 students walked out and paraded downtown to the city hall in protest. Police arrested the entire crowd, but later released all but 19, all of whom were 18 years old or older. They were charged with "breach of the peace" and "contributing to the delinquency of minors" and allowed to go free on bail totaling $3,700. At the trial on October 31, Judge Brumfield, finding the students guilty, and sentencing each to a $500 fine and 6 months in jail, said: "Some of you are local residents, some of you are outsiders. Those of you who are local residents are like sheep being led to the slaughter. If you continue to follow the advice of outside agitators you will be like sheep and be slaughtered."

October 5, 1961, McComb, Miss.: Charles Sherrod was arrested on the street, thrown into a police car, and charged with resisting arrest. Cordelle Reagan was also arrested and charged with contributing to the delinquency of a minor. Both were field workers for SNCC active in desegregating the city's public facilities.

October 11, 1961, McComb, Miss.: Paul Potter, of Philadelphia, a vice president of the National Student Association, and Tom Hayden of Atlanta, both white, were dragged from their car and beaten as they drove alongside a group of Negroes making an antisegregation march. The incident occurred in the business section of the city.

October 22, 1961, Jackson, Miss.: Dion Diamond, SNCC field worker, was arrested for "running a stop sign" after being followed all day. In court the next day, the arresting officer told the judge: "He is a freedom rider. Throw the book at him." Diamond was refused legal counsel and fined $168. He had been active in the effort to desegregate facilities for interstate bus, train, and air passengers.

November 18, 1961, McComb, Miss.: Persons unknown fired a shotgun blast into the bedroom of Dion Diamond and John Hardy, both SNCC fieldworkers, living at 702 Wall Street. Both were engaged in the campaign to desegregate all public places. Investigating Officer Frank Williams found shotgun pellets embedded in the window frame.

February 10, 1962, Nashville, Tenn.: Five students, all members of the Nashville Student Non-Violent Movement, were arrested while requesting service at Cross Keys Restaurant. They were all indicted on charges of "unlawful conspiracy to commit acts injurious to trade or commerce."

April 1962, Talladega, Ala.: A protest march by 375 students on April 6 began a series of planned demonstrations against the segregated library, movie theater, lunch counters, and churches. At least 50 students were arrested in the 3 weeks of protest. During the demonstrations, bottles and chemical solutions were thrown at the students, and some students were hurled against plate glass windows.

April 27, 1962, Talladega, Ala.: SNCC Field Secretary Robert Zellner was arrested as he was getting into a car to drive to Atlanta. He was charged with "conspiracy to violate trespass laws." He had been instrumental in getting students to protest racial discrimination in downtown public facilities. Bond was set at $2,500.

April 28, 1962, Talladega, Ala.: A temporary injunction was granted prohibiting "illegal" demonstrations against racial discrimination in the city's public services, naming the following groups: Talladega College's president, members of the student body, members of the college faculty, the executive secretary of the Alabama Council on Human Relations, the Student Non-Violent Coordinating Committee (SNCC) and Congress of Racial Equality (CORE).

June 19, 1962, Atlanta, Ga.: An Atlanta Negro college student, a Negro doctor, and a Negro dentist, and four other Negroes filed suit in Federal Court asking for injunctions to (1) permit Negro physicians and dentists use of staff facilities at Grady Memorial Hospital, (2) end the segregation of patients on the basis of race, and (3) admit students to training facilities without regard to race. The suit declared unconstitutional the separate-but-equal provision of the Hill-Burton Acts, and lists a total of $1,789,719 in Federal funds which it claims Grady Memorial Hospital has received under the Hill-Burton Act.

July 1962, Cairo, Ill.: A field secretary for SNCC, Mary McCollom, was slashed on the leg by a member of a mob which had gathered when students picketed Mack's Barbecue, a restaurant which had consistently refused to serve Negroes. Negroes in Cairo had filed several complaints with the Illinois Commission on Human Relations listing biased facilities in Cairo. Groups of Negro and white students were turned away from a public swimming pool and a bowling alley.

June 21, 1962, Clarksdale, Miss.: A white lawyer from Jackson and four college students were jailed in Clarksdale for 20 hours without outside communication. One of the students was a Negro. William Higgs, the lawyer, and students were jailed on a Sunday night by county officers and were released the following day, without charges being filed against them. They were investigating complaints of discrimination against interstate travelers.

August 20, 1962, Cambridge, Md.: A group of five persons, including members of the Cambridge Nonviolent Action Group (a group organized by SNCC in 1961), the Civic Interest Group, and the Congress of Racial Equality, were charged with "disorderly conduct" and "trespassing" when they demanded service at Murrel and Foxwell Restaurant. A waitress threw water on the group, but when they attempted to swear out a warrant against her, they could find no legal authority willing to do so. The integrated group also tried earlier to be served at DizzyLand Restaurant where a waitress informed them they "could wait till hell freezes over."

August 23, 1962, Charleston, Mo.: Eight students were arrested during a week of demonstrations against segregation in a movie theater and cafeteria. Those arrested included an SNCC field secretary. The charges made were "interfering with a police officer" and "trespassing."

November 22, 1962, Marietta, Ga.: A Howard Johnson's restaurant on U.S. Route 41 refused to service SNCC staff members, James Forman, Charles McDew, and Julian Bond. The three were locked out of the restaurant as a waitress saw them approaching. A second Howard Johnson's on Murphysboro Road outside of Nashville refused the same group service.

November 28, 1962, Murphysboro, Ill.: In a hearing before Jackson County Housing Authority, Mrs. Maxine Passmore was given until December 4, 1962, to vacate the Bridgewood Homes public housing project. Mrs. Passmore is president of the Murphysboro Nonviolent Freedom Committee. This group, in a year of work, had succeeded in integrating some restaurants, a bowling alley, and a swimming pool.

January 8, 1963, Montgomery, Ala.: SNCC Field Secretary Robert Zellner was arrested on the campus of Huntingdon College for "vagrancy." Zellner, a 1961 graduate of Huntingdon College, had dinner with a student and another friend on the campus. He had urged them to help in desegregating Montgomery. Zellner was taken to the county jail in Montgomery, then transferred to the city jail where the charge was changed to "vagrancy," and bond set at $1,000.

January 23, 1963, Montgomery, Ala.: Assistant Solicitor Maury Smity said in court that he offered Robert Zellner, SNCC field secretary, the following deal: If Zellner would plead guilty to a vagrancy charge placed against him on January 8, 1963, accept a $100 fine and a 30-day suspended sentence, "false pretenses" charges against him would be dropped. The solicitor himself said in court that Zellner refused the offer.

On January 8, the day of his arrest on vagrancy charges, Zellner had written a check for a camera to the City Pawn Shop. Harold Ehrlich, pawnshop operator, reading of Zellner's vagrancy arrest, called police. Calls were made to Zellner's Atlanta bank to determine if the check was good. Bank officials had notified police by telegram that there were sufficient funds in Zellner's account. The check in question, however, was held by police.

January 11, 1963, Pine Bluff, Ark.: William Hansen, a field secretary for SNCC, Ben Greenwich, an SNCC fieldworker, and Leon Nash, a student at Arkansas A.M. & N. College, were arrested in front of a laundromat. The three were charged with "vagrancy," and "suspicion of passing bad checks."

Hansen and Greenwich had been working for several weeks in Little Rock, where after sit-in demonstrations, negotiations with owners of hotels, drugstores, and department stores had gotten underway. The Pine Bluff arresting officer suggested to Hansen and Greenwich that if they would both agree to leave town, the charges against them would be dropped. Bond was set at $300.

January 11, 1963, Montgomery, Ala.: Robert Zellner, SNCC field secretary, was sentenced to 3 days in jail on vagrancy charges subsequent to his arrest on January 8.

January 19, 1963, Nashville, Tenn.: Four students face trial on charges of "unlawful conspiracy to obstruct trade and business." The charges stem from an unsuccessful attempt to reserve overnight accommodations at the Young Men's Christian Association in Nashville. The students were John Lewis, Lester McKinnis, Frederick Leonard, and Vincent Horsley. The original charge was "breach of the peace," but Judge John Boone changed it later to the conspiracy charges. Charles M. Gray, manager of the YMCA, swore out the war-

rant for the arrests charging the students with "failing to leave the YMCA lobby after being denied accommodations." Reservations had been made for the students the day previous, but the YMCA claimed none had been made.

February 7, 1963, Knoxville, Tenn.: Picketing of a segregated cafeteria near the University of Tennessee was continued by the Students for Equal Treatment. The group is cochaired by Marion S. Barry, former chairman of the Student Nonviolent Coordinating Committee and a graduate student at the university in the field of chemistry. Barry said the group had tried many times to negotiate with S. B. Byerley, who operates Byerley's Cafeteria, but that Byerley had refused to talk with students or representatives of campus church centers.

February 7, 1963, Pine Bluff, Ark.: Ten Arkansas A.M. & N. College students were expelled from that college after having participated in sit-in demonstrations at Woolworth's.

February 8, 1963, Pine Bluff, Ark.: Several demonstrators against segregated public facilities, including SNCC Field Secretary Bill Hansen, were severely beaten by a mob of white youths.

February 9, 1963, Pine Bluff, Ark.: The windshield of Bill Hansen's car was smashed after a mass meeting of Negroes in Pine Bluff. Several crudely made Molotov cocktails were hurled at St. James Methodist Church where students had been holding strategy meetings.

February 21, 1963, Baltimore, Md.: Since February 15, 1963, at least 450 Morgan State College students have been arrested while protesting segregation at the Northwood Movie Theater, adjacent to the Morgan State College campus.

February 21, 1963, Talladega, Ala.: At the request of the State of Alabama, hearings on a temporary restraining order against antisegregation demonstrators have been extended until March 13 to give the State additional time to amend its plea. During the last 2 weeks of hearings, most of the enjoined parties (the student body of Talladega College, Robert Zellner, SNCC field secretary; Talladega College President Arthur Gray, and others) have filed amended motions to prove that the State has come into court with unclean hands in conspiring to maintain segregation in Alabama.

The State holds in the hearings that antisegregation demonstrators incite violence by their presence and that the State's only concern is the prevention of violence.

March 1, 1963, Atlanta, Ga.: Hotel segregation in Atlanta has caused at least 20 Negro employees of the Fulton County Welfare Department to withdraw from a conference of social workers. The 20 Negroes who had been urged to attend the conference asked for their registration fee to be returned when they discovered that the Dinkler-Plaza Hotel would not let them eat with other social workers.

March 21, 1963, Atlanta, Ga.: Two Negro college students, both members of the Committee on Appeal for Human Rights (COAHR) waived hearing before a municipal court judge on charges of trespassing at the segregated Henry Grady Hotel. They were bound over to Fulton County criminal court with a bond of $100 each. The two students along with two others had entered the hotel and presented photostatic copies of their reservations which had been obtained by a white student at Spelman College. The clerk informed them that the hotel was "sold out." The students refused to leave, took out blankets and pillows and lay down on couches in the hotel lobby. Police asked them to leave and arrested them upon their refusal.

March 28, 1963, Nashville, Tenn.: Several hundred Negroes, students and adults, marched from Tennessee A. & I. University to downtown Nashville to protest arrests which had taken place at the B. & W. Cafeteria and Cross Keys Restaurant, targets of continual demonstrations since November 1962. A number of students had remained in jail from March 4 to 21 awaiting trial.

March 23, 1963, Atlanta, Ga.: Students from Booker T. Washington High School and staff members of SNCC picketed the Rollerdome skating rink protesting its segregated policies. Police demanded names of all the picketers, and refused to allow two New York photographers and SNCC field secretary Robert Zellner to take photographs.

March 23, 1963, Knoxville, Tenn.: Students from Knoxville College and the University of Tennessee along with members of Americans for Liberty and Equal Racial Treatment began picketing the Tennessee and Bijou Theaters, after they had been refused admission.

March 25, 1963, Knoxville, Tenn.: At least 53 students were arrested since picketing began March 23 at the Tennessee and Bijou Theaters. Most were arrested on charges of "disorderly conduct," "refusing to move one," and "inter-

fering with commerce and trade." All students were released on bond, some as high as $250.

April 10, 1963, Talladega, Ala.: Eighteen Talladega College students were arrested on trespassing charges during sit-ins at three drugstores, Stone's Drug Store, the City Pharmacy and Fordham's store. The arrests were observed by Talladega Mayor J. L. Hardwick.

April 6, 1963, Talladega, Ala.: Three hundred college students, professors, and local citizens staged a protest march around the city's courthouse. The marchers circled the building once and then stood silently before it, wearing signs that read, "Open the Pool," "Open the Library," "Open the Hospital."

June 2, 1963, Cambridge, Md.: Two 15-year-old youths were sentenced to indefinite terms in reformatories because they had been arrested twice during antisegregation picketing in Cambridge.

June 8, 1963, Danville, Va.: A grand jury indicted three leaders of the Danville Christian Progressive Association on charges of "inciting to riot" and "encouraging a minor to commit a misdemeanor." Avon Rollins, field secretary for SNCC, said that one policeman pushed a 16-year-old girl down a flight of stairs in the courthouse on June 5. Rollins said another policeman clubbed a 13-year-old crippled boy, and a third pushed Rev. A. I. Dunlap, pastor of St. Paul A.M.E. Church over a bannister. Dunlap, Julian E. Adams, Sr., and Rev. Lawrence Campbell, pastor of Bible Way Church, were the three indicted.

June 8, 1963, Atlanta, Ga.: The jailing of three college students at a segregated restaurant brought to 89 the number of sit-in demonstrators arrested here since April.

June 10, 1963, Danville, Va.: Avon Rolins, SNCC field secretary, and SNCC executive members were arrested with 37 others after they had been hosed down and attacked by police with billy clubs in a demonstration against racial segregation in the city's public facilities.

Later the same day, at a protest demonstration at the city jail, police again ambushed the demonstrators, hosed them, and beat them savagely. At least 30 were injured and needed medical attention. Robert Zellner, field secretary for SNCC, was arrested when he tried to take photographs.

June 12, 1963, Gadsden, Ala.: Two SNCC field secretaries were jailed during antisegregation demonstrations in the downtown area.

June 12, 1963, Pine Bluff, Ark.: A Negro high school boy was savagely beaten by 20 white youths in a "white only" city park while 2 policemen stood by and watched. When Jesse Wilson's friends tried to help him after the beating, city police ordered them away, saying, "We don't want a group gathering here." Later the youth was refused treatment at Jefferson County Hospital until a Negro doctor could be found to treat him.

June 12, 1963, Savannah, Ga.: The Savannah Youth Strategy Committee, affiliate of SNCC, renewed demonstrations after they had given Mayor Malcolm McLean 36 hours to comply with their demands for immediate desegregation of all public facilities and nonarrest in their protest against privately owned public accommodations.

June 13, 1963, Danville, Va.: Negro citizens who had been waiting to see Mayor Stinson since July 11, faced high-power water hoses and at least 40 policemen with nightsticks. They were trapped on the steps of the city hall with the police behind them and trucks in front of them.

That evening, persons coming from a mass meeting were stopped at a roadblock, made to get out of their cars, and were searched. City police and Virginia State troopers, armed with submachineguns, checked the cars. The police were accompanied by an armored tank with four machineguns mounted on top.

June 14, 1963, Danville, Va.: Police appeared at the High Street Church with warrants for the arrest of 30 persons, all the SNCC workers, and Rev. L. W. Chase. The SNCC field secretaries and others had been entrapped in the church by police since the day before, following a demonstration against segregation in public places.

June 17, 1963, Atlanta, Ga.: A group of 14 persons were arrested at Leb's Restaurant and charged with "trespassing" and "disorderly conduct." The group was led by the Committee on Appeal for Human Rights and the Student Nonviolent Coordinating Committee.

June 18, 1963, Danville, Va.: James Forman, SNCC executive secretary, was found guilty of trespassing and fined $50.

June 19, 1963, Danville, Va.: Avon Rollins, executive committee member of SNCC, protested grand jury hearings "which are serving to intimidate Negroes

from participating in the freedom movement." Lawyers are forbidden to enter the hearings, and no one is allowed in without a subpena.

County Judge Aiken refused to set bond for the arrested demonstrators, including two SNCC workers—Daniel Foss and Robert Zellner.

June 19, 1963, Itta Bena, Miss.: The group of 58 arrested June 18 was convicted of the charge of "breach of the peace." Bond was set at $750 for each man and $500 for each woman. They were sentenced to 6 months in jail and $500 each.

June 19, 1963, Albany, Ga.: Twenty-nine Negroes were arrested. Police beat women and children, while the Negro community retaliated by throwing bricks and bottles. One Negro woman was dragged from her front porch by police, beaten and left lying in the street.

SNCC workers, John Perdew, Peter Lissovov, and Philip Davis, were arrested in a group of demonstrators who were marching toward the segregated Albany Theater. They were charged with "disorderly conduct."

June 19, 1963, Savannah, Ga.: Three thousand Negroes left a mass meeting to march en masse to the Holiday Inn, where they knelt in prayer on the street. After 400 were arrested, the rest walked to the city jail to protest the arrests.

June 20, 1963, Albany, Ga.: Fifty-six Negroes and whites were arrested in two separate demonstrations: one group in sit-in attempts at four restaurants, and another group of teenagers who were singing freedom songs in a residential project.

June 20, 1963, Savannah, Ga.: State and city police fired tear gas on a group of 2,600 Negroes as they knelt on the street in front of the city jail protesting the arrest of 400 Negroes. Protests in this city have continued for 2 weeks under the leadership of Benjamin Van Clark of the Savannah Youth Strategy Committe, an affiliate of SNCC, and Hosea Williams of the Chatham County Crusade for Voters. Negroes are seeking desegregation of all hotels, motels, restaurants, cabs, and other public facilities.

June 21, 1963, Albany, Ga.: Three more SNCC workers were arrested bringing the total arrests of SNCC personnel to 19. The three were in a crowd coming out of a mass meeting. They were singled out and arrested.

A note smuggled out of the jail described the beatings of Miss Joanne Christian, arrested on June 20th. Miss Christian had been dragged into an alley by police, dropped on her back three times, after which a detective threw her into the corner of the jail and "squeezed the door on her." She was then pulled up by her hair by a policeman wearing badge 43, thrown down a flight of stairs, where a desk sergeant picked her up by her hair and hit her on the neck.

June 21, 1963, Danville, Va.: Grand jury indictments were read today for five members of the Student Nonviolent Coordinating Committee and some local ministers. Indictments for "contributing to the delinquency of minors" and "inciting to riot," both felonies carrying $5,000 bond for each person, were cited for: James Forman, SNCC executive secretary, Dorothy Miller, SNCC officeworker, and three SNCC field secretaries, Robert Zellner, Avon Rollins, and Daniel Foss.

June 21, 1963, Clarksdale, Miss.: Twenty-three persons were arrested since June 17th. Those arrested had been picketing the library, the courthouse, churches, the local Bell Telephone Co., and the newspapers. They were charged with "parading without a permit."

June 27, 1963, Danville, Va.: Daniel Foss, a SNCC worker, told attorneys visiting him in jail, that he had been beaten and intimidated by other prisoners. Foss' glasses had been smashed and his shoes had been taken from him.

July 1, 1963, Gadsden, Ala.: A SNCC field secretary was released from jail after paying a $20 fine on vagrancy charges. The youth, James Austin, was arrested June 29th when he took a seat on the "white" side of the Trailways Bus Terminal.

July 1, 1963, Greenville, Miss.: Two field secretaries of the Student Nonviolent Coordinating Committee were arrested as they spoke to a group of Negroes on the steps of the city jail after the arrest of 17 antisegregation marchers. Charles McLaurin and Charles Cobb were charged with "resisting arrest" and "creating a disturbance," for urging the demonstration. Later, two more SNCC personnel were arrested while sitting-in at the counter in Walgreen's Drug Store.

July 3, 1963, Danville, Va.: Resumed demonstrations began in a test of segregated facilities at a drive-in and at movie theaters. Negroes were refused admission at all the businesses.

July 3, 1963, Savannah, Ga.: Benjamin Van Clark, a SNCC worker, was sentenced to pay a $1,500 fine, or face 2 years in jail after his third arrest on trespassing charges. Clark and five other Negroes were jailed on June 25th and held without bail. Chatam County Solicitor Andrew J. Ryan, denied them bail because all six had been arrested three times for their antisegregation activities under trespass statutes passed in Georgia in 1960.

July 7, 1963, Albany, Ga.: Albany Movement Vice President Slater King, and two field secretaries of SNCC were arrested with nine other persons at the segregated Tift Park Pond. The pond, once a public facility, was recently sold by the city government to a private individual, the editor-publisher of the Albany Herald, a segregationist newspaper, who operates the pond on a white-only basis.

July 8, 1963, Savannah, Ga.: Hosea Williams, director of the Chatham County Crusade for Voters, was arrested on "good behavior" warrants sworn out by local white citizens for "potential damages" to the community of Savannah. Bond mounted to $7,500 as other whites swore out similar warrants.

AFFIDAVIT FROM REV. SAMUEL BENJAMIN WELLS

(Active in both voting and desegregation campaigns in Albany, Ga.)

I, Samuel Benjamin Wells, was with seventeen others that went down to City Hall, about 10:30 p.m., July 8th. We walked slowly, recognizing all the traffic signs, being careful not to block the path of the people who walked the streets at the time. We were walking in a single file to make sure that we did not obstruct the traffic. Arriving at City Hall, we found about twenty policemen and detectives standing out all over the sidewalk, which appeared that they were waiting for us. We walked up and stood in a single line on the outer edge of the sidewalk, just to the edge of the street where the cars pass. No sooner than we came to a halt, the uniformed officer wearing captain's bars asked me, Samuel B. Wells, "What did you come for this time?" I spoke and said, "I came because, after two years having passed, the city fathers have failed to hear or respect the grievances of the Black citizens of this community * * * for two years they disregarded thirty-three percent of the Albany Community which happens to be black, provoking them by selling their property without even giving them a chance to vote on the matter or without consulting the citizens of Albany. We are protesting because we believe we should be recognized as citizens if for no other reason than the fact that we have defended this country from her enemies every time we was called upon to do so and will defend this country again, if need be. We are also here to protest the illegal arrest of our leader, Mr. Slater King." At this time the policeman asked me, "Is this all you want to say?" Then the detective asked me, "Who do you want to see?" My reply was, "I would like to see the official that's responsible." Then he said, "They are not here." Patricia Gaines, standing beside me, told the officer that we would like to wait here until he called them on the 'phone and told them that we were here, waiting to have a conference with them. Then the captain, the uniformed officer, caught me by the right wrist with his left hand. With his right hand, he grabbed me in my groin. With the first hold he only caught me in my pants. Then he reached down into my groin to get a hold on my genitals and they lifted me by these two holds, carrying me in the alley about half way between the door and the street, that is, the door that led to the booking office. The detective looked around as if to see if there was anyone looking. Then I could feel him as he released his grip and dropped me on the pavement. Then he said, "Oh, oh," as if he did not do it intentionally. Then we were nearing the cement steps of the entrance into the booking office. I began watching the steps as we neared them, because I was afraid that they would throw me up against the steps, as the same detective had swung me there before, at another time, with the help of two other men, and I landed across the stomach of a fifty-nine-year-old woman. "You better look because we'll throw you up against those steps," he said, when he saw me watching the steps. Then, dropping me at the door inside, and looking to see if they were ready to book me, the two again picked me up, to carry me in, dropping me on the floor and asking me to get up and give the officer my name and address. Again I failed to cooperate. Then the two picked me up and threw me against the bars of the office. I gave the officer my name and address and age. When he said, "That's all," I again fell back on the floor. The two picked me up and carried me into the area where the whites are locked up because you have to go through this area to get to the

place where they lock up the colored. Then again in this area where they lock up the whites, they threw me again on the floor. During this time I made it clear that I had been hurt by the detective and the officer who purposely picked me up by my genitals. The detective's response was, "What do you want to do about it?" As I continued to lay on the floor, I told him, "I will see you around the corner of justice, because injustice will not prevail always." Then the same two officers carried me down into the area where they threw me into a cell so that I fell flat on my back with my head out the door of the cell. One of the officers kicked me up side the head and after this I rose to my feet. The officer backing up putting his hand on his gun, told me to stay in the cell. I told him "I do not want to come out the cell because there is more power in the cell than there is out there where you are."

Subscribed and sworn before me this 12 day of July, 1963.

(Signed) SLATER KING, N.P.

My commission will expire 10/6/63.

July 10, 1963, Savannah, Ga.: At the heels of a violent 2-hour run-in between 2,000 Negroes and Savannah Police who clubbed and tear gassed the demonstrators, Georgia Gov. Carl E. Sanders promised to take "whatever steps necessary" to end antisegregation demonstrations. The battle, which resulted in the arrest of 68 Negroes, occurred after a SNCC Field Secretary Bruce Gordon, and an undetermined number of Negroes were hauled away in police wagons after they were accused of blocking traffic in front of the city jail. Policemen who were ordered to break up the crowd using "whatever means necessary," lobbed tear gas pellets at them and shot over the heads of the demonstrators. Rick Tuttle, a SNCC worker, said several Negroes suffered from gas inhalation and head wounds from police beatings.

July 11, 1963, Cambridge, Md.: Members of the Cambridge Nonviolent Action Group (an affiliate of SNCC), picketed "Dizzyland" restaurant while a crowd of Negro and white onlookers battled. The demonstration followed sporadic violence on July 10 when about 250 Negro marchers had protested the arrest of four sit-inners at the restaurant. On July 11 four whites and three Negroes entered the dining place and were attacked and thrown out by whites inside. The Negro crowd then moved on the restaurant calling for its owner. Whites and Negroes fought until State police broke up the crowd as the city police stood by, making no attempt to end the melee.

July 12, 1963, Americus, Ga.: Eleven members of the Sumter County Student Nonviolent Coordinating Committee were arrested at a local theater after trying to purchase tickets at the white ticket window. They were charged with "blocking the sidewalks" and "disorderly conduct," and were held under $212 bond.

July 12, 1963, Danville, Va.: Six Negroes, carrying signs asking for equal employment and the intervention of Dan River Mills in the racial crisis in Danville, were arrested on mill property. Officials of the textile mill did not sign a warrant. Eight others, carrying signs through two department stores in Danville, were also arrested.

July 12, 1963, Selma, Ala.: A SNCC fieldworker, who had been arrested June 17 on charges of "failure to obey an officer of the law" and "resisting arrest," was convicted of another set of charges, "conduct calculated to provoke a breach of the peace" and "resisting arrest." Bossie Reese was found guilty and fined $200.

July 13, 1963, Danville, Va.: After 2 white observers—both fieldworkers for SNCC—were arrested, some 40 Negro pickets protested and were also arrested. Sam Shirah and Daniel Foss were charged with "vagrancy" and "refusing to move when ordered to do so" as they watched a group of Negroes picketing the city hall. Bond was set at $500 for Shirah and $300 for Foss.

Samuel Giles, a SNCC worker, led a protest picket line about the original arrests, with 25 others. All were jailed. Another group of six Negroes, led by David Davis, another SNCC worker, and Claudia Edwards, a field secretary for the Congress of Racial Equality, were arrested also at the city jail.

July 13, 1963, Albany, Ga.: Six persons seeking entrance to Albany's only operating swimming pool were arrested at the pool's entrance and charged with violation of an antitrespass law and failure to obey an officer.

July 15, 1963, Gadsden, Ala.: Ten State troopers held and beat a SNCC field secretary after telling him he would have to learn "respect for white troopers." They then placed him under arrest for "having a foreign driver's license."

Landy McNair, the arrested SNCC worker, is a native of Jackson, Miss., and possesses a Mississippi license. The arrest was ordered by Albert Lingo, director of the department of public safety for the State.

McNair had been riding in a car with Marvin Robinson, a CORE field secretary; Patricia McElderry, a SNCC worker, and another Negro youth. State troopers halted Robinson, who was driving, and arrested him when he produced an out-of-State license. When McNair slid behind the wheel, they demanded that he produce his license. He was then dragged from the car, beaten, and arrested.

STATEMENT OF LANDY MCNAIR: SNCC FIELD SECRETARY

(Active in voting and desegregation campaigns in Alabama)

Place: Eastern part of Gadsden, Ala., July 15, 1963.

Persons involved: Landy McNair, Patricia McElderry, and Edward Thomas, SNCC workers; Marvin Robinson, CORE field secretary; Colonel Al Lingo, safety director of Alabama; Alabama State troopers.

About 1:30 or 2:00 in the afternoon, Patricia McElderry and myself decided to go over in East Gadsden to where she lived, to her house. Eric Rainey had left to carry Claudi Hawls to Selma, Ala., in the car. So we decided to ask Marvin Robinson to carry us to Patricia's house in Mary Hamilton's car, which he agreed to do.

Mary's car was parked in the rear of the Mary Sue Apartments. As we drove around to the front of the Mary Sue Apartments, where the driveway comes off of Megin Boulevard, we saw a white 1963 Oldsmobile. We joked that it was Col. Al Lingo, safety director of Alabama, who has a car like that.

The white 1963 Oldsmobile made an improper turn at the corner of Sixth and Megin as we approached the boulevard, and followed us all the way down Megin, about three cars behind.

There were four of us in the car, Patricia, Marvin, myself, and Edward Thomas. We were carrying him home. We got about one and a half miles, and as we turned off the boulevard, there was a sign saying, "Entering Green Pastures"—which is also part of East Gadsden—we were stopped by a patrol car.

A policeman got out of the patrol car, and at this time three other patrol cars and the white car came up also.

The officer from the first car came out of the car, and came up to the car we were in and asked Marvin for his driver's license, which Marvin showed him. Marvin has a Louisiana license, and the officer asked was Marvin working in Alabama.

Marvin said he was a field secretary of CORE. So the policeman said his license was no good for Alabama.

The policeman went to the car and asked over the intercom: "We have this Nigger Robinson and what should we do with him?"

And the voice over the intercom replied, "Put him in jail."

The officer came back over to the car. He knew who we were, and said Marvin was under arrest.

Marvin got out and said I should drive the car, and said: "Tell Mary not to worry about getting me out of jail," and to get in touch with the lawyer, whose name I forget.

I slid under the driver's seat, and the officer asked to see my license. He said a Mississippi license was no good for Alabama, and was there anyone in the car with an Alabama license. There wasn't.

I was lighting a cigarette, and another officer said take the cigarette out of my mouth.

He asked where did I work, and I said I was a field secretary for the Student Nonviolent Coordinating Committee.

He continued to ask questions, and I was answering, "Yes," and "No."

Another officer from the rear said; "Wait a minute, Boy, can't you say, "Yes, Sir'?"

I didn't respond.

He asked me again, and I didn't respond.

Al Lingo, who had come over, leaned into the window and said to Patricia and Thomas, "What are you damn niggers doing in Alabama, anyhow?" No one said anything.

One officer asked what should be done with the car.

The reply was to put it in storage. One of the troopers climbed under the driver's seat.

Pat still sat in back, Thomas in the right front. The officer said if Pat wanted to ride downtown, she had to get in front. So Pat and Thomas got out of the car, and Pat said something to me.

I didn't hear what she said, but I said, "Yes." So Pat and Edward started to walk down the boulevard in the direction of Pat's house.

And about that time, Lingo said—I don't remember exactly what, but he said—"I'll teach you damn niggers * * * something," and went to the back of his white 1963 and pulled out one of those prodders—cow shockers—what you call them. It was wrapped in black tape and he came toward me with this thing and attempted to put it on me, and I grabbed it with my left hand.

He asked me to turn it loose, which I didn't do.

When I didn't, 10 officers approached. One officer ran behind me and pulled my hand up over my head.

I remember being hit up side my face and in the stomach.

I know he bounced my head up alongside the car about 10, 15 times.

I remember him telling me to get up. I was trying to get up. He still had my hands pinned up behind my head.

I don't know too much until I was in the car. Pat and Thomas were about a half block down, and they'd remember better what happened.

There were two officers in the front, and one in the back with me. He had a little hand prodder of electricity. He kept jabbing it into my arm all over, and he asked me did I know what a nigger was?

I told him, "Yes." He asked me, what was it?

I replied that, "A nigger was a black man, I guess." He asked me, did I know how to pray?

All the same time he was still jabbing me with this little hand prodder. And I said "the Lord's Prayer" and he asked me to say, "Yes, sir."

At the time my head was hurting—no excuses—I said, "Yes, sir," anyway. He asked me to repeat it louder. And I did.

He asked the officer sitting in the front right to hand him a gun and take the bully out. He handed the gun to me. I refused to take it.

He said to the other officer "I want an excuse so I can kill this damn nigger right here." And he told me as soon as I get out of jail if I don't leave the State of Alabama he would kill me. And I didn't respond.

He continued to talk all the way down. About two blocks from jail he asked me if I was from Mississippi, how come * * *.

I didn't understand what he said, and I said I didn't understand, and he hit me across the face with his hand. And I said I still didn't understand, and he hit me again.

That's all that happened until we got to the jail.

It was the usual thing with booking. It was the Etowah County Jail on Broad Street in Gadsden. I was booked on breach of the peace, provocation—that's an open charge—and resisting arrest.

The determination of the people in Gadsden is still high, and if no effective results come out of the negotiations going on, the demonstrations will continue.

Because when a man can't sit in his own house because he's black, we really don't have democracy.

July 19, 1963, Americus, Ga.: Eleven juveniles, jailed a week ago, were convicted of the following charges: blocking the sidewalk, failure to disperse, and illegal picketing. The students were placed on probation and their parents fined $15.75 for court costs. They were sentenced by Juvenile Court Judge James Smith.

Generally, there are no court costs in juvenile cases, and no fines are imposed unless damages are involved.

July 19, 1963, Americus, Ga.: At least 55 Negroes were jailed after an antisegregation demonstration at the Martin Theater.

July 19, 1963, Savannah, Ga.: Municipal Court Judge Victor Mullins reduced bond for 24 jailed antisegregation demonstrators, but refused to lower $15,000 bail each for two SNCC field workers, Bruce Gordon and Rick Tuttle. Bail for 23 demonstrators was reduced from $3,000 each to $1,000 each. Bond for Chatham County Crusade for Voters head, Hosea Williams, was lowered from $30,000 to $15,000.

July 19, 1963, Atlanta, Ga.: Twelve sit-in demonstrators were removed bodily from the doorway of Lebs Restaurant and charged with violation of the State's antitrespass law. A white man had barred the way of the demonstrators, slapping and kicking them when they tried to enter the restaurant.

July 19, 1963, Atlanta, Ga.: Fulton County Superior Court Judge Durwood T. Pye has ordered Solicitor General Bill Boyd to prepare, for presentation to a grand jury, indictments on 101 arrests resulting from sit-in cases dating back to November 1961. The judge's order listed names of persons arrested, places where violations are alleged to have occurred, and arresting officers. The judge told grand jurors to indict violators of the State's antitrespass law, violation of which is a misdemeanor and usually not handled by grand juries.

July 22, 1963, Albany, Ga.: Rifle shots sprayed a bedroom of SNCC's Albany office. Two SNCC workers, John Perdew and James Daniel, asleep at the time of the shooting, were not injured. A detective from the Albany Police Department investigated the scene.

July 23, 1963, Somerville, Tenn.: SNCC field secretaries reported that a deputy sheriff broke up an antisegregation demonstration with tear gas after white hoodlums attacked demonstrators, ripped up their signs, and threw liniment in the face of Colonius Towles. The police stood by and watched an older white man beat James Carpenter, Jr., 17 years old.

Seventeen students were arrested while sitting-in at Rhea's Drugstore. One student, Malcolm Gray, was injured when hoodlums broke all the teeth in his mouth. No arrests were made.

July 23, 1963, Danville, Va.: Two workers for SNCC were convicted on charges of "refusing to obey an officer." The two, Sam Shirah and Daniel Foss, had been watching a demonstration by Negroes at the city hall. They were fined $25 plus court costs. Sam Shirah described the treatment he received in jail as follows: "When I was arrested, on July 11, I went limp and would not cooperate. Police took me inside the jail into an office and banged me up against a wall three or four times. There was seven or eight policemen in there with me. Then they took me into another office, threw me on the floor and my head banged up against a desk leg. They took me into a third office, locked the door, and started beating me in the stomach and kicking me in the groin. Four of them jumped on top of me and started beating me. Two of them got hold of my leg and twisted it. When I hollered that they were breaking my leg they jumped up and then took me into my cell."

July 25, 1963, Clarksdale, Miss.: Six young civil rights leaders, jailed a week ago on charges of violating a city antilitter ordinance when they passed out leaflets urging a boycott of merchants, were released. On a $400 appeal bond, four were released: Lafayette Surney, of SNCC; Thomas Gaither, of CORE, and Cecil Scott and Sam Jackson, of Clarksdale. Two, Barbara Gates and Erzilla Hicks, both 16 years old, were released by a juvenile court judge and charges against them dropped for lack of evidence.

City officials brought an injunction against further demonstrations. The court order, which named SNCC, SCLC, CORE, and the NAACP, prohibits the groups from "engaging in, sponsoring, inciting or encouraging mass street parades." The order also prohibits "boycotting, trespassing, and picketing and other unlawful acts."

July 28, 1963, Danville, Va.: Eighty Negroes and whites were arrested by local police as they attempted to stage a protest march in downtown Danville. About an hour later, a car carrying several SNCC workers was stopped, and Robert Zellner, a SNCC field secretary, was arrested on charges of "violating" a corporation court injunction and a local city ordinance prohibiting demonstrations. Zellner was being held in Danville city jail in lieu of $1,500 accumulated bond. Zellner had not participated in the march, but had followed the demonstrators about a block behind and had witnessed their arrest. He was accompanied by another SNCC field secretary, Sam Shirah.

July 29, 1963, Pine Bluff, Ark.: Three students and a field secretary for the Student Nonviolent Coordinating Committee required medical attention after they were attacked by whites throwing ammonia and bottles at them. The students, members of the Pine Bluff Movement, had been staging a sit-in at McDonald's Restaurant, a drive-in hamburger stand, when the violence occurred.

About 60 whites gathered at the door of the restaurant while the sit-in demonstrators were standing in the glass enclosed vestibule of the restaurant. As police watched from across the street, whites threw ammonia and acid at the students while the restaurant manager, Mr. Knight, threw cokes, ice, and water at them.

(Whereupon, at 3:55 p.m. the hearing adjourned until Wednesday, June 12, 1963.)

CIVIL RIGHTS

THURSDAY, JUNE 13, 1963

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

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

Present: Representatives Celler, Rodino, Jr., Rogers, Donohue, Brooks, Toll, Kastenmeier, McCulloch, Meader, Cramer, and Lindsay.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The committee will come to order.

Our first witness this morning is the distinguished Representative from Michigan, Representative Charles C. Diggs, who is accompanied by, I presume, Dr. Aaron E. Henry, of Clarksdale, Miss., who is the president of the Mississippi State Conference of the National Association for the Advancement of Colored People.

Prior thereto, the chairman would like to read a statement.

Patience is the art of hoping. The Negro has prayed and hoped. Relief seems hopeless despite patience. He has waited—waited with anxiety. There seems no end to anxious waiting. Certainly there must be an end to patience and waiting. Frankly, the Negro will no longer wait. The new generation of Negro, better educated, with more money, with more power than heretofore, will use these advantages and assets to break the shackles that still bind. He will brook no opposition and will not be satisfied with token integration. The white man has tarried too long. The Negro will not accept now the theory of gradualism.

The 20 million Negroes must be reckoned with. They have power. We white leaders must not let the 20 million Negroes be led by demagogs and fanatics and extremists. That power must be molded and led by men of reason—not men of rancor. Congress must help supply the format of leadership, with strong progressive laws. We have a gifted and dedicated President and a dynamic Attorney General, who would execute these laws. We must supply them with the legislative tools asked for. Otherwise, we shall share the blame for unconfined and dangerous strife and disorder. Much evil will result unless we act and act quickly, for time is of the essence. Might must not triumph over right, riot over reason. The bullet should not replace the ballot. As the President stated: "Fires of frustration and discord are burning in every city."

A tragic answer to the President's eloquent plea over television to the Nation on Tuesday was the unspeakable shooting and killing of the Negro head of the NAACP of Mississippi. Excited Negro clergymen in New York, my own city, threaten a huge mass movement on Washington unless a strong civil rights bill is passed soon.

It is over 100 years since the Emancipation Proclamation. It is 9 years since the *Brown* decision with its edict of "deliberate speed." Yet, little progress has been made. Truculent Governors encourage their citizens in the law's defiance. A black nationalist fever has exacerbated the difficulties.

We can no longer palliate and ponder, quibble and quarrel. We must pass stringent laws and pass them soon.

We must do away with the slowness with which the lower courts have moved to implement the 1954 school desegregation decision. Only four-tenths of 1 percent of the Negro students in the 11 States of the old Confederacy are now attending classes with whites.

Unless we act, I fear riots and ruin in certain places.

Mr. McCULLOCH. Mr. Chairman.

The CHAIRMAN. Mr. McCulloch.

Mr. McCULLOCH. I have no prepared statement and did not intend to make one but I should like to say now that I deplore and all right-thinking Americans deplore and unequivocally condemn the murder of Medgar Evers in Mississippi the day before yesterday.

Mr. Chairman, in my humble opinion on this committee but coming from a great section in Ohio, I want to call on every American wherever he may be, or whatever his occupation is, and whatever his origin was, to do nothing to inflame the emotions of any segment of our population in these trying times. We have been reading with great concern and with sorrow of riots, demonstrations by people of various segments of this country. Unlawful activity by whomsoever is engaged must come to an end and we must solve this very difficult problem, probably the most difficult of all domestic problems, in accordance with the best traditions of this country.

To that end, I have been willing to move and have been moving with all the ability that I have for many years. I mention there, Mr. Chairman, the Civil Rights Act of 1957 on which I worked with you for so long and in which was the title III when it left this committee and when it left the House and on the work on the Civil Rights Act of 1960 which were two of the giant steps in the implementation of the Constitution of the United States in the last 100 years.

If you will pardon the personal reference, I have legislation before this committee which has been before this committee since late January or early February. It should be given prompt consideration without further postponements of hearings regardless of the cause, unless there be real emergencies, and we should move to the enactment of that legislation and to the consideration of supplemental legislation thereto introduced by several of my colleagues, including my colleague to the right this morning, John Lindsay, of New York.

The CHAIRMAN. I want to testify to the effect that Mr. McCulloch has been working in cooperation with me and the other members of

the committee as he has in the previous years which work led to the 1957 act, to the 1960 act, and I am sure will lead to the 1963 act.

I note the presence of our distinguished colleague, John Lindsay, who is not a member of this subcommitte but we welcome his presence.

Mr. LINDSAY. Mr. Chairman, I thank you once again for permitting me to sit with the subcommitte although I am not a member of it.

I do think that the time is long past due for every member, every elected official in a representative capacity to speak out on behalf of his community and the people that he represents, speaking for them to express the shock, the disbelief, the sadness, and the concern over the murder of Mr. Evers in Mississippi. That man had three children waiting for him at home and a wife. I have four, just one more than he, and I can imagine the anguish that they are going through at this moment. This has definitely shocked my community.

My mail, I am glad to say, is rolling in today as the result of this incident in protest to what has occurred and this just demonstrates to me once again that we must have legislation to protect the Bill of Rights, protection for individuals. We must have legislation along the lines of title III that Mr. McCulloch mentioned. We must have legislation on public facilities and we must have it across the board from education to housing to equal job opportunity, management and labor alike.

I think the country is going to insist upon legislation being passed in this session of the Congress.

I still think that it would be helpful for this committee to hold hearings in Mississippi.

The CHAIRMAN. I am going to shut the gentleman off on that. We have covered that and the gentleman knows very well that this committee has no power to go down to Mississippi. I told the gentleman that some time ago.

We have no resolution that empowers us to issue subpenas or to leave Washington. To do that we would have to go to the Rules Committee and the gentleman should know that. I am sorry to have to reprimand the gentleman.

I should like to go to Mississippi. I would like to go everywhere but we do not need any more facts. We can legislate now if necessary.

This is a legislative inquiry, not a general inquiry, as to the details of what is happening throughout the length and breadth of the land.

I am sorry that I will have to cut the gentleman off on that score.

Mr. LINDSAY. With due respect to my distinguished chairman, I must disagree.

The CHAIRMAN. We have no power.

Mr. LINDSAY. I still think you can go to the Rules Committee.

The CHAIRMAN. You try to go to the Rules Committee and try to get something out of them. We would have to wait until doomsday.

Our witness will be Mr. Dudley Diggs, or rather Mr. Charles Diggs, Representative in Congress from the State of Michigan.

I am thinking of a very famous actor, Dudley Diggs, but you are a famous Congressman, Charles Diggs.

STATEMENTS OF HON. CHARLES C. DIGGS, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN; DR. AARON E. HENRY, PRESIDENT, MISSISSIPPI STATE CONFERENCE, AND CLARENCE MITCHELL, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. DIGGS. Thank you very much, Mr. Chairman. I am flattered by the analogy between myself and the distinguished English actor. I would merely add that I am here today to speak realistically and not theatrically with respect to what I consider to be a very important matter.

Mr. Chairman, I am not here to make a formal statement. I prefer to reserve my remarks on the substance of the legislative issue until the debate opens in the House. I rather prefer to yield my time with respect to the substantive issue and introduce a person whom I consider to be one of America's most distinguished freedom fighters, Dr. Aaron Henry, of Clarksdale, Miss., the president of the NAACP of that State.

Now, Mr. Chairman, I find myself in a rather awkward position to make a reference to a matter which has engaged you and the gentleman from New York in a colloquy; but may I speak about that from the standpoint of the principle involved and give you at least my personal opinion as to the impact of having hearings in the areas mentioned if it were possible.

You may recall, Mr. Chairman, that in the middle of April I communicated with you about holding some of the hearings in those areas where the problems are more acute.

I recognize, of course, that you have the kind of problem that you have referred to and, if you were to use the present resolution under which you are operating, it would necessitate an interpretation of some of the clauses to determine whether or not you had authority and if not you would have to go to the Rules Committee. But I hope it would be educational at least to give you at least what my idea is about the basis for the communication I sent you urging this.

First of all, freedom fighters like Dr. Henry are generally people of modest means and people who have extraordinary expenses. By extraordinary expenses I mean that they, in many instances, have to pay for fines, etc., that would in any other place be illegal.

I have known of instances where freedom fighters like Dr. Henry have been stopped, while driving, on spurious traffic charges saying they were speeding or they ran a red light or something like that and they had to pay for this out of their pockets. They have extraordinary expenses with respect to property damages to which they are subjected such as Dr. Henry has been on a half dozen different occasions involving his own home and his own place of business. They have extraordinary expenses involving doctor bills as a result of being beaten up for pressing for civil rights. They have extraordinary expenses that are tied proportionately to the loss of income which they have suffered, and Dr. Henry has been a victim of this. His family has been a victim of it since his wife's teaching contract was not renewed as a direct result of his involvement in civil rights

activities. They cannot afford the travel and other expenses that are involved in coming here to Washington. This is the first reason.

The second reason is that, despite the fact that we have reams of testimony, Mr. Chairman, on this subject and could probably proceed into hearings or to marking up a bill without further testimony, I think it is important to get more testimony from people like Dr. Henry, who are on the firing line, and to get this kind of testimony in their natural habitat. I think that it would give the committee a greater feel for the problem and an even stronger desire to want to do something to resolve it.

I say that, Mr. Chairman, because I think all of us recognize that motivation varies with respect to support of this legislation. The gamut ranges from insincerity, insincerity as best epitomized by people who want to put antidiscriminatory amendments on every bill that comes through, knowing full well that their type of amendments have a tendency to kill the substantive issue, and we saw evidence of that yesterday when people from States who normally you would think would be for civil rights stood up and voted for the Waggonner, of Louisiana, amendment to the area redevelopment bill which would have said that the Area Redevelopment Agency could not promulgate any regulation which would have prohibited discrimination in the use of facilities.

We saw Members from Northern States stand up in support of that amendment because they felt that, if it did get in the bill, it would help kill it. So we do have that kind of insincerity.

We do know that there is political motivation involved in some people's minds with respect to this matter. We know that there are moderates here in Congress who want to do just enough to satisfy people and not go any further than that.

We know that there are not too many people who have a real evangelistic zeal about civil rights legislation and issues despite all of the events of recent days.

So, Mr. Chairman, it has been my personal opinion that, if the committee members could actually see the conditions under which Negroes live in these areas, if they could actually talk to some of their oppressors both in the public and private sector in these areas, I am sure that the sheer revulsion which would take place would strike the chords of their Christian instincts and, in my opinion, Mr. Chairman, that is what is needed here in America today. I think that we need more Americans to get a visceral reaction to the meaning of second-class citizenship and how it affects Negroes politically, socially, and economically, and I do not think that you can get the real impact of it until you have actually been in those areas and talked to people in those areas on both sides of this particular issue.

The CHAIRMAN. I am in thorough accord with you on that but I have here before me House Resolution 36, which passed the House, which gives us our power and, reading that resolution, I have no power as you indicate. I wish I had the power but I have not the power. I could not get the power now at this stage of the game.

We will put in the record House Resolution 36.

I would like to do exactly what you want to do but I am powerless. My hands are tied.

(H. Res. 36 is as follows:)

[H. Res. 36, 88th Cong., 1st sess.]

RESOLUTION

Resolved, That, effective from January 3, 1963, the Committee on the Judiciary, acting as a whole or by subcommittee, is authorized to conduct full and complete investigations and studies relating to the following matters coming within the jurisdiction of the committee, namely—

(1) relating to the administration and operation of general immigration and nationality laws and the resettlement of refugees, including such activities of the Intergovernmental Committee for European Migration which affect immigration in the United States; or involving violation of the immigration laws of the United States through abuse of private relief legislation;

(2) involving claims, both public and private, against the United States;

(3) involving the operation and administration of national penal institutions, including personnel and inmates therein;

(4) relating to judicial proceedings and the administration of Federal courts and personnel thereof, including local courts in territories and possessions;

(5) relating to the operation and administration of the antitrust laws, including the Sherman Act, the Clayton Act, and the Federal Trade Commission Act; and

(6) involving the operation and administration of Federal statutes, rules and regulations relating to crime and criminal procedure; and

(7) involving the operation and administration of the Submerged Lands Act and the Outer Continental Shelf Lands Act.

Provided, That the committee shall not undertake any investigation of any subject which is being investigated by any other committee of the House.

The committee shall report to the House (or the Clerk of the House if the House is not in session) as soon as practicable during the present Congress the results of its investigation and study, together with such recommendations as it deems advisable.

For the purpose of carrying out this resolution the committee or subcommittee is authorized to sit and act during the present Congress at such times and places within the United States, whether the House has recessed, or has adjourned, to hold such hearings and to require by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents, as it deems necessary. Subpenas may be issued under the signature of the chairman of the committee or any member of the committee designated by him, and may be served by any person designated by such chairman or member.

Funds authorized are for expenses incurred in the committee's activities within the United States; and, notwithstanding section 1754 of title 22, United States Code, or any other provision of law, local currencies owned by the United States in foreign countries shall not be made available to the committee for expenses of its members or other Members or employees traveling abroad.

Mr. DIGGS. Lastly, Mr. Chairman, just to conclude on that particular issue, I think it would help restore confidence in congressional machinery and I think that this is a very, very important point to be considered in connection with what the committee does and what the Congress does.

The CHAIRMAN. I wish everybody who makes this charge would also couple it with reading of House Resolution 36, which would exculpate the chairman and the members of this Judiciary Committee from any charge of failure to go down into the highways and byways of the old Confederacy and see what is happening. I would like to do it. I am sure the members would like to do it. We just cannot do it. We cannot get the power at this stage of the game.

Mr. DIGGS. With respect to the matter of confidence in congressional machinery, Mr. Chairman, I would like to point out that, despite the fact that Congress has passed two bills since Reconstruction, one in

1957 and one in 1961, both in the voting field, there has been not one Negro registered as a direct result of the passage of these bills.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt my colleague there and I take no issue with that statement. It is regrettable but there has been authority in the executive department to move in some fields since 1957 and, if my memory is correct, there has been some movement under that legislation and under the legislation of 1960, both in the former or previous administration, and in this administration, and the facilities are there to bring more actions.

I refer again, Mr. Chairman, to the 1957 act which passed the House containing a title III with stronger provisions than had ever been successfully passed in the House before, and I am sure that the gentleman from Michigan knows the conditions under which that title failed in the Senate.

Furthermore, I would like to make this statement, too. By reason of the reference to the action through some sessions of Congress on the floor of the House with respect to amendments that would end some of these deplorable practices, there may be some who participate in those decisions in a manner that is not strictly honest. I am sure, however, that there are many, and I am speaking for them, whom I do not know but I do know there are some who are as conscientious in their votes on that question on the floor of the House as upon any other; and, finally, Mr. Chairman, while I am a Northerner, at the most formative period of my life I was in the Deep South and I am a member of the bar of the State court in one of those States and I am not wholly unmindful of the deplorable conditions of which the witness speaks although I come from Ohio.

Mr. DIGGS. I have no doubt that the gentleman from Ohio's concepts are correct and that his orientation in this field is beyond question.

I would like to conclude this portion of my reference by saying that so far all real progress in the field of civil rights has come from the executive and from the judiciary despite the passage of the two bills to which I have referred so that, in short, Mr. Chairman, in my opinion, if it were possible, taking into consideration all of the problems involved, for the committee to hold hearings in the areas I have mentioned, the impact would have a constructive contribution toward the education of all concerned.

I have just one final word, Mr. Chairman. I am hopeful that the committee will report out legislation which is going to cover all of the subjects that are involved in the civil rights crisis today. I would think that in addition to all that have been mentioned, that is, extension or making permanent the Civil Rights Committee, to permit the Attorney General to initiate lawsuits in connection with the deprivation of rights under the 14th amendment and all of these other things which have been mentioned in the communications media, I would hope that fair employment practices would also be a matter which would be favorably considered by this committee. This, I find, has been strangely absent from any statements which have been made from the administration in connection with the so-called civil rights package.

There are three reasons why I am hopeful that it will be all inclusive. First of all, I think that it is morally and constitutionally justified. Secondly, I think that the mood of the Negro people and their supporters across the country requires that we make an all-out fight for

the whole package of civil rights legislation which will eliminate or at least provide the legal protection against the deprivations to which I have already referred.

I hope that no one is underestimating the mood of the Negro community and their supporters across the country. It is not exaggerated at all, and there is no question that the alternative to lack of what will be considered adequate congressional action is going to result in the kind of demonstrations to which the chairman has referred and to which other people have referred.

I heard on the "Today" program this morning and also last night a statement from the Reverend Martin Luther King indicating that they anticipate, they are holding in reserve, or something to that effect, large groups of people who are prepared to come to Washington to have sit-ins in the Capitol. It was even mentioned that sit-ins in the offices of recalcitrant Congressmen or recalcitrant Members of the other body will not be beyond imagination.

So that, we are up against in this country a real crisis, and I think that we ought to recognize it for what it is and try to do something about it as comprehensively as we can, because, in my opinion, after hearing statements in the last couple of days over the television from the senior Congressman from Mississippi, Mr. Colmer, and the senior Senator from North Carolina, Senator Ervin, and a statement yesterday from the senior Senator from Georgia, Senator Russell, it becomes quite obvious that there is going to be no less resistance to the civil rights package which comes out of this committee, whether it is merely an extension of the Civil Rights Commission or whether it is the whole ball of wax, including fair employment practices.

The CHAIRMAN. I want to say this. We had the same threats in 1957 from Members of the other body and from persons outside the other body. We had the same threats in 1960. Nonetheless, we got those two acts passed, and I anticipate that, if we get a Civil Rights Act out of the Congress—and we shall—a good bill will first come out of this committee. We will get the bill passed in the Senate regardless of what those gentlemen have said on the floor of the Senate or elsewhere. I am quite convinced of that. The temper of the country is such as to require a good Civil Rights Act. Water never rises above its source, and the source is very high, and these people who try to resist the rise of that water are going to fail.

We are going to get a good bill passed in the 1963 act which will be even stronger than the two previous acts.

Mr. DIGGS. I appreciate the chairman's confidence, and I hope he is correct in his assessment of the situation.

I merely want to stress that here in 1963 the mood of the Negro community and its supporters is much different than it was in 1957 and 1961 and that, therefore, the alternative to lack of action or short changing on what they consider to be adequate legislation is going to be strong indeed.

The CHAIRMAN. I am sorry I interrupted you so often.

Mr. DIGGS. That is your prerogative, Mr. Chairman.

The CHAIRMAN. What I say now is the reflection of views of Mr. McCulloch, of Ohio, the ranking Republican member, and I think I speak for all the members of the Judiciary Subcommittee when I say that we honestly hope that better counsel will prevail and that that

which Dr. King or others say concerning the threats of a march down the streets of Washington with sitdowns in the Halls of Congress not occur. They should be discouraged, because I can assure you that there would be tremendously deep resentment against any action of that sort which would undoubtedly prejudice the cause of the Negro.

I do hope you and others like you who are leaders will prevail upon those gentlemen not to stage any demonstrations of that sort in the Capitol.

Mr. DIGGS. That brings me to my concluding statement, Mr. Chairman.

I think that in the civil rights crisis that we have, which involves Congress and all other governmental agencies and, of course, the American people in the private sector, that if you want the kind of rational counsel as epitomized by people like myself and Dr. Henry to prevail, if you want it to be influential with respect to the masses of the Negro people, then we implore that you give us the weapons that are necessary and that is the civil rights package which I have referred to.

The choice, in my mind, as to whether or not demonstrations are held or the choice with respect to which way the masses of the Negro people in this country will go will depend upon the choice that the Congress and that the Executive and that the judiciary and the American people make in supporting what I consider to be the reasonable and legitimate demands of the masses of the people. If they are not able to get these reasonable demands satisfied, then I am afraid that the rational counsel of people like myself and Dr. Henry is going to be discarded and that the masses of the Negro people are going to be seeking other types of leadership which will create an even greater crisis than the one in which we are presently engaged.

Now, Mr. Chairman, I would like to introduce to you Dr. Aaron Henry. Dr. Henry, as I mentioned, is married. He has a daughter. He was my host in April when I, along with him and his family, was the victim of a Molotov cocktail being thrown into his home, which received a great deal of publicity, publicity because of my being there and being a person who is in the national category, although these things have happened to Dr. Henry before. So I point that out to indicate that this was not a new incident for that particular area.

I have been extremely impressed with Dr. Henry because of the dignity which he epitomizes and more importantly the amazing restraint that he has exercised under this extreme duress.

Dr. Henry.

The CHAIRMAN. We are happy to hear you, Doctor.

Dr. HENRY. Mr. Chairman, when I left home Monday going into the State of Texas to appear before the Texas Pharmaceutical Convention, which it happens to be my privilege to serve as president this year of the National Pharmaceutical Association, I was to have been met here to join me in his testimony by a man that several of you have referred to already, Mr. Medgar Evers.

When I turned on the television set yesterday morning to really see what had happened to Mr. Wallace in Alabama and saw the picture of Mr. Evers in the top of the "Today" screen, I began to wonder what statement has Medgar made now that has hit the national headlines, only to hear Mr. Jack Lescoulie say that, "Mr. Ray Wilkins has been invited to this program this morning to go with Miss Lena

Horne because of the fact that Mr. Evers has been murdered in Mississippi."

That man was the closest friend I had. We even shared the same birthday. We had worked together in the civil rights struggle for over 5 years.

I want you to know that it is under those conditions that I appear before you.

My name is Aaron E. Henry. I live in Clarksdale, Miss., the county in which I was born July 2, 1922. I want to express my appreciation to this House Judiciary Committee, a committee of the highest governmental body in the world, for this opportunity of appearing before you and acquainting you with some of the conditions under which many Negro and white citizens live in my home State of Mississippi. I am happy also for this opportunity to acquaint you with some of the actions we feel that Congress can and should take to relieve these conditions.

Our chief problems are to be found in these areas: (1) Law enforcement and the courts; (2) employment; (3) education; (4) voting rights; and (5) human dignity.

In listing these problems in the order stated it should not in any way place priority of one over the other. We should take an approach of both and, rather than either/or, in trying to resolve these problems. They all can be brought close to home by citing some examples of deprivation in each category. In the area of law enforcement in the courts, Negroes generally feel that we do not have any chance of successfully defending ourselves when we are charged by the local officials and are tried in the local courts. Neither do we have any defense against police actions directed toward us outside the courtroom.

These are some of my own experiences as president of the Mississippi State Conference of the National Association for the Advancement of Colored People.

On December 7, 1961, I was called to the county atorney's office. The county attorney of my home county, Coahoma, is Mr. T. H. Pearson. Mr. Pearson was concerned about a campaign to withhold patronage that the Negro citizens had launched against the downtown merchants trying to get the merchants to employ Negroes above the menial level and to use courtesy titles when addressing them, instead of such titles as boy, girl, aunt, uncle, preacher, and nigger. Mr. Pearson told me that if I did not agree to use my influence to put a stop to the campaign he was going to put me in jail. When I refused, he called the chief of police, Mr. Ben Collins, whom he already had waiting and told him, "Carry this nigger to jail." I was arrested out of the county atorney's office, without a warrant. While I know this was an illegal arrest, I went peacefully, because there is no defense from a bullet in your head for resisting arrest, legal or illegal. Before the day was over six more leaders of the Negro community were behind bars in the Coahoma County jail on the same charge.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt.

Mr. Henry, did you report this illegal act to the U.S. district attorney when you were released from jail?

Dr. HENRY. I reported it to Mr. John Doar of the Justice Department.

Mr. McCULLOCH. How soon did you report that to him?

Dr. HENRY. The same day, I am sure.

Mr. McCULLOCH. While you were in jail, or the day you got out?

Dr. HENRY. We got out of jail the same day. We were released on bond the same day.

Mr. McCULLOCH. Where is that gentleman located, in Washington?

Dr. HENRY. Yes, sir.

Mr. McCULLOCH. How did you report it?

Dr. HENRY. By telephone.

The CHAIRMAN. What name was that you reported it to?

Dr. HENRY. Mr. John Doar, D-o-a-r. He is the assistant to the Civil Rights Commisisoner, Mr. Burke Marshall.

Mr. McCULLOCH. He is in the Civil Rights Division as an employee?

Dr. HENRY. He is in the Civil Rights Division of the Justice Department.

Mr. McCULLOCH. That was in December of 1961?

Dr. HENRY. December 7, 1961; yes, sir.

Mr. McCULLOCH. Was there any action taken after you called Mr. Doar in the Justice Department by Mr. Doar or anyone else in the Justice Department about this illegal arrest?

Dr. HENRY. I am sure they made some investigation. However, as far as I know, there were no remedial actions taken.

Mr. McCULLOCH. You have no letter or no report on this condition which you have described?

Dr. HENRY. Yes; the complaint was received and they were investigating it.

Mr. McCULLOCH. And this arrest, as you have described it, is in strict accordance with the facts?

Dr. HENRY. Yes, sir; I was there.

Mr. McCULLOCH. You will not refrain from putting anything into their statement that might be used as a defense to what appears to be a thoroughly illegal act?

Dr. HENRY. No, sir. It is just exactly as it happened.

Mr. McCULLOCH. You reported it but so far as you know nothing has happened?

Dr. HENRY. That is right.

Mr. McCULLOCH. You may proceed.

The CHAIRMAN. Counsel is instructed to communicate with Mr. Doar and with Mr. Marshall, head of the Civil Rights Division of the Department of Justice, for a report on this case.

Proceed.

Dr. HENRY. On March 3, 1962, I was arrested from my home at 636 Page Street, while in bed with my wife. A white boy by the name of Sterlin Lee Eilert had complained that I had tried to get him to secure me a white woman. After he was not able to get one, he charged I made sexual advances toward him.

I presented witnesses at the trial that substantiated my activities during the day. At the time of the alleged attack, only 10 minutes of my day was unaccounted for. The drive from Memphis, Tenn., to Shelby, Miss., would take at least 2 hours. The boy claimed he was put out of my car at Shelby, Miss. My car had been stored at a car wash rack from 10 a.m. until 5:30 p.m., so attested to by the car wash rack manager. The boy was allegedly picked up at 5 p.m. Visitors

and neighbors testified that I was home by 5:30. The affidavit used in the case was dated 11 days after my arrest.

After I had been arrested some 5 hours, the chief of police, Mr. Ben Collins, went out to my home, secured the keys to the car and searched it for "gum paper in the ashtrays, and a faulty cigarette lighter," which he testified at the trial that he found.

The week of June 2 of this year, the case was set aside and overruled and remanded by the Mississippi State supreme court. Upon discussing this case with the Justice Department agent, Mr. John Doar, I was called by the press as someone had been informed that I had made a complaint to the Justice Department. I informed the agent of the press just who I thought was behind this heinous plot. The men suspected were both local law-enforcement agents. I was promptly sued for $40,000 and a judgment against me was rendered in their favor. The men involved were Mr. T. H. Pearson, county attorney, and Mr. Ben Collins, chief of police in my hometown.

March 4, 1963.—For the seventh time in 2 years the plate glass windows of the Fourth Street Drugstore, which is owned by me, have been broken and smashed with rocks and bricks. No arrests have been made. The insurance company has canceled the insurance.

On Good Friday, April 5, early in the morning, my family and I, and a guest we had visiting with us, Congressman Charles C. Diggs, Jr., were awakened by broken glass and flames. Our house had been fire-bombed by two white men in the early hours of the morning. We succeeded in getting the family out of the house and then Congressman Diggs and I fought the fire and extinguished it. Our lives were narrowly saved.

On April 20 of this year, a hole was blown through the roof of the drugstore that I own. The Justice Department and local officials are still investigating.

My wife, Mrs. Noelle Henry, who has been employed by the local school system for 11 years, has had her contract revoked because of my activity in the civil rights movement. A suit has been filed to recover her employment.

Mr. McCulloch. Let me ask you a question. Do you have teachers' tenure legislation in your State?

Dr. Henry. No, sir.

Saturday morning of last week, three shots were fired into our home around 1 in the morning while my family and I were asleep. General areas of deprivations, the first category, law enforcement and the courts, other cases and other people:

I. March 30, 1961, Jackson, Hinds County: Club swinging police and 2 police dogs chased more than 100 Negroes from a courthouse where 9 Negro students were convicted for staging a sit-in demonstration. Several were struck by the clubs and at least two were bitten by dogs.

II. August 27 and 29, 1961, McComb, Pike County: Five Negro students from a local high school were convicted of breach of the peace following a sit-in in a variety store and bus terminal. They were sentenced to a $400 fine each and 8 months in jail. One of these students, a girl 15, named Miss Brenda Travis, was subsequently rearrested, and sentenced to 12 months in a State school for delinquents.

III. August 29, 1961, McComb, Pike County: Two Negro leaders were arrested in McComb as an aftermath of the sit-in protest march on city hall, charged with contributing to the delinquency of minors. They were Curtis C. Bryant, of McComb, president of the McComb Branch of the NAACP, and Cordelle Regan. Each arrest was made on an affidavit signed by Police Chief George Guy, who said he had information that the two "were behind some of this racial trouble."

IV. October 22, 1961, Jackson, Hinds County: Dion Diamond was arrested for "running a stop sign" after having been followed all day. In court the next day, the arresting officer told the Judge, "he is a freedom rider. Throw the book at him." Diamond was refused legal counsel and fined $168.

V. April 12, 1962, Taylorsville, Smith County: Corp. Roman Duckworth, Jr., U.S. Army, a Negro, was shot and killed by Policeman Bill Kelly when, according to witnesses on the bus, "he insisted on his right to sit where he chose on an interstate bus." Policeman Kelly claimed that Duckworth was drunk and started fighting. No charges were brought against Kelly. Duckworth was en route from Camp Ritchie, Md., to see his wife who was ill in a Laurel, Miss., hospital.

VI. June 21, 1962, Clarksdale, Coahoma County: A white lawyer from Jackson, Miss., named William Higgs, came into Clarksdale working as legal adviser to the Reverend Merrill W. Lindsey, a candidate for Congress on the Democratic ticket. With Mr. Higgs were several students, some Negro and some white. The whole group was jailed upon trying to leave Clarksdale. They reported that they were held nearly 20 hours without permission to use a telephone, and no formal charge has yet been brought against them.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt again. While no one has sought my advice in this matter, the recitation of these cases is factually correct.

I would suggest that the executive department take another look at section 241 of title 18 of the United States Code. Also section 242.

The CHAIRMAN. I think the testimony of Dr. Henry should be sent to Mr. Burke Marshall in the Civil Rights Division, and that Mr. Marshall be asked for a report.

Mr. McCULLOCH. Of course, Mr. Chairman, I make that suggestion without the request for advice from anyone by reason of the fact that there is considerable law in effect now at the Federal level which will give much relief against those deplorable and illegal practices even though they are tedious, long involved, and costly. That is what the courts are for in this country, both at the Federal and the State level.

Dr. HENRY. You will find, sir, that all of the cases that I am citing have already been submited to the Civil Rights Division of the Justice Department. You will also find that most of it is already in the Congressional Record so submitted by Congressman Nix.

Mr. McCULLOCH. And the cases in some instances are from a year to 2 years old?

Dr. HENRY. Yes, sir.

May I proceed?

Mr. McCULLOCH. Proceed.

Dr. HENRY. Thank you.

The CHAIRMAN. Go ahead.

Dr. HENRY. In the area of employment, the question of employment for Negroes can be cataloged in this manner: In the entire employment structure on the State level, except in the department of education, there is not a single Negro employed.

Mr. MCCULLOCH. I would like to ask this question, Mr. Chairman: Are Negroes excluded from highway construction and maintenance on the Interstate System in your State?

Dr. HENRY. Yes, sir.

Mr. MCCULLOCH. Has that been brought to the attention of the Civil Rights Commission, within your knowledge?

Dr. HENRY. Well, vaguely, I would assume so; I have not personally brought it.

These bureaus of State employment wherein there is no Negro employment are public accountancy, adjutant general, aeronautics commission, agricultural and industrial board—except in cases of some county agent assistants—architecture, archives and history, athletic commission, department of audit, bank supervision, banking board, bar admission board, barber examiners, blind and deaf school board, bond commission, bond retirement commission, budget and accounting, building commission, capitol commission, central market board, children's code commission, Confederate monumental park commission, cosmetology board, dental examiners, depository commission, educational and finance commission, election commissioners, eleemosynary institutes, embalming board, employment security commission, board of engineers, forestry commission, game and fish commission, geological economic topographical survey, State board of health, historical commission, commission on hospital care, insurance commission, levee board, medical education board, board of mental institutions, industrial and technological research commission, Mississippi Commission on the War Between the States, Mississippi Milk Commission, State park commission, State board of pharmacy, et cetera.

While this picture on employment for Negroes is bleak, the situation regarding Federal employment for Negroes except in the post office is little, if any, better in the following Federal programs now in process in Mississippi:

Office of Defense Mobilization, Bureau of Commercial Fisheries, Office of Mineral Exploration, Bureau of Mines, National Park Service rural area development program—contact was made with a Mr. William L. Batt, Jr., in regard to being some assistance to Negroes of the Clarksdale, Coahoma County, area; we have not had a visitor nor any assistance in regard to this request—Federal Extension Service, Forest Service, Soil Conservation Service, Rural Electrification Administration, area redevelopment program, Bureau of Census, Weather Bureau, Bureau of Public Roads, Bureau of Apprenticeship and Training, Bureau of Employment Security, Bureau of Labor Statistics, Public Health Service, Social Security Administration, Office of Vocational Rehabilitation, Food and Drug Administration, Defense Materials Services—not a single Negro serves in the National Guard in the State of Mississippi, although much of the funds used to support this project is Federal money—Urban Renewal Administration, Federal Housing Administration, Federal National Mortgage Association, et cetera. All of this, added to the introduction of automation

on the cotton plantations, places the Negro in the labor market in bad shape.

Of course, there is one in this list that I would like to elaborate on just a little bit and that is in the area of redevelopment.

Over 6 months ago, we communicated with Mr. William L. Batt, who is reported to be in charge of this Department. We have only heard that the Department will be in communication with us. This has been over 6 months. We have received no further assistance from Mr. Batt in the redevelopment area.

Mr. FOLEY. Will you identify that man further for us?

Dr. HENRY. Mr. William L. Batt.

Mr. FOLEY. Where is he employed?

Dr. HENRY. He is here in Washington in the area redevelopment program. Of course, I would like to also point out that not a single Negro serves in the National Guard in the State of Mississippi, although much of the funds used to support this project are Federal money.

I would like now to address myself to the question of education.

Mr. ROGERS. May I interrupt? Does the State of Mississippi have any civil service system? Do they have State and county employees?

Dr. HENRY. On the State level, no. The only employment we have, based on the State level, is within the department of education and, to some degree, in the agricultural extension agency's program where we do have some Negroes serving with the department of agriculture.

Mr. ROGERS. Then the State or county official is free to select whomever he wants and they do not have any examinations or anything of that nature so that you are not even given an opportunity to determine whether you have or do not have the skills to perform the work?

Dr. HENRY. That is right. Yes.

The CHAIRMAN. Have you any idea how many Negroes are employed in any Federal departments or projects in Mississippi?

Dr. HENRY. The only employment of any degree of Negroes in any Federal Department of Mississippi is the Post Office Department.

In the field of public school systems—still 100-percent segregated despite legal rulings to the contrary. In the field of public education a survey made and published by the Coahoma County branch of the NAACP is self-explanatory.

I would like to submit, at a later date, the complete text of this survey. I did not get it to Mr. Mitchell in time to be included in this report but I would like to have the chairman's permission to send it in, as soon as I get back home, and have it included.

Generally, the survey will show that in my hometown in Coahoma County there is not a single school that Negroes attend that is accredited.

It will show that every school that white children attend is accredited. It will show that in the entire State there are not more than eight schools that Negroes attend that are accredited.

Mr. FOLEY. What do you mean, Doctor, by "accredited"? Who certifies them?

Dr. HENRY. The State board of education, and we are not accredited even by the State standards.

Mr. FOLEY. Yet it is a State school.

Dr. HENRY. They are State public schools; yes.

The CHAIRMAN. There have been cases, however, that have been filed to have the school system integrate these schools, filed by the Department of Justice, have there not?

Dr. HENRY. Yes; there have been two such cases in the courts.

The CHAIRMAN. What has happened to those cases?

Dr. HENRY. Well, the judge ruled that the Federal Government didn't have any right to do it, and it is on appeal.

The CHAIRMAN. In other words, what the judge in the district court said was that there could be no integration?

Dr. HENRY. No; he said this is an impacted area.

The CHAIRMAN. Oh, I did not understand. Is that case on appeal?

Dr. HENRY. Yes.

The CHAIRMAN. What happened to the other case, the same thing?

Dr. HENRY. The same thing.

Mr. ROGERS. Mr. Chairman.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. Directing your attention to the testimony you have given concerning accredited high schools, do you mean that of all of the separate schools, segregated high school in Mississippi, none of them are accredited as it relates to the colored race; is that right?

Dr. HENRY. No; that is not right. There are about eight in the entire State that are accredited.

Mr. ROGERS. There are eight that are accredited?

Dr. HENRY. That is just high schools.

Mr. ROGERS. The accrediting or certification of being accredited is made by whom?

Dr. HENRY. The State board of education. The criteria for accreditation are made by the State board.

Mr. ROGERS. Have you any instances of individuals graduating from high schools, other than the eight that have been certified, who have submitted their credentials to institutions of higher learning and asked for permission to enter where they were denied because it was not accredited?

Dr. HENRY. Yes. Outside of the State, yes, sir; that happens every day.

Mr. ROGERS. And have you been successful in getting those institutions to accept them or is it denied?

Dr. HENRY. They usually accept them on a probationary basis and require them to take remedial courses to strengthen their educational program and, of course, it takes anywhere from a year to 2 years before they are able to then proceed in a normal course of education.

Mr. ROGERS. Has any attempt been made to get the State board of education to accept other schools as being accredited other than the eight?

Dr. HENRY. Yes, sir. There are requests being made by many of the schools almost monthly and I think this is an important fact, too, in that in Jackson, Miss., the man that we have spoken of recently that was killed the night before last, he and his wife were parents who had tried to get their children into the accredited schools of Jackson, Miss.

Mr. ROGERS. How many high schools are there, for example, aside from the eight that have been accredited in the State of Mississippi.

Dr. HENRY. I would say there must be about 200—200 to 300.

Mr. ROGERS. About 200?

Dr. HENRY. Yes, sir.

Mr. ROGERS. Thank you.

The CHAIRMAN. Do you know the names of the two judges who threw out those two school cases?

Dr. HENRY. It was the same judge who did it, who handled both. It was Judge Sidney Mize.

Both of these cases, Mr. Chairman, were in adjoining counties and I am sure in the same district, and he handled both of them.

I would like to inject this now, too, since there appears to be some discussion.

The CHAIRMAN. Another question. Do you know whether or not the judge that made that decision was a segregationist?

Dr. HENRY. Yes, sir; of the first order.

The CHAIRMAN. What makes you say that? What is the basis for that statement?

Dr. HENRY. Well, he has publicly admitted that he is a segregationist and the history of the rulings in the past have all been against the desegregation efforts of the area.

The CHAIRMAN. Has he made any public statements outside the courts which indicate the conclusion that you have reached?

Dr. HENRY. Well, I have seen it in the press. I don't know whether they are first-person statements or second-person statements but I have seen statements at least alluding to the fact that he is a segregationist.

The CHAIRMAN. How long has he been on the bench, do you know?

Dr. HENRY. I don't know. Ten or twelve years, I guess.

The CHAIRMAN. Ten or twelve years?

Dr. HENRY. Or longer.

The CHAIRMAN. Who appointed him; do you know?

Dr. HENRY. No, sir.

The CHAIRMAN. Will counsel, for the record, find out who appointed him?

Dr. HENRY. Well, Mr. Chairman, it seems to make no difference.

Mr. MCCULLOCH. Mr. Chairman, in view of that comment, I would suggest that counsel find out whether those questions are asked in the other body when nominations are being considered for confirmation.

The CHAIRMAN. It is a very serious thing if judges of our Federal courts allow their personal bias to shape their decisions particularly when we have an edict from the Supreme Court, which constitutes the supreme law of the land as an interpretation of the Constitution, which edict provides that the schools shall be desegregated with all deliberate speed.

Mr. FOLEY. Do you know whether or not in either of those two cases any affidavit of bias or prejudice was filed with the judge?

Dr. HENRY. No; I don't know, but I do recall a case that was filed by Mr. Salter.

Mr. FOLEY. A private citizen?

Dr. HENRY. This is private, yes, where in a picketing case in Jackson, Miss., the judge was asked to excuse himself and the reason given was because of his prejudice and bias and he refused to excuse himself.

Mr. FOLEY. Was that in the Federal court or the State court?

Dr. HENRY. That was in the Federal court.

Mr. FOLEY. What judge was that?

Dr. HENRY. That was Judge Mize. This is not a school case.

Mr. FOLEY. This is a picket case you are talking about now?

Dr. HENRY. Yes; that is right.

The CHAIRMAN. In those two school cases, who was the plaintiff; do you know?

Dr. HENRY. The Federal Government was the plaintiff.

The CHAIRMAN. And the ruling was that the Government had no standing in the case?

Dr. HENRY. That is right.

Mr. CRAMER. Mr. Chairman, may I ask a question? Did the picketing case have a civil rights question involved?

Dr. HENRY. The right to picket; yes, sir. The right to peaceful protest in civil rights; yes, sir.

The CHAIRMAN. Proceed, Doctor.

Mr. MCCULLOCH. Mr. Chairman, I would like to go back to one comment that was made by the witness.

Did I accurately understand you to say that most if not all of the Negro elementary schools were not accredited schools under your State law?

Dr. HENRY. Nearly all rather than most. We do have about eight high schools that are accredited and a fewer number of elementary schools would be accredited.

Mr. MCCULLOCH. And most of your elementary schools are not accredited schools?

Dr. HENRY. That is right; yes, sir.

Mr. MCCULLOCH. Therefore, a provision in some 50 or 75 bills that we are considering to the effect of the completion of the sixth grade in a school accredited by any State or the District of Columbia would be of little or no help to you in your State?

Dr. HENRY. That is exactly what I was driving at; yes, sir.

Mr. MCCULLOCH. Proceed.

Dr. HENRY. I appreciate your having made the observation for me.

We are now in the area of voting rights.

Fewer than 15,000 of 950,000 Negroes in Mississippi are registered voters; here are a few of the reasons why.

1. August 29, 1962, Clarksdale, Coahoma County, Miss.: Seven Negroes were arrested after attending a voter registration meeting. David Dennis was charged with failing to yield the right of way although he was driving on the main highway of the city. Police officers forced him to submit to a long harangue of threats and abuse. The others were forced by Clarksdale police to alight from their car and were charged with loitering in violation of the city curfew. They were in a moving automobile, leaving town.

Mr. MCCULLOCH. Were they able to register?

Dr. HENRY. These young men were working with us in trying to encourage people to register. We were having a voters registration meeting and they were workers in the movement.

2. August 30, 1962, Indianola, Sunflower County, Miss.: C. R. McLauren, Albert Garner, J. O. Hodges, Samuel Block, and Robert Moses were arrested by Indianola police on charges of distributing literature without a permit. The registration workers had been taking leaflets announcing a registration mass meeting door to door in a Negro community.

3. September 3, 1962, Ruleville, Sunflower County: Because of registration activity, two Negro-owned drycleaning establishments were closed (allegedly for violating city ordinances).

4. September 3, 1962, Clarksdale, Miss., Coahoma County: Miss Willie Griffin was arrested on the streets of downtown Clarksdale as she tried to persuade Negroes seen downtown to go to the courthouse to try to register to vote. She was grabbed from behind and held by a policeman. She jerked herself away from him and was charged with resisting arrest. She was placed in a cell in the city jail without a bed or a chair. She pulled a pad from the wall and made herself a seat on the floor. She was then charged with destroying public property. She has been fined over $600 in local courts. The judge has given her 6 months to pay another fine and costs of $245.

5. September 3, 1962, Ruleville, Sunflower County: A letter from Mayor Durrough notified the Williams Chapel Missionary Baptist Church that tax exemption and free water were being cut off because the property was being used for purposes other than worship services. The church was a meeting place for voter registration schools and workers.

6. October 29, 1963, Clarksdale, Coahoma County: Charles McLaurin working in the voter education campaign in Coahoma County carried an elderly crippled Negro lady to the Coahoma County Courthouse for the purpose of registering to vote. He stopped the car to let her out as near the courthouse door as possible. Upon getting out of the car the lady went into the courthouse. The chief of police, Mr. Ben Collins, charged McLaurin with stopping in the street, and backing up in the street, and he was fined $102. He decided to forfeit the bond rather than run the risk of a higher fine or incur the legal expense of an appeal.

7. February 28, Greenwood, LeFlore County: Three registration workers were attacked with gunfire on U.S. Highway 82, just outside of Greenwood. The shots were fired from a 1962 white Buick, with no license plates. The car in which the workers were riding was punctured by 11 bullets.

There are many more cases that could be cited.

We are now in the area of human dignity:

1. May 7, 1962, Jackson, Hinds County: Several white youths, riding in an open convertible, lassoed 9-year-old Negro Gloria Laverne Floyd with a wire and dragged her along the street. The girl suffered a deep gash in her head that required several stitches, cheek bruises, a laceration of her right shoulder, and burn marks are still on her neck. Police have made no arrest.

2. September 25, Liberty, Amite County: Herbert Lee, a Negro who had been active in a voter registration campaign, was shot and killed by a white member of the Mississippi House of Representatives of the State legislature, named E. H. Hurst, in downtown Liberty, Miss. No prosecution was undertaken. The authorities explained that the representative had shot in self-defense.

3. Rev. M. W. Lindsey, candidate for Congress from the Second Congressional District in Mississippi, was refused newspaper space for advertisement by the Clarksdale Press Register and radio time over radio station WROX, until this situation was called to the attention of Mr. Clarence Mitchell, our Washington bureau head of the NAACP,

who in turn reported it to FCC. The Reverend Lindsey was not permitted to have any of his supporters serve as members of the election commission while all other major candidates had this privilege.

4. December 26, 1963, Clarksdale, Coahoma County: Ivanhoe Donaldson and Benjamin Taylor, students from Detroit, brought a truckload of food, clothing, and medicines for distribution to the delta's needy families who had been cut off from receiving Federal surplus commodities. (The medicines had been donated by physicians in Louisville and were consigned to me, a licensed pharmacist.) They were arrested by Clarksdale police and held for investigation. The police did not search the truck until December 27, and found what they described as "a drug to ease the pain of middle-aged women." Donaldson and Taylor were charged with possession of narcotics and bond was set at $15,000 each. Bond was later reduced to $1,500. The grand jury did not indict them after all of this difficulty.

These are a few of the major cases.

The Federal Government can help relieve these cases.

These are some of the suggestions that we would like to present:

(*a*) Enacting civil rights legislation that will give the Department of Justice the authority to act when danger is imminent, and not have to wait until an act of violence has been committed.

In many situations in Mississippi we have asked for protection from both the local and Federal Government. In most cases the local government has refused. The Federal Government has told us they have no right to act until violence has been committed.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt to say that I cannot agree with that advice that you have been given. There is injunctive relief in the Federal courts now to give redress to citizens of this country under those conditions. That authority was used within the last month.

Dr. HENRY. I would like to discuss that with you later to know how to get it.

Mr. McCULLOCH. Well, I can give you a quick answer.

Dr. HENRY. Yes.

Mr. McCULLOCH. By persuading the Justice Department to promptly act within the authority that is in their hands now.

Dr. HENRY. Well now, I might as clearly as possible state the premise that I am trying to make and that is when we feel that there is the possibility of imminent danger and we call it to the attention of the Justice Department that we fear that there might be difficulty over this particular situation and we would like prior protection or prior surveillance. The answers we have received have been that "We can only act after the difficulty has developed and not before."

Mr. RODINO. Dr. Henry, were all of these incidents reported to the Civil Rights Division of the Justice Department?

Dr. HENRY. Everything that I have mentioned today: yes sir.

The CHAIRMAN In reference to your remedies, I think if we pass the so-called board part III that it would go a great way toward giving you the relief that you want. It would enable the Attorney General upon the plea or complaint of anyone aggrieved to proceed by way of an injunction to prevent the commission of the wrong that you are concerned about. In other words, you do not want to wait until it is a fait accompli. You want to prevent the evil from occurring.

I think if we do that, we will go a great way toward helping.

Mr. McCULLOCH. Mr. Chairman, again at the risk of being repetitious, it is my studied judgment that the Justice Department has authority to bring injunctive relief where they allege and can prove irreparable injury in denying civil rights to any person by reason of color or such discrimination reasons therefor.

The CHAIRMAN. I do not want to get into an argument with the gentlemen, but there are limitations when discrimination is accomplished by anyone other than the State. The 14th amendment limits State action rather than individual actions. Individual action must be under color of law. I do not think that our criminal fabric is expansive enough to cover proceedings under all of these cases that have been mentioned. I doubt it very much.

Mr. McCULLOCH. Mr. Chairman, I again pursue this by saying that some of the recitals of cases here before us this morning are recitals of overt acts by duly elected and constituted public officials of the States or political subdivisions thereof and again it is my judgment that in those cases there is authority and power and jurisdiction of the Justice Department to seek injunctive relief before the final overt act is committed.

The CHAIRMAN. With that statement I agree.

Proceed Dr. Henry.

Dr. HENRY. I was really trying to find here a date It goes back to the case of the young men in the Greenwood area where James Traverse, in the case I have already referred to, was shot.

We at that time were housed in an office area where we got threatening telephone calls almost daily that they were going to burn it down. We called upon the Justice Department for protection of this particular property. Of course, we were told that we couldn't get it because of the fact that it hadn't happened and before this campaign was over this particular office was set afire.

So, the only thing I am saying is that we have many instances where we have asked for prior protection and relief and the answers have been that it was not available.

Mr. McCULLOCH. And in the case that you have just mentioned, explosives or inflammable material of one kind or another were used, and there was damage from those explosives or from the inflammatory liquids that were used?

Dr. HENRY. Yes.

Mr. McCULLOCH. And that was when?

Dr. HENRY. That was the time that James Traverse was shot in Greenwood.

Mr. McCULLOCH. And that has been after May 6, 1960?

Dr. HENRY. This was February 28 of this year. This was, shall we say, perhaps a week after February 28 of this year. It was during the Greenwood, Miss., difficulty. You probably remember that situation.

Mr. FOLEY. Was there any evidence that the material used was transported in interstate commerce?

Dr. HENRY. No, we have no evidence of that.

Mr. FOLEY. That is the basis of the Federal Government's jurisdiction.

Mr. McCULLOCH. There is a presumptive clause in the law, I believe, Mr. Foley. Are there many explosives manufactured in your State?

Dr. HENRY. Well, what is usually used in these type of explosions is gasoline and, of course, I suppose that you could very well believe and know that much of the gasoline that is used is transported across State lines.

(b) The next recommendation that we would like to make is to use Federal marshals already stationed in the South to create the image of Federal presence in areas where Negroes are denied basic human rights. Where Negroes, because of fear of reprisals of economic sanctions are afraid to go down to register if we could have the Federal marshals placed inside the registrar's office on a particular day of the month and it would not have to be too many. This, I believe, would give the Negroes in the community more confidence in going down to try because they would know or feel at least that "certainly nothing will happen to me today because the Federal marshal is there"; and I think that the presence of the Federal marshal with regard to the registrar would have its effect for good because he would not be so inclined to turn you down with Federal presence in evidence.

Mr. ROGERS. Then you feel that enactment of the broad part III which authorizes the Attorney General to move in and assist any person who thinks his civil rights have been abridged would be one answer to the problem. Is that right?

Dr. HENRY. I think it would help; yes, sir.

Mr. ROGERS. And if the Attorney General was authorized to act, do you believe that that would give confidence in others to assert their civil rights?

Dr. HENRY. Yes, sir. Yes, sir.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask a question or two there.

As I recall from an earlier statement that you made there are some 15,000 or 18,000 Negroes registered to vote in your State?

Dr. HENRY. Yes, sir.

Mr. MCCULLOCH. Are they prevented from voting by intimidation or other unlawful act, as we would determine unlawful acts in Ohio, after they are registered?

Dr. HENRY. I didn't get the last statement.

Mr. MCCULLOCH. Are they intimidated, after they are registered, from voting at the ensuing election for which they registered or do substantially all your registered voters vote?

Dr. HENRY. Those that are registered don't have the difficulties of voting after they are registered.

Our big problem is getting them the permission to register.

Mr. MCCULLOCH. Do you have any information on what percentage of the Negroes that are properly registered then exercise their franchises at the ensuing election or at any time that they are duly registered to vote?

Dr. HENRY. No, not at present. We have the machinery for a survey for the coming elections to try to determine this percentage.

Mr. DONOHUE. Mr. Chairman.

The CHAIRMAN. Mr. Donohue.

Mr. DONOHUE. Is there any particular section of Mississippi where these 15,000 registered voters live?

Dr. HENRY. Generally, yes, sir.

Mr. DONOHUE. In what section of the State?

Dr. HENRY. Well, it wouldn't be sectional but there would be particular counties. You would have the county where I live, Coahoma, Washington, Lowndes, and the gulf coast area, which would include Harrison and Jackson Counties would have the bulk of the Negroes that are registered. Also Lauderdale, Jones, and Warren Counties.

Mr. DONOHUE. How many counties are there in the State of Mississippi.

Dr. HENRY. Eighty-two.

Mr. DONOHUE. Eighty-two, and the registered voters among the Negroes are concentrated in four or five counties?

Dr. HENRY. Yes, sir, six to eight at the most.

Mr. DONOHUE. Six to eight?

Dr. HENRY. Yes, sir.

Mr. DONOHUE. And in these other counties there are more preventive means used against them?

Dr. HENRY. Well, it is a combination of things. Certainly, in some of the areas where the Negro has manifested his right to vote to some degree, it is on the desire and the drive to endure the hardships that you must suffer to get to register. However, there are times when a man has to decide between the right to feed his wife and family or if he is going to be a registered voter and some men have made the decision to become a registered voter, but it is a hard decision to have to make.

Mr. DONOHUE. In other words, you say that in these other counties where there are no Negroes registered, it is because they fear making any attempt to register?

Dr. HENRY. Largely, and when they go down they are denied.

You see, we have, as you know, a State law that says, in order to become a registered voter in our State, that you must be able to interpret to the satisfaction of the circuit clerk any section of the State constitution, and we have 286 sections, and I don't think a man on this panel could register in any of the offices if the clerk didn't want you to.

Mr. DONOHUE. Tell me in these instances where people of the colored race have attempted to become registered, have they ever called upon the Federal marshals for assistance in protecting them?

Dr. HENRY. Well, yes, we have asked and, of course, we go back to the same question of a while ago that there is no real difficulty, there is no assistance with our difficulty.

In other words, we have not been able to get the assistance of Federal presence when we go down to try and we have asked for it.

Mr. DONOHUE. Well, as I read in the press, you are stymied from going into the office to register or to the courthouse where that registration office is.

Dr. HENRY. Well, it is more at the door. It is more after you have presented yourself. The clerk many times is too busy to process you or he has something else to do and, of course, he really doesn't have to use any of those excuses. He can just throw the law at you which says you have to be able to interpret any of these sections of the constitution. He can stop you.

Mr. DONOHUE. How many Federal districts are there in the State of Mississippi?

Dr. HENRY. I don't know. I think four or five.

Mr. FOLEY. I think you have only two southern judicial districts, northern, and southern.

Dr. HENRY. We have four judges and I would presume each would preside over a district.

Mr. FOLEY. No, they do not. You have two districts with several judges, the northern and southern districts.

Mr. DONOHUE. Tell me this with further reference to that. Where are the Federal courts in Mississippi, do you know?

Dr. HENRY. Well, there are several. I don't know all of the communities where they are.

Mr. DONOHUE. Are the Federal marshals located in the Federal courthouse?

Dr. HENRY. Yes, I understand that they usually use the post office buildings that houses the Federal court and when a particular post office is so used, there is a Federal marshal stationed there. I know there is one in my home town and I know of four or five other communities nearby that have them.

Mr. DONOHUE. Have there been instances where you have requested the assistance of the Federal marshal in your efforts to register voters?

Dr. HENRY. Yes, we have done it on the national level. We have not asked the man there himself but we have gone to the Justice Department and requested it.

Mr. DONOHUE. What I have in mind is in your efforts to register to become a voter in Mississippi which would entitle you to vote in the State and national elections; have you called upon the Federal marshals for assistance in enabling you to register?

Dr. HENRY. Yes, sir; we have asked for it.

Mr. DONOHUE. And they have refused?

Dr. HENRY. The Justice Department has not granted us that permission.

Mr. DONOHUE. Do you mean the Justice Department here on the national level, here in Washington would not?

Dr. HENRY. On the national level in Washington; yes, sir.

Mr. DONOHUE. And has the Federal marshal in your district or in any of the districts in Mississippi refused to assist?

Dr. HENRY. Well, you have this situation. Whenever we have asked even the local Federal Bureau of Investigation agent to assist us in a particular difficulty, he has to clear with his superiors before he can act and I am sure that the same thing is true of the marshals, that they can only act on the request directed from those people under whom they work.

Mr. DONOHUE. But you have filed your request here in Washington?

Dr. HENRY. Yes, sir.

Mr. DONOHUE. But you have received no relief?

Dr. HENRY. That is right.

Mr. RODINO (presiding). Dr. Henry, of the 950,000 Negroes who are in Mississippi, you say that there are 15,000 registered to vote; how many of those are eligible to vote? How many are 21?

Dr. HENRY. About 450,000.

Mr. RODINO. Are there any further questions?

Mr. MEADER. Mr. Chairman.

Mr. RODINO. Mr. Meader.

Mr. MEADER. Dr. Henry, you recommend on page 8 of your statement four remedies.

Dr. HENRY. Yes, I have only gotten through the second one. I hadn't gotten to (*c*) yet.

Mr. RODINO. I am sorry. I thought you had concluded.

We will permit the witness to finish.

Dr. HENRY. Thank you. (*c*) Enact a civil rights bill that will give the Attorney General the authority to enter cases in behalf of civil rights.

Of coures, that has been discussed.

(*d*) Enact a National Registration To Vote Act, that will insure the right to register of every American citizen when they reach the age of 21, and have lived 1 year in the community where registration is desired. This act should have the same protection as the Armed Services Registration To Vote Act. We never hear of a Negro boy once he has reached the age of 18 denied the right to register for the armed services. This action could work the same way on the registration to vote level.

I want to thank you, gentlemen, for the opportunity to appear before you.

Mr. RODINO. Mr. Meader.

Mr. MEADER. Mr. Chairman. Dr. Henry, you have cited some examples of abuses in Mississippi and I assume that you are of the opinion that these four recommendations for legislation by the Federal Government will correct those abuses.

Dr. HENRY. Will help correct them, yes, sir.

Mr. MEADER. Now, your first one:

Enacting civil rights legislation that will give the Department of Justice the authority to act when danger is imminent, and not have to wait until an act of violence has been committed—

that is a little bit vague to me.

It sounds as though you were expecting a law enforcement officer to anticipate a violation of the law and prevent it before it occurs. That would be a very desirable thing if it could be done but I do not know of any way that the Attorney General or a prosecutor or a policeman or any one can read the mind of an intentional criminal and prevent a criminal act before it occurs. That is what you seem to want us to accomplish, if I understand your statement. Is that what you have in mind?

Dr. HENRY. Well, to this extent: If I have received several telephone calls, "We are going to blow up your house tonight," and I communicate those threats to the Justice Department and ask for surveillance, I don't think that is unreasonable to ask.

Mr. MITCHELL. I am Clarence Mitchell, director of the Washington Bureau of NAACP. I had not intended to say anything but this question is so important that I would like to reply to Mr. Meader.

This goes to the heart of the problem.

Mr. Medgar Evers, who is now dead, had received many, many threats like that and, as a matter of fact, there was a fire bomb thrown at his home. So any fool could see that sooner or later he was going to be the victim of some kind of attack.

We submitted a formal complaint to the Justice Department about the fire bomb that was thrown at his home, but while the Department was fiddling around about whether the statute authorized it to act in cases involving explosions by gasoline, somebody went down there and got in the bushes, drew a bead on him, and killed him. This happens all the time in Mississippi.

I said when I was here the other day that the Justice Department knows that when these people go down to register they are going to be denied the right to vote. The Department knows they are going to be physically attacked. Often there are people from the Attorney General's Office on the scene as observers. As a matter of fact, the Department had an observer on the scene when Mr. Wilkins was arrested down there on the public streets of Jackson the other day, but they stand around and don't do anything.

I don't think there is anything unreasonable about asking Justice Department men to be on hand to prevent that kind of thing from happening.

Mr. MEADER. Mr. Mitchell, has your organization drafted any phraseology which would be embodied in a Federal law to accomplish the objective that I just read to Mr. Henry?

Mr. MITCHELL. We would be happy to undertake to draft something but we don't believe that there is anything needed.

We know that if somebody sends a threatening letter to the President of the United States, he might be the worst crackpot in the world but before long somebody is out investigating the letter writer and they find out what this is all about.

We think the lives of the citizens who are down there in Mississippi are just as precious. Indeed, the life of the President is most precious to us but we think these citizens' lives are just as precious as the President's life.

Mr. MEADER. Mr. Mitchell, you and I have no quarrel on that. This subcommittee is considering this stack of bills, 138 bills, to adopt a civil rights act of 1962 and we must concern ourselves with the drudgery of finding language to accomplish that objective or to express a thought and do so within the confines of our constitutional powers.

Now, this first recommendation of Dr. Henry's statement struck me as being a laudable objective but very difficult to accomplish in ordinary law enforcement procedures and methods that have been traditional in our country.

How do you anticipate a criminal act and prevent it?

Mr. MITCHELL. May I say, Mr. Meader?

Mr. MEADER. If you have some phraseology which will accomplish that, I think you will have made a discovery that the United States of America and all the 50 States would be glad to have because we would all prefer to prevent violations of law before they occur rather than simply to punish people who violate the law after it occurs.

Mr. MITCHELL. May I say, Mr. Meader, that when we receive threats of bombing in our New York NAACP office, somehow by the use of some kind of statute, the city of New York takes action as a precautionary measure to prevent that kind of crime. I won't quarrel about the way the proposition is stated. The simple thing we want to do is, when we know that people like Dr. Henry and Mr. Evers,

who have been active in the registration and vote campaign and other things, are the targets of assassins, we want the Federal Government to have some hand in preventing this.

We believe the Justice Department can do this, and I say if they come up here somebody ought to ask the Attorney General whether he can do it under existing law. If he says that he can't do it under existing law, let him say what he would need in order to do it and, if he can't draft the language, we can.

Mr. MEADER. Well, I just want to suggest, Mr. Mitchell, that in this stack of bills, and I have not read them all but have glanced through them and am familiar with their provisions in general, I do not believe there is a single phrase in any one of these bills that would accomplish your objective number (a) of preventing a crime before it happens.

Mr. MITCHELL. I don't believe a single new phrase is needed in the situation in Mississippi to get what we are asking for.

I am confident that the Justice Department can act, if it wants to. The fact that they have these members of the Attorney General's staff down there watching the situation let's you know that they could act if they wanted to. As a matter of fact, the question arose a while ago at this hearing about whether complaints had been submitted to the U.S. marshals. Of course, they haven't been submitted to the U.S. marshals in Mississippi because we have known for a long time that it is the policy of the Justice Department to handle these matters from Washington so that you are wasting time going to the local U.S. attorney or to the U.S. marshal.

Mr. RODINO. Might I point out, Mr. Mitchell, unless I am wrong that under the Constitution the Federal Government cannot act as a policeman. This is a State enforcement authority and the cases you have cited in New York are cases where the State has acted as a policeman and, although we would welcome any recommendation as to how we could possibly do this, under the present Constitution of the United States of America, I do not believe we could do it.

Mr. MITCHELL. I respectfully submit that what you have said does not apply to what we are talking about.

If somebody is engaged in the transportation of narcotics in this country, the Federal Government finds a way of apprehending them.

Down in Mississippi they are engaged in the transportation, peddling, and promulgation of a narcotic that is of the worst kind, that is racial discrimination. We have a law which says that the Federal Government says it is unlawful to interfere with the right to vote. It is publicly announced that they are going to interfere. They publicly attack Negroes and we in turn tell them that on May 1 or May 15, some Negroes are going down there to register to vote. Here is a potential Federal crime.

I can't for the life of me see where there is any constitutional violation for the Federal Government to take precautions so that the law is upheld.

Mr. LINDSAY. Would the gentleman yield?

The gentleman from Ohio mentioned Federal statutes which empower the Federal Government to move in by the injunctive process where there is imminent threat.

I know perfectly well that the Justice Department uses the FBI to investigate violations of Federal law all the time and this is one of them—the statute that the gentleman from Ohio just mentioned. But let us face facts squarely. One of the problems in M ssissippi and other areas is that the investigative arm of the Department of Justice, the FBI, resists getting involved in civil rights cases. Let us face it. Is that not a fact?

Mr. RODINO. No. We will have no demonstration.

Mr. MITCHELL. I would like to say, Mr. Lindsay, that is a fact and for this reason: The FBI ordinarily works with the police department on other kinds of crimes and they, because they consider the other types of crimes more important, don't want to alienate the local police department. This is one of our big problems.

Mr. MCCULLOCH. Have you finished, Mr. Lindsay?

Mr. LINDSAY. I just want to commend Dr. Henry for a very excellent statement. I think it was one that is factual and helpful, and I want to commend our colleague from Michigan, Mr. Diggs, for an excellent commentary that he made at the opening.

I am sure that the Chairman will not rule me out of order and I am sure he will agree if I am constrained to make a comment on the technical objection that was raised as to this committee holding hearings in Mississippi that I think it is a sad commentary on the Congress that the House Committee on Un-American Activities is permitted to roam the country holding hearings and issuing subpenas and the Judiciary Committee is not.

Mr. RODINO. The chairman has made his statement and I consider it also a deplorable situation but those are the facts that we are facing.

If there are any ways that we can overcome them, I welcome and the committee welcomes the cooperation of the gentleman in getting this situation corrected so that we may do just that.

Mr. MCCULLOCH. Mr. Chairman, I would also like to say that I think Dr. Henry has been an excellent witness and he has been plied with questions from every angle, and his answers have been most excellent and factual as the case may be.

I would like to, however, ask Mr. Mitchell this question. I was particularly interested in what I understood as repeated statements that you and perhaps your organization are of the opinion that there is existing authority under Federal law usable by the Department of Justice in seeking relief in many of these cases where law violation is imminent, where it is threatened and where it then has occurred.

I would like to ask this question if that assumption is correct, if that understanding is correct: Have you or has your organization so advised the Department of Justice of your opinions on this matter?

Mr. MITCHELL. We have, Mr. McCulloch, on numerous occasions. We have present here a former distinguished member of the top staff in the Justice Department, Mr. Lindsay, and we have under all administrations including this one, submitted our views on what the Justice Department had authority to do, but it is a fact that the Department for administrative reasons makes determinations not to enforce certain parts of the law. For example, Congress passed this dynamiting statute in 1960 and there was a rash of bombings. One of the most terrible of them was the bombing of the home of a colored doctor down in Louisiana, a brand new dwelling.

We submitted that case to the Justice Department and we learned that for adminstrative reasons although the home had been dynamited, the Department was not going to act, and we then challenged the Department. We said, "This is incredible. Here Congress gives you the authority to act and you don't use it."

So they then did start an investigation. I don't know whether they ever came up with any findings but they have been most reluctant to make use of a law that they now have on the books.

Mr. McCULLOCH. Do you have documented in writing the facts that you have been reciting to us now?

Mr. MITCHELL. I certainly have, and I will be happy to submit them.

Mr. McCULLOCH. Will you furnish that for the record, then, and, Mr. Chairman, I ask that they be made a part of the record, the documentation just recited by Mr. Mitchell.

The CHAIRMAN. They will be accepted.

(The documents referred to will be found in the files of the committee.)

Mr. DIGGS. May I ask, Mr. Chairman, unanimous consent that Mr. Mitchell's statement be included in the record?

The CHAIRMAN. Yes.

(The statement referred to follows:)

STATEMENT OF CLARENCE MITCHELL, DIRECTOR OF THE WASHINGTON BUREAU OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman and members of the subcommittee, I am Clarence Mitchell, director of the Washington Bureau of the NAACP. Mr. Roy Wilkins, executive secretary of our organization, was to testify today, but serious problems arising out of the commitments that we must honor in the South prevent him from coming. I hope that you will hear him at a later date at a regularly scheduled hearing. I include the term "regularly scheduled" because we would not wish to cause any delay in the progress of this legislation.

I have asked for permission to file this statement because I do not wish to detract in any way from the dramatic presentation of Representative Charles Diggs and Dr. Aaron Henry. However, I believe that it should be a matter of record and I hope that its contents will be brought to the attention of Members of the House.

Mr. Medgar Evers, State secretary of the NAACP, was shot and killed from an ambush in front of his home in Jackson, Miss., on June 12. He leaves a brave wife and three small children. He is dead because the Government of the United States follows a policy of too little and too late in safeguarding the civil rights of colored citizens in the South. Mr. Evers was willing to die, although he loved life like the rest of us. We cannot restore life to him. We can save the lives of thousands of colored and white people like him who are willing to make the supreme sacrifice for freedom.

When this same subcommittee held hearings in 1959, the Government was giving a clear warning of events that culminated in the bloody assault on freedom riders in Alabama in 1961. On page 806 of the printed hearings, you will find a statement about how Mr. Evers was assaulted while he was an interstate passenger on a bus in Meridian, Miss. The assault occurred at approximately 2 a.m. At that time, the rights of passengers in interstate commerce to ride without being segregated on the basis of race had been clearly established in the courts. Mr. Evers had such faith in the laws of our country that he was willing to rely on them at an early hour of morning in a small Mississippi town where he could have been killed. Along with Mr. Evers and thousands of other colored people, I also had and continue to have such faith. Like him and many of them, I, too, had to make a decision in the small hours of morning about whether I would take my stand with the Constitution or retreat in the face of unlawful use of police power by a southern city. Like Mr. Evers and hundreds of other citizens, I chose the Constitution. I would do it again, even if I had to pay the same high price paid by him. Like him, I, too, love life.

In spite of the arrests, the assaults, the humiliations, and numerous pleas of the U.S. Department of Justice, the Government did not make massive changes

that it could have made earlier until the television cameras were focused on burned buses and maimed humans in the dreadful attacks on freedom riders.

Mr. Evers' home was bombed. There were numerous threats to his life. The U.S. Department of Justice knew about this, but this did not save his life. Now that he is dead, the Nation is shocked and there is much activity about finding the murderer. Mrs. Evers has said bravely that the killing "will not stop anything. They will have to kill me and the children and an awful lot of others." She has given the Government of the United States clear evidence that thousands of its citizens are ready to die for liberty. The Government did not heed that evidence when Mr. Evers gave it in 1959. I hope that it will pay attention in 1963 and pass legislation that will protect civil rights in all parts of our land.

The CHAIRMAN. Mr. Cramer.

Mr. CRAMER. I thought the comments of the gentleman from Michigan were very helpful concerning the statements in your statement showing the need which suggests that a national police force be established, and I read your second paragraph (b) in which you suggest the greater use of Federal marshals already stationed in the South to create the image of Federal presence as the Negroes are being denied basic human rights.

Do you think that housing and employment discrimination also are human rights? Are they intended to be included in that?

Dr. HENRY. Specifically, what we had in mind there was the question of the right to register to vote.

Of course, I am pretty sure that it could be flexible enough to be used in other cases, but, specifically, that is the difficulty we were trying to overcome with that recommendation.

Mr. CRAMER. If you define those as basic human rights as well, involving nondiscrimination in employment and nondiscrimination with regard to private as well as public housing, then why did you limit the applicability of your proposals to the South?

Dr. HENRY. Well, this particular recommendation comes from the president of the Mississippi NAACP. That is where I live.

I suppose there would be recommendations from other sections but I feel in Mississippi this would help us.

Mr. CRAMER. Then I assume that your recommendation would be that, if there should be established a national police force as you recommend, that it should be established throughout the country to affect and protect all basic human rights whether it relates to housing or employment or otherwise?

Mr. MITCHELL. Mr. Cramer, may I point out that the witness has not recommended a national police force. He has made a legitimate recommendation that is constitutionally sound, and I would suggest that anybody who tries to distort it by referring to it as a national police force is trying to take the issue out of focus.

Mr. CRAMER. How would you describe it?

Mr. MITCHELL. I would say it is a cry from the people who are in distress, from the people who are victims of mobs, from the people who are being shot when they go into their houses, where their Government is out busy in Laos and out busy in Germany and out busy all around the world trying to keep the peace, to come to Mississippi and come to your State where there are troubles to keep the peace. That is why I say it is a terrible thing when these people come here in good faith to this committee to make recommendations and then somebody tries to pretend that what they ask for violates constitutional precepts.

It may be that this can be gotten away with in the Congress, but it will never be gotten away with in the eyes of the American people and, as long as God gives me a voice to speak, I will try to tell the American people here and elsewhere that this is wrong.

Mr. CRAMER. I am not challenging your right to make any statement you wish. You have been so invited before this committee. No one suggested that you do not have the right to make any presentation you wish, but what I am trying to do is get a definition of what is being proposed.

I will ask you to describe it.

You have criticized the suggestion made not only by me but by a number of others on the subcommittee as to whether or not this would not result in a national police force. Now you describe how you could have Federal authority throughout this Nation to protect and preserve all types of human rights without setting up a national law enforcement agency to accomplish it.

Mr. MITCHELL. What I am saying is that we should have Federal authority to protect all rights under the Constitution of the United States and I assume we now have that authority.

I assume that whether the Constitution be violated in Florida or in Maine, the Federal Government has a right to be concerned with it.

Mr. CRAMER. Then are you saying what we have now is that we have adequate laws on the books and adequate constitutional power to protect those rights at the present time?

Mr. MITCHELL. No, I am not saying that. I am saying that we have got laws on the books which could protect some of these things that we now suffer from and they are not being used, and I am saying that there is a need for additional law such as title III that the chairman has introduced, such as fair employment practice legislation which is not now on the books, and I will say that Congress will insult the American people and insult those who are the victims if it fails to present these things.

Mr. CRAMER. Well, now, what I am trying to do is get at some specifics. The gentleman from Michigan suggests we have a 130-some-odd recommendations, not a single one of which would do what you have recommended in (a) and (b).

Now, let me say further that, with regard to the Negro leader who was killed just the other day and there have been whites killed as well, that I deplore it as much as anyone else. I do not think there is a Member of Congress that does not.

The question is, though, Exactly what should the Congress do within its constitutional authority in order to do as you have suggested? What legislation can you recommend that would have given him protection?

I assume about the only way, after he had been threatened, that he could have been protected would have been to have a Federal bodyguard, somebody to accompany him at all times.

Is that not the only way that could be done?

Mr. MITCHELL. May I say this: We are grateful for all of this deploring of the incident, but what we need is more protection and less deploring, and I think that the reason we have these incidents is exactly because of what is going on here.

Now, as I grow older——

Mr. CRAMER. What do you mean by that, by "what is going on here"?

Mr. MITCHELL. I am getting ready to define what I mean.

As I grow older, I have less patience with subterfuge, and I would say most respectfully that you ought to know as well as I know that the civil rights people of this country have been arguing for certain basic legislation which is the inclusion of part III which we believe will aid in protecting basic rights guaranteed by the 14th amendment.

We believe that we ought to have the enactment of a fair employment practice law which would guard against discrimination in jobs.

Mr. CRAMER. I understand that.

Mr. MITCHELL. You have asked me to be specific and I am trying to be specific. As a matter of fact, we have given a very clear picture of what we are interested in. The chairman has introduced it, and it has been introduced in the other body.

Now, we can get all tied up on these little things about whether you are going to have a Federal marshal at somebody's doorstep and that sort of thing but if we are really interested in protecting the constitutional rights of people, it seems to me this committee knows as well as I do that it can do it.

Mr. CRAMER. Then are you satisfied with the recommendations that have been submitted and are now embodied in these legislative proposals?

Mr. MITCHELL. I would say we are satisfied with the recommendations that embody the broad principles that I was about to outline and most of them have been introduced by the chairman and other members of this body. The chairman knows what they are. The ranking member knows what they are. Most of these members know what they are, and we are not concerned about 100, or 90, or 1,000 bills. Any knowledgeable member of this committee knows that what we are here for is the basic program.

Mr. CRAMER. I may not be knowledgeable, if that is what you are implying.

Mr. MITCHELL. I am not saying you are or are not.

Mr. CRAMER. As I understand, your specific recommendation is that we protect the human rights which are suggested should be protected in paragraphs (a) and (b) of the recommendations as contained in specific proposals.

Now, it is fine to say that these things should be done but this committee and the Congress have to enact legislation to carry it out.

Now, what should Congress do, and I am asking you for a recommendation not for a speech.

Mr. MITCHELL. It is hard to separate those two things in Congress.

Mr. CRAMER. A recommendation as to what legislation Congress can enact that would prevent, in the future, the killings, be it white or Negro, in this country?

Mr. MITCHELL. No, Mr. Cramer, again——

Mr. CRAMER. I want specifics.

Mr. MITCHELL (continuing). Most respectfully I am going to say this: I don't know whether the people at this hearing know that you are a Republican from the State of Florida.

Mr. CRAMER. I don't know what that has to do with it.

Mr. MITCHELL. It has a great deal to do with it because I must say most respectfully I don't believe you are going to vote for a bill that is for civil rights. I am willing to sit here until doomsday answering your questions, but I think the public ought to know that there is a real suspicion that maybe some of these questions might not be designed to get at the facts there but there might be a tendency to have a smokescreen in this area.

Mr. CRAMER. Mr. Chairman, I do not think that point is properly taken before this committee. I have asked him a question. There was absolutely nothing improper about the question. I asked for specific recommendations. Whether I am for or against a piece of legislation as it finally comes out of a committee, I do have a duty, I believe, as any member does, to try to make it as good as possible.

Mr. MITCHELL. And most respectfully, I want to cooperate.

Mr. CRAMER. Your recommendations would be very helpful. I want to know what your recommendations are that are to be considered.

Mr. MITCHELL. I am trying very hard, Mr. Cramer, to cooperate by answering you but I don't want you and I don't want the audience——

Mr. CRAMER. I am not attacking you, whatever your thought may be, and you should not attack me.

Mr. MITCHELL. I don't want this committee or you ar anybody else to think I am under the illusion that we may expect a constructive result to flow from this.

Mr. CRAMER. I will have you know that one of the amendments included in the bill that has been introduced by the ranking minority member of this subcommittee and full committee was one that I recommended. I was consulted with regard to the legislation and, I think, made some constructive suggestions.

I am not antagonistic to this problem in the slightest. I would like to have you answer the questions as to what specifically you recommend.

Mr. ROGERS. Mr. Chairman.

The CHAIRMAN. Just a minute. I want to get this clear. I was not here during the entire colloquy, but what I gather from the part of the time that I was here seems to indicate that your point of view was more or less the following, and you correct me if I am wrong: that because of these horrendous incidents that have been occurring, murder and so forth, you feel, as I understand it, that there should be a greater numerical presence of U.S. officials, like marshals, in the Southland where these events have occurred, in order to prevent the recurrence of such horrendous action; that that would be more or less prophylactic; it would tend to create law and order and prevent some of the segregationists of the South from perpetrating some of these terrible crimes. Am I correct in that statement?

Mr. MITCHELL. You are absolutely correct, Mr. Chairman, and more than that, as you and the ranking member know, in response to your request, I submitted to you a statement by a group of distinguished lawyers who met out at a great university of this country and who took the same position.

The only reason I don't identify them is I don't have permission to do so, but I respectfully ask that you, as chairman, communicate with one or all of those lawyers and ask that they make their statement

public, because it is the product of sound legal minds saying that we need a Federal presence in the South.

The CHAIRMAN. Now I have to follow it up with another question. Just how can we do that? How can we devise ways and means legislatively to provide for a greater number of marshals or other officials in every nook and cranny or on all the highways and byways of the various States where we are anticipating disorder? How would you suggest that that be done?

Mr. MITCHELL. I don't think that they are needed in every nook and cranny of this country.

The CHAIRMAN. That was just a phrase that was haphazardly used.

Mr. MITCHELL. This is one of the problems that we face when we start talking about remedies. People begin talking about the things that I regard as cliches. Again and again when you talk about passing a fair employment practice law, people say there will be hordes of investigators.

Well, we passed the National Labor Relations Act and it is part of the law. We don't have any hordes of investigators.

I think what we are saying here is that under the existing statute which is the voting statute, the Federal Government ought to use marshals when it knows that this law is going to be violated and they do know in advance. They have the observers right down there to see. All they need is the marshal around to stop the violation.

I think, further, that if we pass title III, if we pass fair employment practice legislation and things of that sort, surely there ought to be Federal officials going in to see that the law is carried out just as we send people to go in to see that we don't transport spoiled fish in interstate commerce.

The CHAIRMAN. That is what we probably will accomplish in the legislation that we are now attempting. For example, in the case of voting, frequently actions have been started to enjoin certain State officials and by the time the end result is reached the election is over.

We have a provision for expediting those cases which would be very, very helpful. In many other areas we are seeking legislation which will fill some of these gaps, which will accord more prompt, more expansive remedies to those that are deprived of their rights.

We are trying to work along those lines, but, when you speak of a national police force as I think was mentioned——

Mr. MITCHELL. It was indeed, and I mentioned it, and this is precisely why I made a heated rejoinder when it was mentioned.

Mr. CRAMER. I was not the first to mention it.

Mr. MITCHELL. I know that once you get to kicking around these terms like a national police force, and abolishing the right of trial by jury, and all those other cliches that get flung at us when we ask for civil rights legislation, pretty soon the public gets all confused and it looks like we are asking for something unreasonable. So when Mr. Cramer asked Dr. Henry about whether he was for a national police force, my temperature went up. I said to him that I hoped that he would understand that we were not asking for any national police force.

Mr. CRAMER. Mr. Chairman, I would suggest that the reporter reread the question I asked and we will see that that is not what I asked

at all. It was not described as a national police force by me initially but by others on the committee.

I asked what specific legislation you or Dr. Henry have to recommend to this committee that will accomplish the objectives you propose in your subsection (a) specifically and, secondly, that would relate to the killing—which, as I say, all of us abhor and hope the perpetrator is caught—that recently occurred that would prevent that type of killing, be it on one side or the other, and I still have not received a reply.

Mr. MITCHELL. Mr. Cramer, I think I have replied but I would say that, if you, on looking at the transcript, think that I haven't, I will be happy to answer whatever you have in mind. I just want to say about this deploring business, the Jackson Daily News, which is one of the most inflammatory papers in Mississippi, Gov. Ross Barnett, who defied the Government of the United States, are all deploring this killing but it doesn't bring Mr. Evers back to life.

We can prevent this by passing legisltation which will give the Federal Government authority to act.

Mr. CRAMER. All right. I want to know what that legislation is. If you have recommendations, I would like to have them. I would like to give serious consideration to it. Where are they? Where are the proposals?

Mr. MITCHELL. For what I believe is the third time, I will reiterate, that we are for a part III such as the chairman has faithfully introduced. We are for fair employment practice legislation.

Mr. CRAMER. Part III would not protect the person——

The CHAIRMAN. Let the gentleman answer.

Mr. CRAMER. He has answered it four times.

Mr. MITCHELL. You were one count ahead of me. I thought it was three.

Mr. CRAMER. What type of legislation?

Part III would not protect the man that was killed.

The CHAIRMAN. Go ahead.

Mr. MITCHELL. I said, Mr. Chairman, in response to Mr. Cramer's question as to what we are specifically for, that we are for, first and foremost, part III, because we believe this will go to the heart of protecting the constitutional rights under the 14th amendment. We are for a Federal fair employment practice law because we know that with job discrimination as it is, it is the only way you can really come to grips with that question.

We are for statutes which would give protection against discriminaton in hotels and restaurants.

We feel that the Federal Government ought to do something to accelerate school desegregation.

These things have been pretty much introduced by you. They are very clearly identified. It is true, they are in a whole lot of other bills, but if we start with this and get this through, I think we will be making a substantial bite in the problem.

The CHAIRMAN. Do I understand your answer to be more or less as follows: If we get these provisions that you mentioned, there will be developed a climate down there which might prevent the disorders that we read about and might even prevent a murder. We have laws against rape. We have laws against larceny, but that does not prevent some cases of larceny or murder. But it certainly acts in some way

as a deterrent and these laws that we are attempting to pass might act as a sort of deterrent or at least a brake upon all the evil that we read about?

Mr. MITCHELL. You have certainly said it, Mr. Chairman. You know there are people who go around the country saying you can't change the hearts and minds of men. You can't change the hearts and minds of safecrackers either but, if you get a policeman who grabs them in the act, you can put them out of circulation for a while. It seems to me that this is the kind of thing that we are interested in, in this legislation.

I want to say, too, Mr. Chairman, that there is a lot of talk going around the country from very high sources that, if you just protect the right to vote, this is all you need to do. That isn't all you need to do and those who say that know full well that this is the easiest kind of thing to get through Congress. They would like to pass a so-called voting bill and then say to the colored people of this country, "Well, you have got civil rights." You and I know that that isn't enough, and I am delighted that you have been always in there fighting for more than that.

The CHAIRMAN. Mr. Rogers.

Mr. ROGERS. What I wanted to emphasize is that I thought that the gentleman was trying to answer the gentleman from Florida that he is in favor of many of these bills.

Mr. MITCHELL. Yes, sir.

Mr. ROGERS. The first of which would be the authorization of the Attorney General to represent any one whose rights have been denied him because of race, color, or creed. That is No. 1 on your program. Then there are other factors in these bills that you believe should be enacted within the Constitution of the United States with the authority that Congress has and in light of two recent decisions of the Supreme Court which relate to sit-ins; which relate to the statutes of, and city ordinances of, the various States that practice segregation.

Recently the Supreme Court sent back to the State of Virginia the problem of examining about 15 cases.

Now, what you are trying to do is to say that, if we enact this legislation, give the authority to the Attorney General and then show that there is a real effort to enforce these provisions, then this trouble will not be in as big proportion as it has been in the past. Is that not what you have said?

Mr. MITCHELL. That is exactly right and it also proves it is wonderful to have a friend in court. I thank you for what you have said.

Mr. RODINO. Mr. Chairman.

The CHAIRMAN. Mr. Rodino.

Mr. RODINO. First of all, I would like to commend Congressman Diggs for his fine presentation and would like to join with the chairman in stating that I hope that men like Congressman Diggs, and Dr. Henry, and Mr. Mitchell will be able to prevail in these very critical times and that reason will be able to overcome all of the emotions that are displayed so that we do the things that are correct without further incurring a blot on our American escutcheon. But I can sympathize with you in that you have labored long in trying to bring about the laws that I believe you have been entitled to for a long time.

I believe, as all of you have expressed, that what is fundamental is that we have equality all the way around and that there be educational

opportunities, employment opportunities, and that there be as the basis of all of this an expression of real human rights in all the legislation that we write.

I would just like to make one further comment, Mr. Mitchell, to clear up this question about police authority. I was presiding when this colloquy occurred and I just want to point this out: I wish it were possible that there were some way of preventing these acts that do take place. I made the statement then that even though there are laws against murder, if there were a threat made on my life or the life of any individual, nonetheless, an individual could not ask the Federal Government to intervene. It is still State authority.

Now, if because of the climate there is a necessity to do something that may prevent these acts until such time as we have written the legislation and the climate is cleared; then I am for that, too.

Mr. MITCHELL. Mr. Rodino, we are not asking for any usurpation of existing State law. What we are asking for is that the Federal Government, within the scope of its jurisdiction, under the Constitution and within the scope of Federal law now on the books or which may be enacted in the future, see to it through its law enforcement officers that this law is obeyed.

Now, it seems to me, of course, if somebody makes a vague threat we are not asking that the Federal Government have a crystal ball to look in to see where it is going to be carried out but when somebody is standing in the front of a gasoline tank with some matches in his hands and you know he has a reputation for arson, it seems to me you have a right to stop him from doing anything damaging.

Finally, in commenting on what you said about restraining people, there has been a lot of talk in the papers about the possibility of sit-in demonstrations here in the Congress. I have a passionate belief in and love for the law, but I would say that I do not consider the sit-in operation any more unlawful, or irresponsible, or destructive to the image of our Nation than to have Members of the Congress stand up on the floor of Congress giving out statements to the newspapers, over radio and television, and otherwise, saying that when the President of the United States comes out with a plea for promoting and protecting human rights, they are going to get up and just talk it to death.

I don't see how we can ask the colored people of the United States or the white people who believe as they do to refrain from sitting if if we don't ask those people to refrain from filibustering.

Mr. CRAMER. Mr. Chairman, I would like to ask that the gentleman be permitted to submit for the record in further answer to my question any specific recommendations he may have, in addition to those that he has already mentioned, of course, embodied in the bills we have before us that would carry out the proposals suggested by Mr. Henry.

Mr. MITCHELL. I would stick by what the chairman so ably defined for me and I would think that, if we have that, we would be in very good shape.

What I would like to do is simply take that part of the transcipt and submit that as my answer.

Mr. CRAMER. The answer, then, is there is no answer as to specific recommendations relating to Mr. Henry's recommendations?

Mr. MEADER. Mr. Chairman, might I ask Mr. Mitchell or the other two witnesses, Congressman Diggs or Dr. Henry, if they have examined H.R. 6720, introduced in the House of Representatives on June 3, 1963, by our colleague, Mr. Lindsay, and I understand that three other members of this committee join.

Mr. MITCHELL. If that is with reference to public accommodations.

Mr. MEADER. This would enforce the 14th amendment by the so-called title III method, giving the Attorney General the right to intervene on behalf of people whose rights were impinged.

Have you examined them?

Mr. MITCHELL. We have. I wouldn't want to say that I could reply to questions about every line in the bill but I am familiar with the principle and I think it is a good piece of legislation.

Mr. MEADER. That is what I wanted to find out.

Thank you.

Mr. KASTENMEIER. Mr. Chairman, just one question.

The CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. We have been talking primarily about preventing acts that happened. In connection with Dr. Henry's testimony about those acts or abuses already committed, let us say by local enforcement officers, police chiefs, or sheriffs, where in some of these cases they clearly seem to me to involve physical abuse and other intolerable acts, is there any way, Mr. Mitchell, that you feel that the Department of Justice, complaints having been made about it, can act, let us say, to punish local enforcement officers for some of these acts insofar as they are connected with civil rights?

Mr. MITCHELL. Yes, Mr. Kastenmeier. We have had this problem in these matters that, when we make a complaint, the Justice Department investigates and if it feels that there is the slightest weakness in the case, it drops it even though there might be prima facie evidence of violation of the law. If it feels that it is sufficiently serious to take this case to the grand jury, the Department does take it to the grand jury, and very often it is lost in the secrecy of the grand jury room.

Now, we have asked that, since some of these things are misdemeanors, the Department adopt a policy of filing an information so that the facts can be stated in open court. We can then cite statistically how these cases have come up and how nobody was punished for the violation of law.

As a matter of fact, as a matter of policy, the Department has not accepted the position that it would file an information in these matters.

In one or two cases they have done it but as far as I know they have not changed that basic policy of refusing to file an information.

Mr. KASTENMEIER. You would certainly admit that, if convictions were obtained, it would serve a purpose in deterring some other like-minded local enforcement officials from engaging in this type of practice. It is one thing to live in a community which is partially hostile but another thing when you have the local law enforcement officers willing to resort to such methods to express themselves.

Mr. MITCHELL. I certainly agree, Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman.

The CHAIRMAN. Counsel.

Mr. FOLEY. Mr. Mitchell, just one question along the lines of Congressman Kastenmeier's questions. Even if the Department of Justice altered its policy and proceeded by way of information instead of

indictment, you would still run into the very basic problem down there of getting a conviction. We cannot take away the right of trial by jury. This is the very practical problem.

Mr. MITCHELL. You are so right, Mr. Foley. That is why we feel there ought to be these civil procedures because, if you do not have them, you never will get anywhere. I felt and have always felt that, if we use the information process, at least there would be some documentation of the wrongdoing whereas now it is lost in the secrecy of the grand jury room.

The CHAIRMAN. Thank you very much, gentlemen.

Mr. DIGGS. Thank you, Mr. Chairman.

The CHAIRMAN. The Committee will be in order.

(The following material was submitted for the record:)

COAHOMA COUNTY BRANCH OF NAACP

The Coahoma County Branch of the NAACP with the cooperation and urging of many of the parents and interested leaders of the community would like to recall the following figures to your attention. While these figures represent the published report of local tax expenditures in the area of schoolchildren, we wonder if this admitted report truly represents the situation. There is a good possibility it could be even worse. At best this kind of unfair distribution of tax funds is duplicated in all facets of public life; library, playgrounds, parks, schools, streets, employment in city and county administration, and, in fact everything that is segregated. Only in such things as sunshine, rain, death, and taxes, commodities over which the local power structures do not exercise absolute control can the Negro citizens expect to be treated with equality. While only the expenditures per Negro and per white child is mentioned here, also reflected in this kind of a report is the amount of local funds that are used to supplement white teachers salaries and place them still in a higher salary bracket than Negro teachers. This is a shrewd maneuver to get around the State law that equalized teachers' salaries which was the result of a suit some years ago by Mrs. Gladys Noelle Bates and the NAACP out of Jackson, Miss. Any Negro teacher that thinks he or she is getting the same or equal salary to the local white teacher, you have a great awakening coming.

If these figures are not correct, we call upon local authorities to refute them.

Local tax funds for education and how distributed

District	White	Negro	District	White	Negro
Aberdeen Separate	$54.78	$11.15	Marshall County	$69.56	$8.91
Attala County	62.67	12.42	Montgomery County	48.73	6.71
Benton County	59.42	15.63	New Albany	55.93	13.42
Bolivar County 1	125.10	2.32	North Panola Consolidated	104.28	1.76
Carroll County	81.26	7.08	North Tippah County	35.14	.00
Clarksdale Separate	146.06	25.07	Noxubee County	113.29	1.21
Coahoma County	139.33	12.74	Oxford Separate	69.42	30.67
Coffeeville	88.95	6.55	Quitman Consolidated	60.70	13.48
Desoto County	87.66	3.74	Quitman County	90.28	8.41
Drew Separate	104.06	54.92	Sharkey-Issaquena	18.75	25.74
East Tallahatchie	69.15	6.61	South Panola	59.55	1.35
Greenville Separate	134.43	34.25	South Tippah	32.40	----------
Greenwood Separate	116.78	46.45	Sunflower County	127.36	11.49
Grenada County	91.51	13.31	Tate County	67.08	5.84
Grenada Separate	79.00	27.38	Tunica County	172.80	5.99
Holly Springs Separate	99.78	7.84	Union County	26.68	7.86
Holmes County	117.92	5.73	Union Separate	47.62	7.24
Indianola Separate	72.26	15.17	Water Valley	53.44	2.75
Lafayette County	37.79	8.12	West Tallahatchie	141.95	13.47
Leflore County	175.38	9.52	Winona Separate	70.95	12.92
Leland	113.02	24.99			

NOTE.—See below for complete State breakdown.

NB.—Not a single Negro child in Clarksdale and Coahoma County attends an accredited school, while all the schools that white children attend are accredited.

There is no relief for this condition on the local or State level, because we have no one to champion our cause in the State legislature. On the Federal level

the law is separate but equal, is unconstitutional. Therefore, the only remedy we see is to place Negro and white children in the same schools, only then will the Negro child and Negro teacher get equal educational opportunities. Public comment is welcome and expected.

1. I agree with the proposed solution of the Coahoma County Branch of the NAACP.

2. I do not agree with the proposed solution of the NAACP, and offer the following alternative.

District	White	Negro	District	White	Negro
Aberdeen Separate	$54.78	$11.15	Lee County	$21.[illegible]	$7.07
Alcorn County	19.39	----------	Leflore County	175.38	9.52
Amite County	70.45	2.24	Leland	113.02	24.99
Amory Separate	70.05	28.22	Lincoln County	68.51	20.06
Anguilla	130.85	21.15	Long Beach Separate	138.38	----------
Attala County	62.07	12.42	Louisville, Winston	47.82	7.64
Baldwyn Separate	32.45	10.04	Lowndes County	64.03	8.53
Bay St. Louis Separate	105.55	19.34	Lumberton Consolidated	85.47	16.09
Benton County	59.42	15.63	Madison County	171.24	4.35
Biloxi Separate	128.92	86.25	Marion County	42.91	19.10
Bolivar County 1	125.10	2.32	Marshall County	69.50	8.91
Bolivar County 2	117.63	3.16	McComb Separate	61.51	18.85
Bolivar County 3	177.37	4.46	Meridian Separate	116.58	63.11
Bolivar County 4	101.55	23.86	Monroe County	44.11	6.20
Bolivar County 5	123.65	5.68	Montgomery County	48.73	6.71
Bolivar County 6	----------	14.26	Moss Point Separate	86.63	43.30
Brookhaven Separate	58.86	20.79	Natchez-Adams	131.84	49.38
Calhoun County	38.96	21.28	Neshoba County	21.16	7.12
Canton Separate	35.79	17.00	Nettleton Line	26.81	1.58
Carroll County	81.26	7.08	New Albany	55.93	13.42
Chickasaw County	55.42	.62	Newton County	67.42	17.98
Choctaw County	46.84	16.97	Newton Separate	81.23	19.83
Claiborne County	142.64	10.88	North Panola Consolidated	104.28	1.76
Clarke County	56.82	16.11	North Pike	30.89	.76
Clarksdale Separate	143.06	25.07	North Tippah County	35.14	0
Clay County	64.07	15.31	Noxubee County	113.29	1.21
Coahoma County	139.33	12.74	Oakland Consolidated	104.03	6.15
Coffeeville	68.95	6.55	Ocean Springs Separate	78.26	84.08
Columbia Separate	90.73	27.82	Okolona Separate	72.39	14.54
Columbus Separate	106.74	54.92	Oktibbeha County	103.87	8.91
Copiah County	49.88	7.11	Oxford Separate	127.98	78.50
Corinth Separate	79.94	41.32	Pearl River County	61.70	----------
Covington County	52.52	23.95	Perry County	98.98	38.51
De Soto County	87.66	3.74	Philadelphia Separate	85.05	30.33
Drew Separate	104.06	20.93	Picayune Separate	74.54	26.43
East Jasper	11.22	8.57	Pontotoc County	34.75	13.59
East Tallahatchie	69.15	6.61	Pontotoc Separate	78.91	----------
Forrest County	67.76	34.19	Poplarville Separate	57.96	18.69
Forrest Separate	86.48	40.58	Prentiss County	33.88	19.88
Franklin County	77.62	13.86	Quitman Consolidated	60.70	13.48
George County	66.53	34.65	Quitman County	90.28	8.41
Green County	69.50	11.37	Rankin County	72.71	14.78
Greenville Separate	134.43	34.25	Richton Separate	52.09	14.41
Greenwood Separate	116.70	46.45	Scott County	31.55	10.95
Grenada County	91.51	13.31	Senatobia Separate	65.08	10.74
Grenada Separate	79.00	27.38	Sharkey-Issaquena	18.75	25.74
Gulfport Separate	93.34	50.76	Simpson County	41.42	8.97
Hancock County	64.18	----------	Smith County	54.34	20.43
Harrison County	58.91	14.24	South Panola	59.55	1.85
Hattiesburg Separate	116.96	61.69	South Tippah	32.40	----------
Hazlehurst Separate	90.95	9.76	Starkville Separate	78.00	19.11
Hinds County	80.24	10.41	Stone County	60.27	13.03
Hollandale	117.81	18.00	Tishomingo County	41.60	2.70
Holly Bluff	191.17	1.26	Tunica County	172.80	5.99
Holly Springs Separate	99.78	7.84	Tupelo Separate	96.87	31.41
Holmes County	117.92	5.73	Union County	26.68	7.86
Houston Seperate	44.75	----------	Union Separate	47.62	7.24
Humphreys County	116.62	15.35	Walthall County	48.08	10.55
Indianola Separate	72.26	15.17	Warren County	101.66	10.62
Itawamba County	34.99	46.06	Water Valley	53.44	2.75
Iuka Separate	29.73	25.32	Wayne County	62.76	8.60
Jackson County	76.51	68.99	Webster County	34.62	11.56
Jackson Separate	149.64	106.37	Western Line	198.74	52.27
Jefferson County	96.89	2.60	West Jasper	55.71	9.87
Jefferson Davis County	59.44	10.24	West Point Separate	51.26	11.91
Jones County	38.25	29.45	West Tallahatchie	141.95	13.47
Kemper County	71.82	11.91	Wilkinson County	80.76	1.28
Kosciusko Separate	74.64	21.16	Yazoo County	248.55	2.32
Lafayette County	37.79	8.12	Winona Separate	79.95	12.92
Lamar County	52.82	43.22	Yazoo City Separate	98.43	35.64
Lauderdale County	62.34	34.28	Vicksburg Separate	124.33	24.17
Laurel Separate	79.63	36.33	Sunflower County	127.36	11.49
Lawrence County	57.01	23.14	South Pike	101.92	10.55
Leake County	48.85	17.37			

STATEMENT OF WILL MASLOW, THE AMERICAN JEWISH CONGRESS

Mr. MASLOW. Mr. Chairman, to save the time of the committee instead of reading my statement I will ask that it be introduced into the record.

The CHAIRMAN. You shall have that privilege.

Mr. MASLOW. To save further time, I would like to address myself to the heart of the statement. That is the main concern of this subcommittee at the moment, a legislative civil rights program to be enacted as quickly as possible.

You will find at the conclusion of the statement an eight point program. I share fully your views and I think Mr. Mitchell likewise agreed that, if this eight point program is enacted, the civil rights climate will have so changed that we are not likely to have repetitions of assassinations in the South or anywhere else.

The CHAIRMAN. Let us have order in the room.

Those who want to leave the room, please do so expeditiously.

Mr. MASLOW. I would urge, therefore, that the main task of this committee is to come up as quickly as possible with a comprehensive civil rights bill, not merely with the bills that are now within the jurisdiction of this committee but with an overall measure including, for example, fair employment practice legislation, which is now before the House Committee on Education and Labor. If you address yourself to the main problems, the problems of education, voting, places of public accommodations, and employment in one massive assault, this committee will do more to stop violence than 100 different police measures.

Now, that eight point program does not require new bill drafting, new legislative or legal analysis. Many of the bills have been before Congress. You, sir, have introduced many of them. They have been debated and discussed now for some 17 years.

All that is required is to have this committee report the bills out, have the House enact them, and then let's get ready for the fight in the filibuster.

The CHAIRMAN. I wish it were as easy as all that, Brother Maslow. It is not quite that easy.

Mr. MASLOW. Nevertheless, Mr. Chairman, you are aware of a sense of urgency that the country now feels, a sense of urgency which was manifested in, the kind of attendance displayed at the hearing this morning which I haven't seen for a great many years.

That kind of urgency, I am confident, will facilitate your task to get through this kind of a comprehensive bill. I urge you not to be content with one bill at each session and usually it is an inadequate bill, but seek to enact a comprehensive and massive law.

The eight points are spelled out and you are familiar with all of them, title III, a deadline bill for public school boards to submit segregation plans, Federal assistance to complying school board, making the U.S. Commission on Civil Rights permanent, enacting a fair employment practice legislation, denying Federal benefits to agencies that discriminate, and fully protecting the right to vote.

If that is done, we will do more than we could possibly have hoped for a year ago, but I submit to you that the time is ripe and that the country and Congress is now in a mood to make these grand steps.

The CHAIRMAN. Thank you very much, Mr. Maslow.
I am sorry that we could not hear you at greater length.
The quorum call has been sounded, as you know.
Your full statement will be placed in the record.
Mr. MASLOW. Thank you very much.
The CHAIRMAN. Thank you very much.
(The statement referred to follows:)

STATEMENT OF WILL MASLOW ON BEHALF OF AMERICAN JEWISH CONGRESS, JEWISH LABOR COMMITTEE, JEWISH WAR VETERANS, UNION OF AMERICAN HEBREW CONGREGATIONS, UNION ORTHODOX JEWISH CONGREGATIONS OF AMERICA, AND UNITED SYNAGOGUE OF AMERICA

The undersigned organizations welcome this opportunity to testify before this committee on proposed Federal legislation dealing with the most pressing domestic issue of our time: civil rights.

This hearing takes place at a time when our Nation is vividly conscious of an abrupt change in the civil rights climate. For 90 years after the 14th amendment, the people as a whole assumed that it was sufficient to put that declaration into effect only in part. The Negro did not receive the equality it pledged. Most tragic was the rigid system of separation that branded the Negro people as an inferior group.

In 1954, the constitutional underpinning for segregation was destroyed by the Supreme Court and the theoretical basis was laid for complete equality for all Americans. The Supreme Court made it clear that nothing less than complete equality satisfied the demands of the Constitution and the principles underlying our democratic system.

During the ensuing years, however, another assumption was made—that the fact of equality, as distinguished from the promise, could be approached slowly, gently, with "deliberate speed," and above all without disturbing anyone too much. For 9 years, we have acted on that assumption and adopted a "gradual" approach to elimination of inequality. Events of the last few years have revealed the folly of that assumption. Events of the last few months compel its abandonment.

We now know that deliberate speed, in some areas at least, means no movement at all, that token integration is still segregation, that gradualism means sacrificing the constitutional rights of a whole generation of children and adults. Equally important, we know that it is possible to move faster and that there is a large moderate group in the population, long silent, that is now willing to move promptly to grant every American his due. Most important of all, we have been told unmistakably that the generation which was to be sacrificed is not in a sacrificial mood. It wants equality now and is ready to fight for it. We can have that fight or we can recognize that there is nothing legitimate to fight about.

We urge this committee to make a complete break with the past policy of supercaution and minimal progress, typified by the Civil Rights Acts of 1957 and 1960. It must be bold enough to abandon a policy that has been proved to be "too little and too late." Our country must close the civil rights gap—the gap between what the Constitution promises and what the people enjoy in practice. This is no time for half measures.

The Federal Government has the power and obligation to insure enforcement of the guarantees of the fundamental law under which it operates. But to discharge that obligation it must have the tools. The required measures have been debated and refined at length in past years. What is needed now is action.

THE ORGANIZATIONS JOINING IN THIS STATEMENT

The American Jewish Congress is a national organization of American Jews, founded by Rabbi Stephen S. Wise, Supreme Court Justice Louis D. Brandeis, Federal Judge Julian Mack and others, to protect the religious, civil, political, and economic rights of Jews and to promote the principles of democracy.

The Jewish Labor Committee is a national organization of trade unions with a substantial Jewish membership and Jewish labor-oriented community organizations concerned with the civil rights of all groups, the strengthening of democratic forces in the world, and the advancement of Jewish culture and the Jewish community.

The Jewish War Veterans of the U.S.A., the oldest active veterans organization in the United States, is dedicated to support of the national defense and to the extension to all citizens of the democratic rights guaranteed by the U.S. Constitution.

The Union of American Hebrew Congregations is the national body of American reform Judaism, representing over a million Americans affiliated with liberal religious Judaism.

The Union of Orthodox Jewish Congregations of America is the national body of Orthodox Jewry representing over 3 million American Jews.

The United Synagogue of America, now celebrating its 50th anniversary, represents over 700 conservative synagogues in the United States of America with a constituency of more than a million American Jews.

A COMPREHENSIVE CIVIL RIGHTS BILL

The undersigned organizations urge this committee to approve a bill dealing generally and comprehensively with the present civil rights crisis. We believe any such bill should contain the following points:

1. "Part III"

The Department of Justice should be given power to institute court actions to enjoin any conduct taken under color of law that denies to any citizen or group of citizens equal protection of the laws as guaranteed by the 14th amendment. The Department should be empowered to initiate such suits whenever, after investigation, it is satisfied that a denial of equal protection exists.

It will be recalled that a provision of this kind was included in the comprehensive civil rights bill of 1957 as enacted by the House of Representatives. Unfortunately, that provision, familiarly known as part III, was stricken from the bill before final enactment. We believe that much of the present unrest growing out of dissatisfaction with continued segregation would have been avoided if part III had been enacted 6 years ago. In any case, we cannot delay this necessary reform any longer.

This provision should not be hedged about with limitation and restrictions. We specifically oppose any provision conditioning the Attorney General's power to act on a showing that the aggrieved party is financially unable to seek legal redress on his own behalf. Such a provision assumes that primary responsibility for enforcing the Constitution rests with private citizens. It is that concept that has permitted development of the present situation in which a Supreme Court decision has been successfully nullified in a substantial part of the country for almost a decade.

That nullification threatens to undermine respect for law. It is not so much that the continued segregation exists as the fact that the Federal Government appears to be powerless to do anything about it. It is essential that Congress end this apparent paralysis.

2. Public school desegregation

All public school districts still operating on a segregated basis, including those that have achieved only token integration, should be required to prepare and put into effect plans for prompt full integration before the beginning of the next school year in September. As the Supreme Court had occasion to remind us recently, its decision in 1955 directing that desegregation proceed "with all deliberate speed" was never intended to allow public officials operating segregated school systems to ignore the requirement of desegregation until directed to act by a court. The school districts that have ignored the Supreme Court's decision for almost a decade can offer no excuse for further delay.

This recommendation can be implemented by legislation requiring all school districts to report to the U.S. Department of Health, Education, and Welfare as to whether they are still conducting segregated schools and, if they are, to submit their plans for desegregation. The Department should be authorized itself to prepare desegregation plans for those school districts that fail to prepare adequate plans. The Department should be further authorized, by itself or through the Department of Justice, to initiate judicial proceedings to compel effectuation of its plans.

3. Federal support of desegregation

The resources of the Federal Government should be used to facilitate the transition to integrated schools. Funds should be made available to those school districts that encounter financial burdens in making the transition. Pro-

vision should also be made for technical advice and assistance to State and local officials so that they can have the benefit of experience in other areas.

4. Discrimination in public places

Congress should prohibit discrimination by restaurants, hotels, and other places of public accommodation. There are at least two bases on which Congress can take such action.

First, it can prohibit discrimination in all places of public accommodation licensed by State or local officials or otherwise authorized to operate by public authority. Such a measure would rest on the concept that enterprises deriving from the State their authority to serve the public are subject to the equal protection clause of the 14th amendment. Congress could then enact legislation under section 5 of the 14th amendment which specifically empowers it to enforce the terms of the preceding sections.

Second, Congress could invoke the interstate commerce clause of the Constitution and prohibit discrimination in places of public accommodation whose operations affect interstate commerce. This could be by the purchase of supplies moving in interstate commerce or by the effect their operations have on persons traveling interstate.

We urge adoption of legislation based on both of these grounds. There is nothing novel or impractical about such legislation. Laws prohibiting discrimination in public places have been in effect in this country for just short of a century. The first was adopted in Massachusetts in 1865. At present, they are in effect in 29 States and the District of Columbia. These laws have worked well. They have not disturbed fundamental concepts of the rights of private property.

Discrimination in this area may seem relatively trivial. Experience shows, however, that it is not. It is a terrible thing to approach a cafeteria, a hotel, a store, or any other place that appears to solicit the trade of everyone and then to find that this means everyone who is of the right color.

This may be plainly seen in the recent events in the South. The widespread protest against segregation and discrimination in public places reflects a deeply felt sense of outrage. We believe that Congress should move to end this assault on the dignity of millions of American citizens.

5. Fair employment legislation

The success of the various State employment laws enacted since 1945 in reducing employment discrimination in the areas they cover teaches two lessons: first, that such legislation can be effective, and, second, that only national legislation can deal with the problem nationally. Twenty-three State laws have been enacted in the areas where resistance to equality is weakest. It is idle to hope that such legislation will be enacted in other States where employment discrimination is an even heavier drain on our national resources.

Federal responsibility for this problem has been recognized at least since 1941, when President Roosevelt issued Executive Order No. 8802 establishing the first Federal Fair Employment Practices Committee. Bills for broad Federal fair employment laws have been introduced in Congress at every session since 1944. They have been blocked by minority opposition using the undemocratic device of the filibuster. As long as 1947, a distinguished group of disinterested citizens, the President's Committee on Civil Rights, recommended: "The enactment of a Federal Fair Employment Practice Act prohibiting all forms of discrimination in private employment, based on race, color, creed, or national origin" ("To Secure These Rights," p. 167). Support for such legislation has continued to the present day.

We firmly believe that the time has come for the U.S. Congress to enact a fair employment practices bill, prohibiting discrimination by employers or unions whose operations affect interstate or foreign commerce. For two decades, action on this legislation has been a prominent feature of the unfinished business of Congress on civil rights. Fair employment should be part of any civil rights bill recommended by this committee.

6. The right to vote

Evidence continues to accumulate that widespread denial of the right to vote continues in some areas of the Deep South, despite the limited reforms embodied in the Civil Rights Acts of 1957 and 1960. We believe that more vigorous action under the existing laws would have a substantial impact on this evil. Nevertheless, some additional legislation would also be desirable.

We particularly recommend provisions making a sixth grade education in any public school in the United States conclusive evidence of literacy, satisfying any literacy test that may be imposed by any State. It is essential that the 6 years of

education be taken as conclusive, not merely presumptive, proof of literacy. If it is made presumptive only, the officials who have used literacy tests to bar qualified Negro voters would be free to continue their obstructive tactics. As long as they have the right to challenge literacy, they will do so and thus compel prolonged litigation to establish the right to vote.

7. The Civil Rights Commission

The U.S. Commission on Civil Rights, established under the 1957 Civil Rights Act, has played a valuable role in helping the country to awareness of its shortcomings in the area of human relations. Its various reports, based on careful investigation, have carried compelling weight. They have repeatedly illumined existing inequalities that demand correction. The Commission's carefully considered recommendations should carry weight with all branches of the Government. The support of the recommendations by Commission members from the Deep South conclusively demonstrates their reasonableness and practicality.

The Commission was originally established for a period of only 2 years and with a limited mandate. Its life has been twice extended but it is now scheduled to go out of existence in September of this year. It is essential not only that it receive a further extension but that it be given permanent status so that it can start to formulate long-range plans. In addition, its mandate should be extended to enable it to serve more effectively as a national clearinghouse on civil rights and to provide advice and technical assistance to Federal, State, and local governmental agencies and private institutions.

8. Discrimination in Federal operations

Finally, we submit that the time has come for a sweeping legislative declaration that discrimination will no longer be tolerated in the distribution of any benefits made possible by exercise of the powers of the Federal Government. This declaration should take two forms.

First, a comprehensive civil rights bill, drafted along the lines indicated above, should also contain a general provision prohibiting discrimination in all programs financed in whole or in part by Federal funds or otherwise made possible by the exercise of the powers of the Federal Government. In addition, the bill should specifically repeal any sections of existing law that purport to authorize any form of racial discrimination or segregation. Such provisions, we submit, would do no more than recognize the requirements of the Constitution which impose a mandate of equality on all governmental action.

Second, Congress should adopt a general policy of inserting antidiscrimination clauses in all legislation adopted in the future which invokes the financial or other powers of the Federal Government.

Under either procedure, Congress should include not only a prohibition but also provisions for effective enforcement. The Department of Justice should be given power to initiate court proceedings for enforcement of the antidiscrimination clauses. In addition, the Federal agency administering any given program should be directed to withhold the benefits of that program from any institution that violates the antidiscrimination requirement.

The CHAIRMAN. Mr. Dale L. Button of the Unitarian Universalist Fellowship for Social Justice.

Mr. Button?

STATEMENT OF DALE L. BUTTON, ATTORNEY AT LAW, REPRESENTING THE UNITARIAN UNIVERSALIST FELLOWSHIP FOR SOCIAL JUSTICE

Mr. BUTTON. Mr. Chairman, I am Dale Button, speaking in behalf of the Unitarian Universalist Fellowship for Social Justice, speaking in the place of Robert E. Jones, who was originally scheduled to appear before the committee and is out of the city.

We feel the Congress of the United States has an opportunity in this session to make a stride toward freedom. We are at a stage in our history where an extraordinary understanding is demanded of our public men in this area.

Events have propelled onto center stage the very important domestic issue of our time—that of the freedom and equality of opportunity of all our citizens.

Birmingham, Ala., Jackson, Miss., Greensboro, N.C., are names which have eclipsed even the world trouble spots of Laos, Vietnam, and Berlin.

I feel we need not remind this committee of the seriousness of the situation when our Negro people and, to a lesser extent, other colored and foreign-speaking minorities, are systematically deprived in many sections of this country—both North and South—of their fundamental rights, by discrimination and segregation which are supported not alone by custom, but are backed in many cases by local and State police power.

The Unitarian Universalist Fellowship for Social Justice, a national organization with members and chapters in 28 States, has been long concerned with the progress of racial equality in America.

At the general assembly of the Unitarian Universalist Association, last month, 1,200 of our delegates adopted a resolution which "calls upon the President, Attorney General, and all other duly constituted authorities to act decisively and at once to protect the constitutionally guaranteed civil rights of American citizens throughout the United States, and to call to account those who violate these guaranteed civil rights * * * ."

It is manifest by the events of the past few months that the powers of the President and the Attorney General are inadequate in guaranteeing the equal protection of the laws to all our citizens. For this reason, our organization wishes to go on record for legislation which would give the Attorney General power to go into the Federal courts and ask for civil injunctions to protect constitutional rights.

Under the Civil Rights Act of 1957, we understand the Attorney General now has authority in the broad spectrum of other civil rights cases. Our statutory weakness is especially glaring in the matter of implementing the Supreme Court public school desegregation decision of 1954.

Therefore, we urge adoption of amendments to the act of 1957 which would incorporate part III which was eliminated from that act. We do not believe it will be enough for Congress to strengthen voting rights only.

We believe the Attorney General's injunctive powers should be extended to include all constitutional rights, so that by judicious use of this power, the Justice Department will be able to effect the desegregation of all public facilities and accommodations which our citizens have a right to use and to enjoy, without discrimination and segregation. We refer not alone to voting rights, but also to public schools, hospitals, public libraries, parks and playgrounds, lunch counters, restaurants, hotels and motels, theaters, waiting rooms, down to restrooms and drinking fountains.

We therefore support legislation on these lines as typified by Mr. Celler's bill, H.R. 1768, with the recommendation that section 123 (a) (1) be strengthened by substituting the word "finds" in place of the words "receives a signed complaint." We feel that in some instances the person whose rights are violated might feel intimidated by local circumstances and fear the formal act of signing a complaint.

In addition, the Unitarian Universalist Fellowship for Social Justice wishes to urge upon this committee adoption or legislation to

strengthen voting rights, to establish the U.S. Commission on Civil Rights on a permanent basis, and legislation to provide criminal and civil remedies for those persons who are victims of police brutality. On this latter point, I have been instructed by vote of the annual meeting of the Unitarian Universalist Fellowship for Social Justice to urge passage of such legislation as embodied in H.R. 3932 or H.R. 6030 or H.R. 6334. We feel the bill H.R. 3932 has the additional merit of providing grants-in-aid for the professional improvement of local and State police forces.

Present acts providing civil liability for unlawful official violence are largely ineffective because few police officers are able to meet a substantial money judgment if it is granted. This defect would be corrected in the proposed legislation by making counties, cities, and other local governments liable for the unlawful violence of their policemen.

We would give strong endorsement also to all legislation which would empower the Attorney General to bring civil suits to prevent the exclusion of persons from jury service on account of race, color, or national origin.

Such legislation should enumerate the acts of unlawful official violence subject to the law, including: Subjecting any person to unnecessary force during the course of an arrest or while the person is being held in custody, subjecting any person to violence or unlawful restraint in the course of eliciting a confession, refusing to provide protection to any person from unlawful violence at the hands of private persons, knowing that such violence was planned or was then taking place, and aiding or assisting private persons in any way to carry out acts of unlawful violence.

Certainly, the use of police dogs and high-velocity fire hoses in Birmingham and the failure of police to intervene in a brutal beating administered to peaceful sit-in demonstrators in Jackson, recently, should come under the purview of a statute dealing with unlawful official violence.

I have outlined for this committee those salient points which our organization seemed appropriate to stress within our purview. The committee has heard many witnesses and doubtless considerable repetition in this field else we would be inclined to deal in more detail with these necessary reforms, but I am sure you have heard and will hear more people in considerable detail on the formulation of legislation in these fields.

To sum up, we feel that this is a period of racial crisis in our country. Halfway measures and piecemeal reforms will not be adequate.

The Congress must regain the initiative in advancing needed social change.

We feel it is now urgent that this branch of Government, which is mostly representative of all America, should act and act wisely and decisively in the area of civil rights.

We very much appreciate this opportunity to appear before the committee and present our statement.

The CHAIRMAN. Thank you very much, sir.

The committee will now adjourn and we will reassemble subject to the discretion of the Chair.

(Whereupon, at 12:40 p.m., the subcommittee adjourned, to reconvene at the call of the Chair.)

CIVIL RIGHTS

WEDNESDAY, JUNE 26, 1963

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

The subcommittee met at 10:30 a.m., pursuant to recess, in room 346, Cannon Building, Hon. Emanuel Celler (chairman of the subcommittee), presiding.

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

Also present: Representatives Ashmore, Libonati, Gilbert, Corman, Lindsay, Cahill, Shriver, MacGregor, Mathias, King (of New York), Willis, Bromwell, Senner, and Moore.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The committee will be in order. Our distinguished member of the subcommittee, Mr. Jack Brooks of Texas, is unavoidably absent due to a death in his family.

The CHAIRMAN. The Chair wishes to read a brief statement on behalf of the committee, and I welcome you, Mr. Attorney General. No doubt you are aware, as we all are that literally not only this Nation but all the world is acutely conscious of the magnitude of the task this country faces in securing for all its citizens equality of opportunity and the equal protection of the law.

We are all aware that the time for temporizing is gone. We cannot at this point of our history indulge in the luxury of fanciful thinking that if we do not face a problem squarely it will vanish.

We cannot call ourselves reasonable men if reason does not prevail. There is indeed a deep wound in this country and it must be healed through the civilized avenues through the just exercise of just law. The deeply moral and moving statement of the President on civil rights can be ignored only at the price of tragedy. I know how hard you, Mr. Attorney General, and your staff have worked, to meet the responsibility placed upon you in this area. I am sure that Congress will meet its own responsibilities to do not only that which is necessary but that which is right.

Mr. MCCULLOCH. Mr. Chairman, I have no written statement, but I join the chairman in welcoming the Attorney General to testify before us this morning. The mere fact that there are 158 bills be-

fore this committee is proof enough to me that it is the most important single domestic problem facing the Congress. It has long been recognized as an important problem, but its tremendous importance is of imperatively recent origin. However, I am glad to say that as long ago as January there were 41 bills introduced in the House headed by H.R. 3139, and on June 8, there were 30 supplementary bills introduced, headed by H.R. 6720 which was authored by our colleague from New York, Mr. Lindsay. Every facet of this question is taken up in one or the other of those series of bills.

Thank you.

The CHAIRMAN. Mr. Attorney General, are any other members of your staff with you?

STATEMENT OF ATTORNEY GENERAL ROBERT F. KENNEDY, ACCOMPANIED BY ASSISTANT ATTORNEY GENERAL BURKE MARSHALL, CIVIL RIGHTS DIVISION, DEPARTMENT OF JUSTICE

Attorney General KENNEDY. Just Mr. Marshall, Mr. Chairman.

The CHAIRMAN. Mr. Burke Marshall.

Attorney General KENNEDY. He is head of the Civil Rights Division.

The CHAIRMAN. You may proceed, Mr. Attorney General.

Attorney General KENNEDY. Thank you, Mr. Chairman, and members of the committee.

I am here today to testify in support of a bill that will go a long way toward redeeming the pledges upon which this Republic was founded—pledges that all are created equal, that they are endowed equally with unalienable rights and are entitled to equal opportunity in the pursuit of their daily lives.

In this generation, we have seen an extraordinary change in America—a new surge of idealism in our life—a new and profound insistence on reality in our democratic order. Much has been done. But quite obviously much more must be done—both because the American people are clearly demanding it and because, by any moral standard it is right.

The 10½ percent of Americans whose skin is not white are required to meet all the duties of citizenship. They must obey the same laws as white citizens, they must pay the same taxes, they must fight side by side in the same wars.

Nothing is more contrary to the spirit of the Constitution—and even to the spirit of commonsense—than to deny the full rights and privileges of citizenship to people who are so obligated. And the Constitution provides the means for redressing this inequity. If we do not use those means, we compound the wrong.

On June 11, the President called for action by all Americans to assure Negroes the full rights of citizenship. He asked for the same action at all levels of government. And he asked in particular that

Congress "make a commitment it has not fully made in this century to the proposition that race has no place in American life or law".

The bill before you today embodies that commitment.

Technically speaking, it is an omnibus bill, H.R. 7152, to carry out recommendations contained in the President's civil rights message of February 28, 1963, and his more recent message of June 19.

The bill contains seven titles dealing with problems of racial discrimination in our country. Two of the titles are virtually identical to bills already introduced by the chairman of this committee and which have the support of the administration. Title I, with minor exceptions, is the same as H.R. 5455, concerning voting rights, and title V is the same as H.R. 5456, which would extend the life of the Commission on Civil Rights.

However, titles relating to discrimination in public accommodations, education, and federally assisted programs are new, as are titles providing a statutory basis for a Community Relations Service and a Commission on Equal Employment Opportunity.

In his message to Congress of February 28 the President pointed out that more progress has been made to secure civil rights for all Americans in the last 2 years than in any comparable period in our history. But he emphasized that harmful and wrongful racial discrimination still occurs in virtually every part of the country and in virtually every aspect of our national life—in public accommodations, in employment, in education and in voting.

The events that have occurred since the President's first message—in Birmingham, in Jackson, in nearby Cambridge, in Philadelphia and in many other cities—make it clear that the attack upon these problems must be accelerated.

The demonstrations show not only that an ever-increasing number of our Negro citizens will no longer accept an inferior status, they have drawn sharp attention to the handicaps which so many Negro citizens experience simply because they are not white—or because years of unjust deprivation have left them in poverty and without the means or hope of improving their condition.

Two titles of the bill—those relating to the Commission on Equal Employment Opportunity and to nondiscrimination in federally assisted programs—bear on the problem of poverty. However, much more will have to be accomplished in this regard, and the June 19 message details the President's proposals to stimulate economic growth, to provide employment opportunities and to equip individuals with the ability to take advantage of enlarged opportunities.

PUBLIC ACCOMMODATIONS

Many of the demonstrations I have mentioned earlier, and the violence which has sometimes accompanied them, stem from attempts by Negro citizens to gain access to such facilities as restaurants, lunch counters, places of amusements, stores, hotels, and the like.

These facilities are public in a very real sense. They are not at all like a private home or a private club, for example, to which the owner invites only the guests he selects. Plainly, places of public accommodation cater to the public. When some members of the public are kept out solely because of the color of their skin, they resent it and their resentment is justified.

Arbitrary and unjust discrimination in places of public accommodation insults and inconveniences the individuals affected, inhibits the mobility of our citizens, and artificially burdens the free flow of commerce.

Consider, for instance, the plight of the Negro traveler in some areas of the United States.

For a white person, traveling for business or pleasure ordinarily involves no serious complications. He either secures a room in advance, or stops for food and lodging when and where he will.

Not so the Negro traveler. He must either make elaborate arrangements in advance, if he can, to find out where he will be accepted, or to subject himself and his family to repeated humiliation as one place after another refuses them food and shelter.

He cannot rely on the neon signs proclaiming "Vacancy," because too often such signs are meant only for white people. And the establishments which will accept him may well be of inferior quality and located far from his route of travel.

The effects of discrimination in public establishments are not limited to the embarrassment and frustration suffered by the individuals who are its most immediate victims. Our whole economy suffers. When large retail stores or places of amusement, whose goods have been obtained through interstate commerce, artificially restrict the market to which these goods are offered, the Nation's business is impaired.

Business organizations in this country are increasingly mobile and interdependent, and they tend to expand beyond the areas of their origins. As they find it necessary or feasible to engage in regional or national operations, they establish plants and offices in various parts of the country. These installations benefit the localities in which they are established and affect the commerce of the country. Artificial restrictions on their employees limit this type of mobility and its benefits to the national economy.

Further, if we add together only a minor portion of all the discriminatory acts throughout the country in any one year which deny food and lodging to Negroes, it is not difficult at all to see how, in the aggregate, interstate travel and interstate movement of goods in commerce may be substantially affected.

No matter—in Mr. Justice Jackson's words—"how local the operation which applies the squeeze," commerce in these circumstances is discouraged, stifled, and restrained among the States as to provide an appropriate basis for congressional action under the commerce clause.

Mr. Chairman, discrimination in public accommodations not only contradicts our basic concepts of liberty and equality, but such discrimination interferes with interstate commerce and the development of unobstructed national market.

We pride ourselves on being a people who are governed by laws. This pride is justified when we provide legal means for the settlement of human differences and the satisfaction of justified complaints. Mass demonstrations disrupt the community in which they occur; they also disrupt the country as a whole. But no one can in good faith deny that the grievances which these demonstrations protest against are real.

I believe the Federal Government has a responsibility to help end the discrimination which causes these grievances. But there are no existing laws which really enable the Federal Government to do so.

So for the past 2½ years we have reopened and maintained communication with Negro and white leaders in the South and the North. As a result we have been able to use our good offices effectively to mediate a great number of disputes, permitting considerable progress toward ending discrimination.

For example, all railroad stations, bus terminals, and air terminals have been desegregated. In a great number of cities, voluntary action has been taken to end discrimination in hotels, theaters, and eating places.

But, obviously, this informal use of our "good offices" is not adequate to deal with the fundamental problem. That is why this legislation is needed, and that is why the President now urges legislation to provide an answer which will be truly effective and which will deal with the problem not in the streets, amid potential violence, but in the courts, under law. That legislation is embodied in title II of the President's proposal.

Title II would establish the right of citizens, without regard to race or color, to the full and equal enjoyment of the facilities of public establishments serving interstate travelers or affecting the interstate movement of goods in commerce.

Among the establishments covered by the title are hotels, motels, restaurants, theaters, and other places of amusement, department stores, drugstores, gasoline stations, and the like. Bona fide private clubs are not covered.

The title would prohibit any deprivation or interference with the right to use the public facilities within its coverage. This legislation would grant aggrieved persons the right to sue for an injunction. It also would authorize the Attorney General to bring suit whenever he is satisfied that the purposes of the bill would be materially furthered and when the aggrieved person has neither the funds nor the legal representation to do so himself.

Before bringing action, the Attorney General ordinarily would be required to permit State or local authorities to act if the State or locality has applicable public accommodation laws. In other cases, he would first afford the Community Relations Service, to be established by title IV, an opportunity to secure voluntary compliance.

There are two constitutional provisions relevant to the validity of title II.

First, the interstate commerce clause of the Constitution (art. I, sec. 8) grants extensive power to the Congress to deal with practices which

burden the free flow of interstate commerce or otherwise affect national trade.

Under this clause of the Constitution, as you know, the Congress has enacted a wide variety of statutes in such fields as labor relations or trade regulations. There can be no real question about the authority of the Congress to deal with discriminatory practices by enterprises whose business affects interstate commerce or interstate travel.

Second, the 14th amendment prohibits the denial to any citizen of the equal protection of the laws. In the *Civil Rights Cases*, 109 U.S. 3 (1883), the Supreme Court held that the powers of the Congress under the 14th amendment did not extend to the elimination of discrimination per se in privately owned places of public accommodation. Racial discrimination is subject to the legislative powers of the Congress under that amendment, the Court said, only where it is accomplished by action that is attributable to the government of a State.

Since the decision in that case, a vast change has occurred both in the character of business organization and in the concept of what constitutes State action. Today, business enterprises are regulated and licensed by the States to a much greater degree than in 1883.

The Supreme Court very recently indicated that racially discriminatory practices of business establishments may be attributable in many instances to action by the State or those acting on its behalf. In every case, discriminatory practices in business are supported or protected in some degree in Government through police and other executive action and through the courts.

It is for these reasons that some believe the present vitality of the decision in the *Civil Rights Cases* is open to serious question. However, the decision has never been overruled.

In these circumstances, it seems to us to be the proper course for title II to rely primarily upon the commerce clause.

There are those who have challenged this public accommodations provision because they believe it would encroach on private property rights. A private businessman cannot be so regulated, they say; he is entitled to decide which customers he wants to do business with in his own store.

For one thing, private property rights long have been subject to reasonable Federal and State regulation in a number of ways. We are all familiar with zoning laws or health regulations or rules affecting labor practices. Indeed, some 30 States now have public accommodations laws forbidding discrimination.

For another thing, some of those who complain most loudly about interference with private property rights, ironically are often those who most stoutly defend the laws, enforced by a number of States which forbid Negroes to be served.

Surely there is no difference—in terms of private property rights—between telling a businessman whom he may not do business with on the one hand, and telling him that if his business is open to those traveling in interstate commerce his doors should be open to one and all, on the other hand.

The difference is not one of property rights, but of the color of the customer's skin. That difference is called racial discrimination and it is racial discrimination, not private property rights, which the public accommodations title seeks to attack.

Mr. Chairman, in summary on this question of public accommodations, there are three points to consider:

1. Whether Congress has the authority to end discrimination in places of public accommodation. It is quite clear that Congress does. It is well established that a privately owned business is not exempt from Government regulation where it is engaged in interstate commerce. Many Federal laws regulate privately owned business—the Sherman Act, Clayton Act, Wagner Act, Taft-Hartley Act, minimum wage law, food and drug law, among others.

2. Has Government ever entered this field of public accommodations before? Clearly, it has. As I pointed out earlier, 30 States now have laws preventing owners of private businesses from discriminating against customers because of race, and some States have laws requiring store owners not to sell to Negroes.

3. Is Federal intervention necessary? I believe it is. Discrimination in stores, restaurants, and hotels is a daily insult to a large number of American citizens. I believe a proprietor might refuse to sell to a disorderly or improperly dressed customer, but no American should be discriminated against because of his color, race, or religion. The Federal Government can and should play a part in ending such daily insults to a portion of our citizens.

The CHAIRMAN. Mr. Attorney General, would you care to read your entire statement before questions are propounded to you, or would you rather have the questions addressed to you as you go along?

Attorney General KENNEDY. I would like to finish my statement, if I may, Mr. Chairman.

SCHOOLS

I should like to turn next to title III of the bill, which deals with the problem of segregated public schools.

The Supreme Court decision in *Brown* v. *Board of Education*, which held that racially segregated public school systems were unconstitutional, is now more than 9 years old. The second decision in that case, requiring that desegregation take place with "all deliberate speed," is now more than 8 years old.

Yet in some areas of the Nation no desegregation of elementary or secondary schools has occurred, in other areas, the rate of progress is barely discernible and falls far short of "deliberate speed."

Thousands upon thousands of Negro children who were in elementary school in the year of the first *Brown* decision will receive high school diplomas without ever having been afforded the rights established by that decision.

As the Supreme Court pointed out last month in *Watson* v. *City of Memphis*, these rights are—

> present rights; they are not merely hopes of some future enjoyment of some formalistic constitutional promise. * * * The decision in *Brown* v. *Board of Education* never contemplated that the concept of "deliberate speed" would countenance indefinite delay in elimination of racial barriers in schools.

Unquestionably, new measures are needed to prevent such delay and it is with these considerations in mind that the President has asked for legislation to accelerate desegregation.

Title III has two purposes. First, it would authorize the Commissioner of Education to provide technical assistance to public school officials in preparing and carrying out desegregation plans and in dealing with problems incident to de facto segregation. The title would also authorize a program of grants and loans by the Commissioner to aid school officials in these activities.

Second, title III would grant authority to the Attorney General to institute civil suits in the Federal courts in certain cases involving racial discrimination in public schools and colleges.

The Attorney General would be able to bring suit upon his certification (1) that the students or parents involved in the suit are prevented from instituting litigation by lack of financial resources, by the unavailability of adequate counsel, or by intimidation, and (2) that his suit would materially further the orderly progress of desegregation in public education.

Although title III does not say so explicitly, it is expected that the Attorney General will call on the Commissioner of Education for information and advice in deciding which cases to file and preparing cases. The expertise available in the Office of Education will obviously be of great service in this connection. And the Commissioner will obtain much useful information from the nationwide investigation of discrimination in education which title III would direct him to make.

Title III would thus combine a program of aid to segregated school systems, which are attempting in good faith to meet the demands of the Constitution, with a program of effective legal action by the Federal Government. I believe that these programs would smooth the path upon which the Nation was set by the *Brown* decision.

VOTING

I should like now to discuss voting rights, which is the subject of title I of the bill.

We can, we must, and we will make strong and continuing efforts to guarantee all our citizens the right to vote without discrimination. In a democratic system such as ours the right to vote, and thus participate in the process of self-government, is in the long run the most fundamental right of all. Obviously, if Negroes could participate fully in the electoral process in areas where racial discrimination is most prevalent, their grievances would secure attention and legitimate demands would be speedily met.

We have made significant progress in enforcing the Civil Rights Acts of 1957 and 1960. Since September 1958, 30 cases have been brought under subsection (a) of section 131 of the Civil Rights Act of 1957 (42 U.S.C. 1971), demands for voting records under title III of the 1960 act have been made in 100 counties, and in 81 counties the records have been or are being analyzed; 38 court actions for voting records under title III have been brought to enforce these demands—10 are pending, and the other 28 have been brought to a successful conclusion.

As a result of this action, thousands of Negro citizens have been enabled to enjoy the franchise which is rightfully theirs. However, with the perspective we now have, 5 years after the filing of the first suit under the 1957 act, we have become keenly aware of certain obstacles to fully effectively use the law.

First are lengthy delays in court proceedings. In a number of instances more than a year elapsed before cases were tried.

One suit was in Ouachita Parish, La., where 24,000 of the 40,000 eligible whites were registered, but only 725 of 16,000 eligible Negroes were registered. Although the suit was filed in July 1961, it is still pending—and so is the Negro's right to vote. In another county, our suit has been pending since December 1961.

There is no such thing as retroactive voting. Once an election date is past, the disfranchised citizen has suffered a loss which is irreparable. No amount of subsequent litigation can repair the damage done to such citizens or to the integrity of our democratic system.

Title I which follows the recommendations made by the President in his message of February 28, would hasten relief in two ways. First, the title would instruct the courts to give expedited treatment to voting rights cases by according them a preferential position on the docket. Election cases are given similar preference in a number of States, and expedited treatment is accorded, under present statutes, to many other types of cases in the Federal courts.

Second, title I would amend the Civil Rights Act of 1957, as amended, which now authorizes the Attorney General to institute suits in connection with both Federal and State elections.

The amendment would provide that, when the complaint alleges the existence of a pattern or practice of discrimination and fewer than 15 percent of the Negroes of voting age in the area involved are registered to vote, the court shall issue orders entitling qualified Negro applicants to vote.

Temporary voting referees may be appointed by the court to take applications for registration pursuant to its order.

This new procedure will provide meaningful interim relief. At the same time it will carefully safeguard the State voting process. No applicant would be registered pursuant to the court's order unless he were found qualified to vote under State law and unless he unsuccessfully applied to the proper local official for registration after the filing of the suit.

The findings of the temporary referee would be subject to challenge and would become effective only upon adoption by a court order. After final determination of the suit, if it were found that there was in fact no pattern of discrimination, an order of the court entitling an applicant to vote would no longer be effective.

A second major obstacle besides delay is the continued use of literacy tests and similar performance examinations as a device for discrimination.

Last year I appeared before this committee in support of the administration's proposal, embodied in H.R. 10034, which would have established an objective standard to determine competency to vote in Federal elections—completion of six grades of schooling. We are again proposing an objective standard for Federal elections, but with some modifications.

The present proposal provides for a rebuttable rather than a conclusive presumption of literacy upon a showing that the applicant has completed six grades of schooling. This change was made because of the feeling expressed by some that in all fairness a registrar should have the opportunity to show that a particular person with a sixth-grade education is not actually literate.

I believe that the practical result will be the same, for I have little doubt that practically all persons who have completed the sixth grade are fully capable of meaningful participation in the democratic process.

Title I would further require that if a literacy test is used as a qualification for voting in Federal elections, it shall be written and the applicant shall be furnished, upon request, with a certified copy of the test and the answers he has given.

The questions asked of white applicants frequently do not compare even remotely in degree of difficulty with those asked of Negroes. Excellent answers supplied by Negroes are sometimes rejected out of hand as insufficient or faulty.

The requirement that the test be in writing would facilitate challenges to capricious decisions on the part of voting registrars.

Title I would deal with another practice of discrimination which is both widespread and effective. It would specifically forbid denial of the right to vote because of immaterial errors or omissions on applications for registration.

Very frequently, voting registrars have rejected Negro applicants for the most trivial errors, such as miscalculations of age figured in days, months, and years, entering correct information in the wrong space on a confusing form, and the like.

You may recall that in my testimony to this committee last year, I described a number of instances of such discrimination. We have encountered many more since.

In one county, Negroes have been required to copy and interpret long, archaic sections of the State constitution—and then have been rejected for omissions of punctuation. Whites, meanwhile, have been asked to copy such simple provisions as, "There shall be no imprisonment for debt."

One white gentleman interpreted that section in these words:

"I think that a Negroe Should Have 8 years in college Beefore voting Becouse he dont under Stand."

He was registered.

In other instances, college professors, schoolteachers, ministers, and Negro graduate students have been declared illiterate. Meanwhile, white applicants in the same districts who completed only the second or third grade have been declared literate and permitted to vote.

Title I would eliminate such abuses.

Although significant progress has been made under existing law, much remains to be done. We must make the right to vote a reality for all our citizens regardless of race, creed, or color. Title I will help us do so.

COMMISSION ON CIVIL RIGHTS

Title V, which I should like to discuss next, is concerned with the Commission on Civil Rights. In his message of February 28 the President recommended that the life of the Commission be extended for an additional 4 years and that the Commission be authorized to serve as a national clearinghouse to provide information, advice, and technical assistance to private and public agencies.

Title V embodies both of these recommendations and I strongly urge their adoption. I emphasize that the Commission's services under the new clearinghouse provision would be available only upon request

and would not be forced on anyone. We believe that the Commission can perform a very valuable function in this area.

Title V would also make minor changes in the provisions of the Civil Rights Acts dealing with the Commission and its procedures. These changes relate to such subjects as the reception of summaries of evidence, service of subpenas, fees and allowances for witnesses, and compensation and allowances for Commission personnel. In addition, the Commission would be authorized to issue rules and regulations. These amendments to the present statute have been requested by the Commission as the result of its experience in carrying out its duties, and we believe they should be adopted.

EQUAL EMPLOYMENT

At the beginning of my statement I touched briefly upon the economic handicaps to which our Negro citizens are subjected and pointed out that measures to deal with this problem are contained in bills not before this committee. However, two titles of H.R. 7152 have an important bearing upon this problem.

By Executive order issued shortly after the President took office, he established the Committee on Equal Employment Opportunity which has opened large areas of employment to Negroes by preventing racial discrimination by Government contractors and subcontractors.

Although it contains some public members, the Committee is financed as an interdepartmental group, and therefore must rely for its operating funds upon contributions by various departments and agencies.

Under the leadership of the Vice President, the Committee has made outstanding progress toward the elimination of discriminatory employment practices in business and industry. It has won the confidence and obtained the cooperation of the leading firms and labor organizations of the country.

Title VII of H.R. 7152 would provide the Committee with a statutory base and would establish its as a permanent body. No change in its composition or manner of operations is intended, and it would remain under the direction of the Vice President.

In short, the new organization will have the same leadership and use the same personnel as the Committee now has and will have the same powers and functions as the President has conferred upon it to date. But it will have, in addition, the prestige of congressional authorization and direct access to appropriated funds to meet its needs.

USE OF FEDERAL FUNDS

Title VI deals with a related problem. Many programs and activities carried on by State and local governmental authorities and by private enterprises receive financial assistance or backing from the Federal Government. The benefits of such programs and activities unquestionably should be available to eligible recipients without regard to race or color. Likewise, the employment practices of the public or private organizations involved should be free of racial discrimination.

However, it is arguable that some of the statutes providing Federal assistance leave the President no discretion to direct the withholding of the assistance on the ground of racial discrimination.

Numerous proposals related to this problem have been made in Congress in recent years. In general they have provided that Federal backing be withdrawn autotmatically and without exception from any program when discriminatory practices occur. The principle that these programs be nondiscriminatory is sound, but I think that a mandatory requirement that financial assistance be withdrawn is too sweeping.

Title VI would specifically provide authority to the executive branch to withhold financial support in any program when discrimination is found, regardless of the provisions of existing law.

However, the exercise of the authority would not be mandatory. This approach, I believe, is directed to the heart of the problem, yet will not force the Government into inappropriate action in the exceptional situation which may arise—for example, a disaster situation or one compelling the emergency grant of a defense contract.

COMMUNITY RELATIONS SERVICE

Finally, I come to the subject of persuasion and voluntary procedures. It is our hope that the recognition of the rights of minority groups can be achieved more and more frequently outside the arenas of litigation and public demonstrations. The administration has made strenuous efforts to help resolve racial conflicts by discussion and mediation in many communities where serious conflicts have arisen.

The President and other members of the administration have met with substantial numbers of white and Negro leaders, a clergyman, business executives, and public officials to enlist their aid to achieve solutions consistent with the basic principles of democracy.

The efforts of Assistant Attorney General Burke Marshall and others have contributed to the achievement of at least precarious peace in a number of cities.

The administration's efforts will continue. But they cannot adequately substitute for the work of a regularly constituted organization which could devote its full energies to mediation in seriously troubled areas.

In every racially troubled community there are leading citizens of both races who would like to confer with each other, who desire to prevent tensions and antagonism and, above all, violence. But often the pressures on these leaders make it difficult for them to approach each other—much less admit that there is a basis for amicable settlement of the problems in their communities.

In situations like these, it is virtually indispensable that some organization be available to bring together the people of influence in both races. Where a local organization exists—a biracial commission or the like—it is in a position to play the primary role.

But even a local group frequently needs the help of reasonable and dispassionate men who are not members of the community and not emotionally involved in the particular situation.

I do not believe there is reason to fear that mediation will block or slow down the vindication of constitutional rights. Grievances may cover the whole gamut of the economic and cultural organization of any given community and may not relate solely to constitutional rights.

Some of the problems will be resolved in the courts, but others must be disposed of by voluntary action. And even those which are susceptible of judicial resolution can frequently be handled more effectively by agreement.

In all, it seems to the administration that there is a real need for a Federal service with a congressional mandate to provide mediation assistance to communities where racial tensions are rising or have erupted. Title IV of H.R. 7152 would create such an organization under the name of the Community Relations Service, to be headed by a Director appointed by the President.

The Service would be able to provide assistance to a troubled community, either upon request or upon its own motion, whenever it concluded that peaceful relations in the community were being threatened. It would seek the cooperation of nonpublic agencies, as well as appropriate State or local bodies.

The work of the Service would be conducted without publicity and in order to encourage interested persons to give it complete information, it would be required to treat as confidential any information it received as such.

Conclusion:

With respect to the bill in its entirety, it must be emphasized that racial discrimination is far too complex a problem to be solved overnight. It has been with us since long before the United States became a nation, and we cannot expect it to vanish through the enactment of laws alone.

But we must launch as broad an attack on the problem as possible, in order to achieve a solution as soon as possible.

The demonstrations of the past few months have only served to point up what thinking Americans have known for years; that this country can no longer abide the moral outrage of racial discrimination.

If we fail to act promptly and wisely at this crucial point in our history, grave doubts will be thrown on the very premise of American democracy.

If we enact a program that presents a reasonable opportunity for the Negroes to resolve their legitimate grievances—only then will this Nation be living up to its ideals.

The courts have already played an important role. This administration has taken significant and far-reaching action by the exercise of Executive power. Now it is clearly up to Congress to bring its strength to bear.

The call to Congress is not merely for a law, nor does it come only from the President.

This bill springs from the people's desire to correct a wrong that has been allowed to exist too long in our society. It comes from the basic sense of justice in the hearts of all Americans.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Attorney General. I should like to indicate some ground rules here in reference to your interrogation, Mr. Attorney General. We have a full complement of the members of the Judiciary Committee, which is unusual, and every member will have an opportunity to address questions to you—committee members besides the members of the subcommittee.

Your statement falls into some seven categories—public accommodations, schools, voting, Commission on Civil Rights, equal employment, use of Federal funds, and community relations services.

I think it would be well if we interrogated you on each one of those categories separately and everybody shall have an opportunity to do so without mixing the categories. The first subject will be public accommodations.

The Chair would like to address a few questions to you, Mr. Attorney General. In title II of the bill the word "substantial" is used, I believe, on page 14. We have no national police force, and the proscriptions against discrimination in patronage in places of public accommodation which are privately owned is going to cover all and sundry entities. There would be involved, I would say, millions of establishments, small and large.

Therefore, the question arises whether or not it wouldn't be well to put a floor on the amount of voluntary services or goods, above which the act would apply. As it is now, it might envisage almost every kind of an establishment—a hotel, gasoline station, restaurant, lunch counter, and what have you. Would you care to comment on that?

Attorney General KENNEDY. First, Mr. Chairman, going specifically to the hotels and motels, it is any hotel, motel, or other public place engaging in furnishing lodging to transient guests including guests from other States or traveling in interstate commerce. It does cover small places, but it covers only those places that furnish lodging to transient guests.

I think that is certainly a qualification that is already written in the law. As far as the department store, retail shop, market, drugstore, gasoline station, and lunch room are concerned, the establishment must be involved to a substantial degree with interstate commerce. So that takes it out of the category of just the very small.

The CHAIRMAN. What is meant by substantial?

Attorney General KENNEDY. It is more than just minimal.

The CHAIRMAN. I take it the legal phrase de minimis is used.

Attorney General KENNEDY. I translated it, Mr. Chairman.

The CHAIRMAN. On one extreme you have de minimis and then substantial. There is nothing really in between.

What is going to happen if you have something in between the two, it is neither substantial or de minimis?

Attorney General KENNEDY. You mean how people are going to learn they are in between?

The CHAIRMAN. How will people know?

Attorney General KENNEDY. First he has to decide he is going to discriminate, because it covers only those who run such an establishment and want to discriminate. First, if we get involved, it will go before our Community Relations Service which will try to resolve this matter. Then and then only will it go to the court. Even then, there are no criminal penalties.

The CHAIRMAN. It is interesting to see how that matter was resolved in labor cases. The National Labor Relations Board was confronted with the same situation, with the Wagner Act. The National Labor Relations Board issued, for example, a jurisdictional guide wherein they set forth certain standards. For example, under retail enter-

prises, the Board asserts jurisdiction over all retail enterprises which have a gross volume of business of at least $500,000 per annum. When it comes to hotels, the National Labor Relations Board issued this standard. The Board asserts jurisdiction over all hotel or motel enterprises, exclusive of permanent or residential hotels and motels which receive at least $500,000 in gross revenue per annum. The Board cited those standards which were housekeeping standards, because it felt that if it would put the standards lower it would neither have the personnel nor have the money to enforce the statute.

So they put their sights rather high. I don't say that amount is proper. But I wonder in view of the difficulties that might be attendant and the years of delay before you can get any appreciable decisions from the court which would tell us what "substantial" meant under the circumstances, whether it would not be wiser to place in the statute some numerical floor, so that when the volume is above the amount the act applies. If the volume is below the amount the act would not apply.

Attorney General KENNEDY. Those standards that you mentioned in those bills of course were not set by Congress but were established by the Board. But in answer to your question, Mr. Chairman, if Congress decides that they want to define this more explicitly, I think certainly Congress has the authority to do so.

The CHAIRMAN. I don't say we should. I am trying to get your reactions.

Attorney General KENNEDY. I understand. I think there is a good deal of merit in that position, Mr. Chairman, and we would be willing to attempt to work something out along those lines.

I would say that what is involved in this whole matter is the question of discrimination. That is, if we establish a cutoff line where a hotel or motel or restaurant can discriminate. Perhaps we can come up with language that is sufficiently definitive. If Congress decides that it wants to be more explicit in this matter, then we would be glad to try to work something out.

The CHAIRMAN. The reason I make this suggestion—and it is only a suggestion—you pointed out in your statement very properly that there had been inordinate delays in the courts. There will be inordinate delays, undoubtedly, in the interpretation of this language unless we are a bit more specific. The mere use of "substantial" might open the door to all manner and kinds of interpretations. Until we get the Supreme Court to act, or even if they would grant certiorari and they don't at times, we are going to waste an inordinate length of time. Meanwhile, since time is of the essence and everyone wants to know what their rights are, I wonder whether or not it would not be better for Congress to be more explicit in the statutes.

Attorney General KENNEDY. I think there is a strong argument for that, Mr. Chairman. I would say there are a number of cases under the Commerce clause which define "substantial" in the course of the decisions. There have been a number of decisions which could give guidance to people as to whether they were covered or not. But if Congress decided that it wants to become more explicit then we would be happy to try to work out with you some cutoff line in connection with these matters in connection with hotels and motels. I would go back to the point, however, that what we are discussing here is the question of discrimination.

The CHAIRMAN. Of course, it is well to remember, too—and this runs counter to my suggestion—that those people of the colored race patronize small services and establishments rather than larger ones.

Attorney General KENNEDY. I think that is right.

Mr. ROGERS of Colorado. Mr. Attorney General, section 202 on page 13, applies to the hotels and motels, including guests from other States or traveling in interstate commerce. You do not have any reference to any substantial part of business in interstate commerce of hotels or motels. Is that your intention in this case?

Attorney General KENNEDY. Yes.

Mr. ROGERS of Colorado. If they hold up the sign for people to rent their hotel or a room, if they happen to be in interstate commerce, then they are covered under this bill. That is the intention.

Attorney General KENNEDY. If they are furnishing lodging to transient guests. I think the key word is "transient" guests.

Mr. ROGERS of Colorado. On page 14 the chairman has directed your attention to the question of a substantial degree as it relates to shops, department stores, and gasoline stations and otherwise. Now in subdivision 3, you have a further provision—

the activities or operations of such a place or establishment otherwise substantially affecting interstate travel and interstate movement of goods and commerce.

Would there be any objecting to striking the word "substantial" and leave it, "affect interstate travel"? Because we have laws that say if it affects interstate travel then they have jurisdiction.

Attorney General KENNEDY. I think that would be acceptable to us, in answer to your question, Mr. Congressman. What we wanted to try to avoid are the smallest kinds of operations—ones that do a minimal business—and are almost a social operation. I have heard what appeared in the paper about "Mrs. Murphy's place." Mrs. Murphy has her motel and she is living there herself and she is bringing in one or two people as guests. We didn't want to cover that kind of place. That is why we put the word "substantial" in. I expect through discussions and the report of the committee we can clarify that. I don't think the word "substantial" is absolutely required.

Mr. ROGERS of Colorado. Assuming that we adopt the provision of title 2 as outlined, what happes to those State laws as you outline in your statement—there are approximately 30 States that prohibit discrimination. In fact, my State prohibits it and says that one who violates this is subject to a penalty of $200. Does adoption of this piece of legislation preempt the field?

Attorney General KENNEDY. No, it does not. In fact it is specifically stated in here, Congressman, that in those cases the Federal Government defers to the local laws.

Mr. ROGERS of Colorado. But we have the *Steve Nelson* case where the Supreme Court set aside the law of the State of Pennsylvania on sedition because Congress passed the Smith Act which also took jurisdiction of sedition. If we take jurisdiction here of a substantial degree of interstate travelers or any jurisdiction whatsoever, will that rule and announcement of Supreme Court in the *Steve Nelson* case apply or did you intend for it to apply?

Attorney General KENNEDY. I think it is covered by section 204(d), Congressman. In case of any complaint received by the Attorney

General alleging a violation of section 203 in any jurisdiction where State or local laws or regulations appear to forbid the act or practice involved the Attorney General can notify the appropriate State and local officials and upon request afford them a reasonable time to act under such State or local laws or regulations before he institutes any action. We defer to the local enforcement of the law.

Mr. ROGERS of Colorado. It would be a safe statement to say that the adoption of this proposal would not interfere with the State law. In fact you would cooperate with those States that have statutes prohibiting segregation. You would cooperate and see that their laws are enforced.

Attorney General KENNEDY. That is right. It would be far better to have this matter handled at the local level by local authorities than by the Federal Government.

Mr. ROGERS of Colorado. Now, passing on to section 203 of this bill which points out that no person whether acting under color of law or otherwise, shall withhold, deny, or attempt to withhold or deny or deprive or attempt to deprive any person of any rights or privileges under section 202, which we have just discussed. Recently the Supreme Court in the *Greenville, South Carolina* case in effect said that sit-ins could not be permitted because there was a city ordinance which had segregation. Would this get at those State laws and city ordinances that have segregation?

Attorney General KENNEDY. I would say, Mr. Congressman, that the *Greenville* case and the other sit-in cases that have been decided have already made those city ordinances and laws unconstitutional.

Mr. ROGERS of Colorado. That *Greenville* case, you think, makes it?

Attorney General KENNEDY. And the other sit-in cases that were decided made those ordinances unconstitutional.

Mr. ROGERS of Colorado. Those ordinances are unconstitutional?

Attorney General KENNEDY. That is right.

Mr. ROGERS of Colorado. Justice Douglas in a concurring opinion points out that he believes under the common law that they are obligated to accept these people regardless of the statutes.

Attorney General KENNEDY. I understand that.

Mr. ROGERS of Colorado. You think we could go that far in this legislation?

Attorney General KENNEDY. I understand that.

constitutional right of an individual to be served without the passage of legislation—whether he has a constitutional right to be served. The Supreme Court has not passed on that. Those matters will be up for argument before the Supreme Court, however, this fall. I don't think there is any question that Congress has the right to pass a law under article I, section 8, dealing with these problems.

Mr. ROGERS of Colorado. In other words, you feel that in spite of this decision of 1883, which says Congress had no authority, that the recent trends of the court would indicate that they would reverse the decision of 1883 and permit legislation to stand that would cover this area?

Attorney General KENNEDY. I personally think that would probably be the decision, Congressman. But we are not basing our bill primarily on that. We are basing our bill on the commerce clause. The civil rights laws were declared unconstitutional in 1883 because they

were passed under the 14th amendment. It was a decision in which Judge Harlan wrote the dissent and I think perhaps it—the dissent—would be accepted as the majority opinion at the present time. But we think that it is quite clear that Congress has the authority under the commerce clause. In fact the majority decision in those cases mentioned this specifically. We think that Congress clearly has the constitutional authority under the commerce clause and therefore we are basing this bill primarily on that, although we mentioned the 14th amendment, also.

Mr. ROGERS of Colorado. If it doesn't come within the commerce clause then it has no application as it relates to these sections?

Attorney General KENNEDY. That is right. It has to be covered by the commerce clause.

The CHAIRMAN. If the gentleman will yield, in that case which was decided in 1883, there were three cases—two of them involved a hotel, one in New York and one in San Francisco, and the third involved transportation in Tennessee. The court held there that the 14th amendment was limited to the action by the States. In those cases the action was by individuals. Therefore, the 14th amendment would not apply. Therefore, the act was held unconstitutional. That statute was not grounded on the interstate commerce clause.

Attorney General KENNEDY. That is right.

The CHAIRMAN. Your proposal is to ground the action on the interstate commerce clause primarily?

Attorney General KENNEDY. Primarily, but also we bring in the 14th amendment.

Mr. MCCULLOCH. Mr. Chairman, in view of that statement, since the decision in the *Civil Rights* cases in 1883 practically every activity described in this legislation has taken on certain State attributes.

Attorney General KENNEDY. I think so.

Mr. MCCULLOCH. Because that business is almost without exception licensed by the various States.

Attorney General KENNEDY. That is right.

Mr. MCCULLOCH. Is there some compelling logic now why that decision might not be the law of the land if all the actions were brought to the case?

Attorney General KENNEDY. I think you are correct.

Mr. MILLER. Mr. Attorney General, I am interested in the subject brought up by the chairman and your remark in connection with the Mrs. Murphy situation. I am interested in getting your opinion on this situation. The bill as drawn provides that these services must be offered by any such place or establishment to a substantial degree to interstate travelers. Do you mean by that, to a substantial degree of the business done by the establishment or to a substantial degree of the whole type of business as provided transients in interstate commerce? In other words, to be specific let me take the Mrs. Murphy case. Supposing she has a private home with three rooms. She lives in a resort area, so that during winter months or whatever period of the year it may be, she rents these rooms almost exclusively to transients traveling on vacations and so forth. In your opinion since the business she does is substantially for transients and with transients, would she be covered under this statute or would

she not, even though her gross or total business in relation to the interstate commerce aspect would be very, very small?

Attorney General KENNEDY. Congressman, the substantial part of this bill does not apply even to Mrs. Murphy's motel. If you look at the bill on page 13, "any hotel, motel, or other public place engaged in furnishing lodgings to transient guests." The "substantial" part of it applies only to the retail shop over on page 14, paragraph 3, the department store, the market, drugstore, gasoline station, restaurant, lunchroom.

Mr. MILLER. What would be your opinion in the situation that I have indicated as to whether or not her establishment would be included within the provisions of the bill?

Attorney General KENNEDY. Is she living there herself?

Mr. MILLER. Yes.

Attorney General KENNEDY. And she is renting out two or three rooms?

Mr. MILLER. Yes.

Attorney General KENNEDY. I would say probably it would not be covered.

Mr. MILLER. Probably.

Attorney General KENNEDY. We did not intend to cover that kind of situation.

Mr. MILLER. You do not intend to cover it?

Attorney General KENNEDY. We did not intend to cover it. If she didn't live there and she rented out a place and she lived someplace else and she rented out an establishment which had three or four bedrooms and took in transients we believe it would be covered.

Mr. MILLER. If she rented just a small home with only three or four rooms, but if she herself did not live there she would be covered?

Attorney General KENNEDY. Yes.

Mr. MILLER. Under the interstate commerce clause?

Attorney General KENNEDY. That is right.

Mr. MILLER. Carrying your thinking on this further——

Attorney General KENNEDY. If she is catering to transients.

Mr. MILLER. Carrying your thought further, then, is there no limit to the power of the Federal Government to control business under the interstate commerce clause? If there is, what type of business, in your judgment, cannot be reached by the Federal Government under the interstate commerce clause?

Attorney General KENNEDY. I think you have a good number of decisions, Congressman, that have gone into that, over a period of the last few decades, which indicate that, under the commerce clause, the Federal Government's power and authority is quite extensive. There have been a large number of acts and bills that have been passed by Congress which have been declared constitutional under the commerce clause.

Mr. MILLER. But as the Attorney General, I am wondering if you could give the committee the benefit of your opinion as to how extensive is this power of the Federal Government to control businesses in the United States under the interstate commerce clause?

Attorney General KENNEDY. I think it is extensive, and I think the authority is extensive if the business has an effect on interstate commerce.

Mr. MILLER. Would you say almost unlimited? Because a laundry bought its soap from outside the State, it would be sufficient justification for the Federal Government to intervene in your judgment?

Attorney General KENNEDY. It would depend on what kind of business they did and, I suppose, how large the laundry was; if it was part of a chain; what the purpose of the statute was under which it was supposed to be covered. I think all of these things are factors.

The CHAIRMAN. Mr. Attorney General, I just want to cite a case which might quiet fears on this score which gives the jurisdiction to Congress on this very matter. I refer to the case of the *Labor Board* v. *Fainblatt*, 306 U.S., page 607, where we have this very significant language:

> Examining the act in the light of its purpose and the circumstances in which it must be applied we can perceive no basis for inferring any intention of Congress to make the operation of the act depend upon any particular volume of commerce affected more than that to which the courts would apply the maxim "de minimis."

That means that the court would not consider within the power of Congress any insignificant volume, but it would consider anything above that which is insignificant and which would be de minimis.

Mr. MILLER. Mr. Chairman, the point I raised was that Mrs. Murphy didn't live in the home and had only three rooms to rent and she rented them, and the Attorney General said in his opinion she would be covered.

Attorney General KENNEDY. I said we didn't intend to cover her.

The CHAIRMAN. It is so insignificant that the court will not take cognizance of it.

Mr. MILLER. The Attorney General said in his opinion she is covered by the statute we were discussing. What about Mrs. Murphy, she won't know where she was?

The CHAIRMAN. I don't think it would cover Mrs. Murphy.

Attorney General KENNEDY. I don't think Mrs. Murphy is going to be in a lot of trouble.

Mr. MCCULLOCH. In the draft of the bill before us there is no distinction where Mrs. Murphy may live.

Mr. MILLER. That is exactly the point.

Mr. MCCULLOCH. Mr. Chairman, I would like to comment on the Attorney General's statement by pointing out that some 30 States have had this proposed legislation under statute for a long time. I am very, very happy to say that even when the *Civil Rights Cases* of 1883 were being decided by the Supreme Court the State of Ohio passed its first legislation in this field and it has, within the last 10 years, been amended to cover air travel. It has been effective, and at this point I would like to place in the record the Ohio legislation in this field.

The CHAIRMAN. Without objection, it is so ordered.

(The document referred to follows:)

OHIO

[Ohio Rev. Code Ann. §§ 2901.35 (1953)]

§ 2901.35 *Denial of privileges at restaurants, stores, and other places by reason of color or race.* (GC §§ 12940, 12941)

No proprietor or his employee, keeper, or manager of an inn, restaurant, eating house, barber shop, public conveyance by air, land, or water, theater, store, or other place for the sale of merchandise, or any other place of public accommodation or amusement, shall deny to a citizen, except for reasons applicable alike

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

Whoever violates this section shall be fined not less than fifty nor more than five hundred dollars or imprisonment not less than thirty nor more than ninety days, or both and shall pay not less than fifty nor more than five hundred dollars to the person aggrieved thereby to be recovered in any court in the county where the violation was committed.

The CHAIRMAN. I want to ask this technical question, Mr. Attorney General, if you will turn to page 14 of H.R. 7152.

Attorney General KENNEDY. Mr. Chairman, may I interrupt for a moment? There are other words that are important, Congressman Miller, on this whole question about the hotel, motel, or other public place. The references to "public place" and "transients" are important.

The CHAIRMAN. Mr. Attorney General, I want to clear up, if I can, a technical question. On pages 14 and 15, retail shop, department store, and so forth, then you give certain conditions. From lines 14 on to the bottom of the page and then on page 15, lines 1, 2 and 3, are those conditions alternative or are they a bundle that applies in toto?

Attorney General KENNEDY. I couldn't hear you, I am sorry.

The CHAIRMAN. Are these conditions that appear on page 14, line 14 to the bottom of the page, 1, 2 and 3, and over on page 15, are those conditions in the alternative or do they apply in toto in accumulated form to any retail shop, department store, or drugstore, and so forth?

Attorney General KENNEDY. In the alternative.

The CHAIRMAN. It doesn't state that here you will have to admit.

Mr. MCCULLOCH. Mr. Chairman, I noted the Attorney General said that there was no criminal penalty for violation of this provision of the legislation if it became law.

I agree with that statement. But if there is a violation of an injunction which would be issued under it, would not the person who violated the injunction be subject both to the criminal contempt and to civil contempt and wouldn't the case against him to show cause why he should not be cited be determined by a judge without a jury?

Attorney General KENNEDY. That question was raised in the context of whether an individual would know whether or not he or she was covered, Congressman. At the time the Court ruled that the particular establishment was covered, then that question would have disappeared, and due to the fact that they were covered they would have to then live up to the law.

Mr. MCCULLOCH. They would have to show cause before a judge of the Federal court without a jury why they should not be punished for contempt, first in a civil proceeding, would they not?

Attorney General KENNEDY. I think there is some question whether they would have a jury or not.

Mr. MCCULLOCH. That is right. There would also be a possibility of punishment for criminal contempt?

Attorney General KENNEDY. That is right. When a charge is brought against a particular establishment that it is discriminating against an individual or group covered by this bill and traveling in interstate commerce, the court makes the decision.

Mr. McCULLOCH. I pursue that for the purpose of showing the importance to some of the members of the committee, if not all, of the phrase, "substantial degree or substantially affected." Now I will yield.

The CHAIRMAN. I might state that the Ohio statute which you have just placed in the record contains criminal sanctions.

Mr. McCULLOCH. Yes, it does and it has been effective.

The CHAIRMAN. I would say that most State laws contain criminal sanctions.

Mr. ASHMORE. Mr. Chairman, one question on that point. Mr. Attorney General, would you object to a jury trial in case of a violation of an injunction, criminal contempt?

Attorney General KENNEDY. I believe that if the suit was brought by an individual in connection with this matter he would be entitled to a jury trial.

Mr. ASHMORE. You would agree to that being inserted in the bill?

Attorney General KENNEDY. If the suit was brought by an individual the establishment that was charged would be entitled to a jury trial.

Mr. ASHMORE. The defendant in the case?

Attorney General KENNEDY. Yes.

The CHAIRMAN. Did you say, Mr. Attorney General, that the individuals who are subject to contempt would have a right to a jury trial? That right can only be granted by the statute.

Mr. MILLER. That was the argument in the voting right case.

Mr. ASHMORE. This calls for another question. In a case brought by the Attorney General you don't think that the defendant should be granted a jury trial?

Attorney General KENNEDY. I think that can be decided by the Congress. If the individual himself brings the case the defendant would be entitled to a jury trial.

Mr. ASHMORE. Why make the difference when you are acting in his behalf?

Attorney General KENNEDY. I am saying what the law is at the present time. He is already entitled to a jury trial.

Mr. ASHMORE. Why shouldn't he be entitled to the same thing when you are representing him as he is entitled to when his private lawyer is representing him?

Attorney General KENNEDY. If Congress decided to pass that law——

Mr. ASHMORE. I give you the same question. Would you agree that he should have a jury trial when you bring the suit?

Attorney General KENNEDY. I am not certain yet, Congressman. I would like to study it a little bit.

Mr. ASHMORE. Will you let us know what your decision is?

Mr. McCULLOCH. Mr. Chairman, I hasten to add that the Ohio law is enforced and penalties are fixed after a jury trial.

Mr. LIBONATI. General, on the use of the word "substantial" under the additional provision in section 202, was that purposely used in order not to bring about a classification which in reality would probably give rise to property rights and subject this bill to attack on the subject of class legislation?

Attorney General KENNEDY. The purpose of the legislation basically, Congressman, was to prevent discrimination in those establish-

ments that deal with goods, commodities, and people traveling in interstate commerce. To say that because you run a small establishment you can discriminate but if you run a slightly larger establishment you can't discriminate didn't make a great deal of sense to us. We do understand that for somebody who is running his own personal operation, operating out of his home, it becomes more of a social matter rather than a monetary or financial matter, involving dealing with the guests continuously. We are not trying to pass legislation that would affect that kind of a relationship. Therefore we put in the word "substantial" to try to clarify the fact that what we had in mind was to get beyond the establishments that are just minimal. If Congress decides—I don't think this bill should rise or fall based on this question—if the Congress decides this is going to create that kind of problem they can write in the kinds of establishments they want to except from the coverage of this bill—as I say nobody is going to jail because they don't understand it. They are going to have all kinds of safeguards all the way through. They are going to have the Community Relations Service that is going to be established by the President, which will try to mediate it. Then a court will ultimately decide whether they should or should not be permitted to discriminate. That is the question. It is a question whether you discriminate. Then the court gives an order, and like every other court order, people should obey it. I don't think it is so horrendous that once a court order has been given that such and such an establishment should not discriminate, they should not discriminate any longer.

Mr. LIBONATI. This provision is one of the most sensitive within the bill, questioning the proper and absolute right on the freedom of the use of property. You have recognized that by putting in this term "substantial" you may be able to discriminate between the use of property for absolute services in this field of accommodation as against properties that have a partial use. So this probably will be the most debated part of the bill when we come into the legalistic language to determine whether or not there is a violation of property rights and its use. Well, that is why I say this part of the bill is probably the most important part as far as any discussion relative to the use of property for private purposes or public purposes is concerned, which may flow over into the public domain and use. That is why I call this to your attention, that in drawing this bill, this term "substantial" was incorporated into the description—the descriptive quality of this part of the bill, to enable the Attorney General to have discretion whether or not to bring suit. If he didn't feel that this was in conformity with the intentions and purposes of the law, and further that the use of property was a determination under a private assent on the part of the lessor to give out these premises in accordance with either public traffic, interstate traffic, or put up a sign that they didn't want to cater to those who were under this classification in interstate commerce that would make them qualify under this law to obey it.

The CHAIRMAN. May I interrupt a minute, Mr. Libonati? I am reading now from the National Labor Relations Board. The NLRB Act, title 29, United States Code, section 152, subdivision 7:

The term affecting commerce means in commerce or burdening or obstructing commerce or the free flow of commerce or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

The words, affecting commerce which are used in the suggested bill appear in the National Labor Relations Board Act. The NLRB has not yet lost a case in the interpretation of those words. The courts have held that Congress was eminently within its rights in passing this act and particularly affecting commerce.

Mr. MEADER. Mr. Chairman, Mr. Attorney General, we made some reference to the 14th amendment method of dealing with this problem. I call your attention to H.R. 6722 by Mr. MacGregor—6720 by Mr. Lindsay, and I think there are some 30 companion bills. I assume that your Department has studied those bills and has some views with respect to them.

Attorney General KENNEDY. I expect they have. I am sure we have them.

Mr. MEADER. Are you yourself familiar with them?

Attorney General KENNEDY. I am not. As I think the chairman said, there are 165 bills or 365. I have not read them all.

Mr. MEADER. This deals with the public accommodations problem through the 14th amendment route rather than through the interstate commerce route. I would like to have some explanation of the position of the Department.

Attorney General KENNEDY. I can talk about that.

Mr. MEADER. I understand your testimony in response to a question earlier that you believe possibly the use of the 14th amendment would be upheld by the Court now.

Attorney General KENNEDY. Yes, I do.

Mr. MEADER. I would like to ask you whether or not——

Attorney General KENNEDY. I might say there are an awful lot of people that won't agree with me.

Mr. MEADER. Let us pass the constitutional aspect of these bills for the moment. Let me ask whether it would be simpler in your judgment or Mr. Marshall's judgment to enforce the public accommodations provisions through the 14th amendment route rather than the interstate commerce clause and would it not be possible to avoid some of the questions which have been raised here this morning with respect to Mrs. Murphy's motel and others through the 14th amendment route?

Attorney General KENNEDY. Does that bill cover Mrs. Murphy's motel?

Mr. MEADER. I would assume that it does. It is a licensed motel.

Attorney General KENNEDY. Then it would cover Mrs. Murphy's motel. You would cover Mrs. Murphy's motel.

Mr. LINDSAY. Would you yield to me?

Mr. MEADER. Yes.

Mr. LINDSAY. Thank you for yielding. I am quite deeply disturbed, Mr. Attorney General, that you have never bothered to read this very important legislation that was carefully drafted and introduced by four of us on the minority side of this committee and many additional Republican members long before the administration saw fit to take any position on this subject at all. We think that it is a very important piece of legislation. It goes into the area of public facilities under the 14th amendment. It would avoid all of these questions that you have been taking different positions about in the last half hour, as to what is covered and what is not covered. It

would avoid the very difficult questions raised by the chairman, as to whether you should have a gross receipts test or no test. The 14th amendment approach in effect would cover any public facility which is privately owned and which is authorized to do business by the State. That covers any situation where there is a practice of discrimination in the use of facilities open to the public, held out to the public for profit, although owned by private people. It would test each case through the courts and establish a body of law as has been done in the past, step by step. We think that the proper way to do this is through the courts. That the broad legislation of this kind which is consistent with the principles of justice in the past is the way to approach this. Whether it covers Mrs. Murphy in this situation or that situation would be tested in the courts in each case, which is the proper way to do it. But the thing that disturbed me, Mr. Attorney General, more than anything is that you haven't given, we think, fair consideration of a proposal of this kind in spite of the fact that you have just stated that in your opinion, as in mine, there is no question but what the Supreme Court would sustain the constitutionality of this bill.

Attorney General KENNEDY. I would say first, Congressman, perhaps I should read every one of the bills. I understand from what the chairman said there are 165 of them, as of July 3, 1963. So I have not read all of them. I am sorry.

Mr. LINDSAY. This was the first and only approach on public facilities that was introduced in the House of Representatives which is the No. 1 area of interest in this country. The first and only approach.

Attorney General KENNEDY. Congressman, I am sorry I have not read all of these bills and I am sorry I have not read your bill. I think there are a couple of problems which I am glad to discuss with you. Assuming that most hotels and most motels are licensed, the question is, if Mrs. Murphy is opening her door to just having a couple of people come in, is this limited activity going to be licensed? I think one of the problems for all of the members of this committee and people generally is "Should Mrs. Murphy really be covered? This is the question, not whether she will be covered under the commerce clause or the 14th amendment. From what I gather from Congressman McCulloch and the chairman and other members of the committee, they wonder whether Mrs. Murphy should ever be covered, whether it is under the 14th amendment or the commerce clause. So I think your bill doesn't go any further in answering that point than our bill does. I think there is a major problem about the bill that you have offered under the 14th amendment.

I personally think, I join with you, that the Supreme Court probably would uphold it. But the fact is that there is a Supreme Court decision on the books at the present time which declares it unconstitutional. That is the law of the land at the present time. We are going to have difficulty and trouble enough, Congressman, about getting this bill through. We are going to have a lot of difficulty and trouble in the Senate of the United States. I would like to get the bill through. I think you would like to get the bill through. I don't think it makes a great deal of sense to be arguing back and forth whether it should be covered by the 14th amendment or by article 1,

section 8. I think it is covered clearly by article 1, section 8. I think we have the authority quite clearly based on Supreme Court decisions, based on precedent, that we can cover it by article 1, section 8. I think the 14th amendment creates a problem about it because of the fact that the Supreme Court decision is on the books at the present time. Therefore we have asked to have it under both article 1, section 8 and under the 14th amendment.

Mr. MEADER. Mr. Chairman, I yielded to my colleague to answer the question whether Mrs. Murphy would or would not be covered under his bill. I did not mean to yield for a long debate on constitutional principles because I did have a question that was based upon this as to the facility of enforcement, and whether or not the 14th amendment approach would be easier for the Department of Justice to enforce than the interstate commerce clause.

Attorney General KENNEDY. I don't think it would be.

Mr. MEADER. You don't think it would make any difference?

Attorney General KENNEDY. No, I do not.

Mr. MEADER. Then my second question is, Have you made any estimate what you will require in the way of additional staff and expense in accomplishing the objectives of title II of your bill?

Attorney General KENNEDY. Not title II alone. I can tell you generally for the whole bill. I think we will probably need 40 or 50 more and additional appropriations of a million five hundred thousand dollars.

The CHAIRMAN. $1,500,000?

Attorney General KENNEDY. Yes. To enforce all of the provisions of this bill. That deals with the school cases and this.

Mr. MEADER. What is your current staff level, Mr. Marshall, in your Civil Rights Division?

Attorney General KENNEDY. Forty lawyers.

Mr. MEADER. How does that compare with 1961 when you took over?

Attorney General KENNEDY. There were 30 then. We asked for some more manpower, 18 or 16 lawyers, from the Appropriations Committee. It is not clear whether we will get those or not. If this bill is passed in toto then I would think we would need double the staff that we have in that division at the present time.

Mr. MEADER. I think this is important in light of the colloquy between yourself and Mr. Rogers with respect to the preemption doctrine, that some 30 States have these laws. I understand your position is that you do not want to strike down those laws so that anyone prosecuted under those laws would have a defense that the Federal Government had preempted the field. I take it that if the language you refer to in section 204(d) is not adequate you would have no objection to our incorporating as we have in other bills proper phraseology to protect the validity of State laws.

Attorney General KENNEDY. That would be fine, Congressman. I think it is far better that these matters be handled at the local level. I think it would have been far better if this legislation had not been necessary at all.

The CHAIRMAN. Mr. Attorney General, you have to be very careful. If we go into the question of preemption or not go into it, 30 States have these prescriptions against discrimination in places of public accommodations privately owned. If we put in the bill that the State laws

shall prevail despite the Federal statute then the States might pass statutes that might be very onerous and might be very harmful to the very purpose of your act.

Attorney General KENNEDY. I think Congressman Meader and I understand what we intend to cover.

The CHAIRMAN. What do you say to that?

Mr. MEADER. The preemption statute or language we have been using is that they shall not be stricken down unless they are inconsistent with Federal law.

The CHAIRMAN. That is all right.

Mr. MCCULLOCH. Mr. Chairman, I shall not take much more time on this title. Since my colleague has properly asked some questions concerning the additional personnel needed to enforce such a provision, has the Department estimated the type of record that hotels, motels, and other establishments named will be required to keep and how often they would have to report and to whom they would report?

Attorney General KENNEDY. I don't think they would have to do that at all, Congressman.

Mr. MCCULLOCH. That is not contemplated by this legislation.

Attorney General KENNEDY. No. Based on the conversations, Congressman, that we have had with hotel owners, motel owners, heads of department stores, restaurants—and we have been meeting with them over a period of the last month—I think a very high majority of them would like to have this kind of legislation passed. The majority would like to cater to everybody, to welcome everybody, because business would be better. But one of the great difficulties for them is that they feel that there in a particular community they cannot move first. They can't move out in front because it is the accepted situation in their community that there is segregation. Frequently we have been able to move as groups. But that is tedious and long. If there was a law on the books saying they have to serve everybody, then everybody is alike. One restaurant couldn't say I am going to serve only white people and therefore all the white people who don't like Negroes would go to that restaurant. If everybody was on the same footing it would be a great advantage for the businessmen in these various communities. Since we began the meetings on the 22d of May, 35 percent of the communities of over 10,000 population in the South and in the four border States have taken some action—businessmen have—to desegregate and I think that is extremely important.

Mr. MCCULLOCH. I want to pursue this one step further. Then do I understand you to unequivocally say that it would not be contemplated to require any person engaged in the type of business described to keep records of the type of guest and to report thereon at regular intervals to either the Justice Department or the Civil Rights Commission or any other department of the Federal Government?

Attorney General KENNEDY. Absolutely not.

The CHAIRMAN. Mr. Willis?

Mr. WILLIS. Mr. Chairman, I had not planned on asking questions because I am not a member of this subcommittee. Let me say first I don't want to compete with my friend from New York as the authors of this bill, but I have this one very serious question to ask. I refer to the public accommodations feature of the bill. Under section 204 the person aggrieved, or the Attorney General, is given a civil rights

relief in that area of public accommodations. Section 205 grants the jurisdiction to the U.S. courts to entertain those injunction proceedings. My question is this: The President of the United States in his message to Congress cautioned against demonstrations and sit-ins, and lie-downs and so on which may lead to violence. I understand that to be your position, sir?

Attorney General KENNEDY. That is right.

Mr. WILLIS. Would you have any objection to broadening the jurisdiction of the Federal courts and to put an affirmative provision in the bill giving jurisdiction to the Federal courts to grant injunctive relief against such actions which may lead to violence?

Attorney General KENNEDY. Where would that be in? Where would you anticipate that we would put that in?

Mr. WILLIS. There are many places to put it in. I could have a separate section. I am serious. It is not a question of style. It is a question of substance. That is what I have in mind. In other words, in at least two phases of this bill we are broadening the right to sue by the Attorney General and individuals and broadening the jurisdiction of the Federal courts under commerce clause or the 14th amendment or for whatever other reasons. Accepting seriously, as I do, the concern of the President and his caution concerning demonstrations, sitins, lie downs, boycotts, and so on, which to quote his language, "may lead to violence," my question is, At any part of the bill that would be appropriate would there be any objections to giving jurisdiction to the Federal courts to grant injunctive relief to prevent such things that apparently both you and I and the President are against?

Attorney General KENNEDY. I would say first, Congressman, I think that the purpose of the legislation and the matter of greatest concern is the injustices and inequities that have led to these demonstrations. What we have attempted to do in this bill and in this legislation is to get to the heart of this matter and try to recify the reasons why the demonstrations and parades and picketing have taken place. I think it would be better, as I said, if local governments did it, the State governments or local authorities, did it themselves. We found a number of States are not willing to do so. Then I think this Federal legislation is necessary. But I think that the legislation gets to the heart of why these demonstrations have taken place; namely, the injustices. So I think this is the better way of approaching it. I think what you suggest possibly has some serious constitutional question.

Mr. WILLIS. Constitutional questions?

The CHAIRMAN. Isn't there the right of petition?

Attorney General KENNEDY. There is already the right of petition.

Mr. WILLIS. I won't press the question. I am very serious about it. I don't think it is a constitutional question in vesting jurisdiction in Federal courts to entertain lawsuits.

Attorney General KENNEDY. I think one of the great problems in the formulation of this bill is what we would do about a situation such as Birmingham. The great problem is article I of the Constitution and the freedom of speech, freedom of assembly, freedom to protest. Once you start taking any steps that would infringe upon that you get into some kind of problem.

Mr. WILLIS. I completely agree. I am not asking for injunctive relief to interfere or infringe in any way with the right of petition,

the right peacably to assemble, the right peaceably to demonstrate, and all the rest. I am talking about the area which concerns the President as part of his message, cautioning against that when it may lead to violence. I am not married to words.

Attorney General KENNEDY. I understand.

Mr. WILLIS. I am not advocating an amendment to go in the opposite direction of the bill at all, sir.

Attorney General KENNEDY. I understand.

Mr. WILLIS. I think this should be seriously considered. I certainly intend to pursue it.

Attorney General KENNEDY. That would be fine, Congressman. Thank you.

The CHAIRMAN. Mr. Gilbert?

Mr. GILBERT. Mr. Attorney General, I would like to compliment you on your presentation this morning and the answers to the questions that have been propounded to you today. Just for the sake of levity for one moment, coming from the great Empire State of New York, I wonder if the Murphy that you refer to comes from the State of New York?

Attorney General KENNEDY. Congressman, I took the name from, I think, Senator Aiken's statement. I am just using the same individual. It is no reference to anybody. I think it might be well if we changed the name.

The CHAIRMAN. Mr. Attorney General, there are quite a number of questions that members wish to propound. We have covered only one of those categories. We would like to adjourn now and return at 2 o'clock. Is that agreeable to you?

Attorney General KENNEDY. I am at your disposal. Yes, Congressman, I will be back.

(Whereupon, at 12:15 p.m., the hearing recessed until 2 p.m. of the same day.)

AFTER RECESS

(The subcommittee reconvened at 2 p.m., Hon. Emanuel Celler (chairman of the subcommittee), presiding.)

The CHAIRMAN. The committee will be in order. The interrogation of the Attorney General will be continued.

Mr. Cramer.

Mr. CRAMER. Mr. Attorney General, fundamentally I feel you will probably agree that any statute that involves possible imprisonment as the result of contempt through noncompliance with the court order should be sufficiently and specifically spelled out so that people will know whether they conform or do not conform with the law.

Attorney General KENNEDY. Yes, very definitely.

Mr. CRAMER. Basically that is essential to a properly drafted statute. I think there are considerable weaknesses in the draftsmanship of H.R. 7152 in relation that specific concept, and I think some of the weaknesses have been brought out by prior questions. Let me ask you this question relating to the accommodation section 202—hotels, line 22, page 13.

Attorney General KENNEDY. Could I make a comment on your first statement?

Mr. CRAMER. Yes.

Attorney General KENNEDY. I don't think there are any weaknesses at all in connection with that. There might be some feeling by Congress that they want to make this more definitive. But as far as having any criminal penalty, a criminal penalty cannot come, and there are none in the bill, until the court has ruled upon the matter. The court is going to say you have to accept individuals. You cannot discriminate on the basis of the fact that an individual is a Negro. Then if that establishment goes ahead and discriminates, at that time in violation of the court order, then he is going to get into difficulty. But that has been true all the time. That is quite specific, Congressman. There is no problem in any of the writing of the bill in connection with that, because there are not any criminal penalties in the bill and it is only when you are in contempt of a court order that you get in difficulty.

Mr. CRAMER. That is correct, and subject to possible imprisonment for contempt procedures as a result of noncompliance. That was the import of my question. Again referring to the test used in determining whether a person is covered or not covered who operates a hotel, motel, and other public lodging where transients guests, including guests from other States or traveling in interstate commerce are served, does the statute become operable if two or more guests from out of State are served?

Attorney General KENNEDY. It says any hotel, motel, or other public place engaged in furnishing lodging to transient guests. Yes.

Mr. CRAMER. So two or more guests would make a person have to conform?

Attorney General KENNEDY. Congressman, it would have met some of the other qualifications. It would have to be a hotel or motel or other public place engaged in furnishing lodging to transient guests.

Mr. CRAMER. Yes, but the test that is used with relation to paragraph 3 on page 14 as appears in your No. 1 qualification on line 16 and 17, relating to goods, services, facilities, privileges, advantages, or accommodations refers to a substantial degree of interstate travelers. What is the justification for using one test relating to hotels and another test relating to other types of services or retail shops and other establishments?

Attorney General KENNEDY. I think hotels and motels are quite clearly more involved in dealing with individuals traveling from one part of the country to another. I think it is very possible that you could have an establishment, for instance, in a city or community that didn't have anything to do with interstate commerce. I think a hotel or a motel would quite clearly more directly affect interstate commerce than a restaurant, a lunch room, a lunch counter, or soda fountain. That's why we put in those qualifications.

Mr. CRAMER. I have some difficulty in following the reasoning, but in any event I would like to know what subtitles 1, 2, 3 and 4, which you indicated to the chairman's question as being intended to be disjunctive, exactly relate to? Is it the entire paragraph 3 or is it only those establishments after the word "and" on line 10? In reading I can't tell whether you intend to apply those tests to any retail stores or shop or department store, market, drugstore, gasoline station or other puplic place or whether it only applies to other establishments, where goods, facilities, privileges, advantages, or accommodations are held out to the public?

Attorney General KENNEDY. The whole paragraph, Mr. Congressman.

Mr. CRAMER. I would suggest if any serious consideration is given to this section that some consideration should be given to clarifying that because they way it is drafted it appears it applies only to the last clause. Relating to the second qualification, line 18, "a substantial portion of any goods held out to the public by any such place or establishment." Does that mean that if an establishment sells good or renders services relating to only one type of goods, a substantial portion of that one goods alone is in interstate commerce?

Attorney General KENNEDY. That is right.

Mr. CRAMER. So if you had a Mr. Murphy operating a shoe repair shop with nothing but the leather coming in from out of State, if a substantial portion of that leather came from out of State he would be covered, is that right?

Attorney General KENNEDY. That is right.

Mr. CRAMER. So it is not a substantial portion of all the goods handled that have to come from out of State but only a substantial portion of any one of the goods handled coming from out of State?

Attorney General KENNEDY. As I understand it, you described it as a store or shop that handled only one type of goods, is that right?

Mr. CRAMER. That was my second question, yes.

Attorney General KENNEDY. A substantial portion of those goods held out to the public have moved in interstate commerce and would be covered?

Mr. CRAMER. The words of the statute of the proposed bill say any goods. They say a substantial portion of any one of the goods, as I read it.

Attorney General KENNEDY. A substantial portion of any goods held out to the public. If they move in interstate commerce, it is covered.

Mr. CRAMER. I yield to Mr. Meader.

Mr. MEADER. The interrogation by my colleague has raised a question in my mind concerning the words in lines 10 to 13 of page 14. I refer to the phrase "and any other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent or hire." My question is, would not that phrase be inclusive of item 1 on page 13, a "hotel, motel, or other public place engaged in furnishing lodgings?" Wouldn't the establishment where accommodations are held out for rent, wouldn't that definition include a hotel or motel? If so, don't you have two different standards?

Attorney General KENNEDY. I think we specifically cover the hotel and motel under section 202, paragraph 1. The accommodations on page 14 are other than those covered by paragraph 1.

Mr. MEADER. In other words, would it clarify the intent of the drafters of this phraseology to put after "accommodations," "other than those described in subsection A–1?"

Attorney General KENNEDY. I think that would be fine, Congressman, if there is any difficulty about it.

Mr. MEADER. They are not intended to cover hotels and motels in the phrase "accommodations held out for use or rent?"

Attorney General KENNEDY. That would be fine, Congressman.

Mr. MEADER. What kind of accommodations would they be if they are not hotels or motels?

Attorney General KENNEDY. There are various possibilities.

Mr. CRAMER. Is the gentleman through?

Mr. MEADER. Yes.

Attorney General KENNEDY. I would be glad to submit a list.

Mr. CRAMER. I would like to have such a list submitted for the record.

(The document to be supplied follows:)

ESTABLISHMENTS PROHIBITED FROM DISCRIMINATING UNDER TITLE II

Title II prohibits racial discrimination and segregation in places of public accommodation.

Section 202(a) of title II declares that: "All persons shall be entitled, without discrimination or segregation on account of race, color, religion, or national origin, to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the following public establishments * * *."

Section 202(a) describes a variety of business establishments in which discrimination and segregation is prohibited.

I. HOTELS, MOTELS, AND SIMILAR PLACES

Section 202(a) (1) prohibits discrimination and segregation in "* * * any hotel, motel, or other public place engaged in furnishing lodging to transient guests, including guests from other States or traveling in interstate commerce. * * *"

The essential prerequisites to coverage under section 202(a)(1) are (1) that the establishment be a "public place," and (2) that it furnish lodging "to transient guests."

A. The "public place" test

The "public place" condition exempts from coverage small establishments furnishing lodging essentially to friends or acquaintances of the proprietor. For example, a small home in a college town catering to students, or a small rooming-house catering to persons known to the owner or referred to the owner by his or her friends, would be exempted so long as it does not advertise, or otherwise offer rooms to the general public. An establishment dependent upon such a limited clientele is not, within the meaning of the bill, a "public place."

B. The "transient guest" test

The "transient guest" requirement exempts establishments, like apartment houses, which provide permanent residential housing. For example, apartments rented on month-to-month tenancies automatically renewed each month unless specifically terminated, are exempted. The question of coverage would be determined by the actualities of the arrangement. The question whether an establishment caters to "transient guests" would be a question of Federal, not State local, law.

The bill covers, as earlier noted, places furnishing lodging "to transient guests, including guests from other States or traveling in interstate commerce * * *." The reference to interstate travelers is illustrative and does not mean that an establishment can escape coverage by refusing to serve interstate or foreign travelers. Establishments would, of course, be prohibited from discriminating against any particular prospective customer, whether or not he was an interstate or foreign traveler.

II. PLACES OF AMUSEMENT AND ENTERTAINMENT

Section 202(a)(2) extends the prohibition against discrimination or segregation to "* * * any motion picture house, theater, sports arena, stadium, exhibition hall, or other public place of amusement or entertainment which customarily presents motion pictures, performing groups, athletic teams, exhibitions, or other sources of entertainment which move in interstate commerce * * *."

A. The "public place" test

The first prerequisite to coverage under this subparagraph is, again, that the establishment be a "public place." Thus, performances produced or presented by private organizations, to which the general public is not invited, in places not generally open to the public, are exempt.

B. The customary presentation test

The second prerequisite is that such a public place must customarily present sources of entertainment which move in interstate commerce. For example, most motion picture theaters customarily present films made outside the State, and they are covered.

But a place of amusement or entertainment is not covered merely because, on one or two occasions, it presents sources of entertainment which moved in interstate commerce. By "customarily" the bill means more than occasionally. That is, some significant percentage of an establishment's performances must move in interstate commerce in order that it fall within the purview of this section.

It is essential to note, however, that there is no requirement in the bill that the production being presented at any given time need have moved in interstate commerce in order that the bill apply to that production; the only requirement is that the establishment customarily presents entertainment that does so. Thus, a baseball stadium which is customarily used for ball games by teams traveling interstate as part of a league is held to the nondiscrimination standard even on a day when a local sandlot team is playing there.

Furthermore, there is no requirement that the kind or class of entertainment provided at any given time must customarily move in interstate commerce. Thus, if an exhibition hall presents a local lecturer on a given evening, the meeting must be held on a desegregated basis if the hall customarily presents performances of any kind moving interstate, even though the lecturers it presents from time to time are all local people.

III. RETAIL ESTABLISHMENTS

Subsection 202(a)(3) prohibits discrimination and segregation in "* * * any retail shop, department store, market, drugstore, gasoline station, or other public place which keeps goods for sale, any restaurant, lunchroom, lunch counter, soda fountain, or other public place engaged in selling food for consumption on the premises, [and] any other establishment where goods, services, facilities, privileges, advantages, or accommodations are held out to the public for sale, use, rent, or hire. * * *"

No establishment is included within the scope of subsection 202(a)(3) unless it also falls within at least one of the below described subparagraphs (i), (ii), (iii), or (iv) of that subsection.

A. Catering to interstate travelers

Subparagraph (i) of subsection 202(a)(3) applies the rule of nondiscrimination to retail establishments if "* * * the goods, services, facilities, privileges, advantages, or accommodations offered by any such place or establishment are provided to a substantial degree to interstate travelers * * *."

Under subparagraph (i) one test would be the location of the establishment. A restaurant located adjacent to an interstate highway or to a railroad or bus terminal, for instance, is almost certainly covered by the bill. But location is not necessarily a conclusive test. On the other hand, any establishment having a significant number of interstate patrons is included, whatever its location; for example, a well-known restaurant, located in a large city, which attracts a substantial tourist trade from other States, may not discriminate.

B. Sales of interstate goods

Subparagraph (ii) of subsection 202(a)(3) prohibits discrimination in retail establishments if "* * * a substantial portion of any goods held out to the public by any such place or establishment for sale, use, rent, or hire has moved in interstate commerce. * * *"

Under subparagraph (ii) the test is, as stated, whether a substantial portion of the goods sold has moved in interstate commerce. Inasmuch as this subparagraph does not refer to services, it does not cover establishments, such

as hospitals, barber shops, beauty salons, or dance studios, which primarily offer services, even if in the course of rendering their services they incidentally use some goods which have moved interstate.

Obviously, a department store, a general store, or even a specialty shop, offering wares manufactured in a number of States, is covered by this section. Similarly, most gasoline stations obtain their fuel in interstate commerce; and almost every drugstore obtains most of its pharmaceuticals from other States. They are covered by the bill.

C. Business activities otherwise affecting commerce

Subparagraph (iii) reaches retail establishments if "* * * the activities or operations of such place or establishment otherwise substantially affect interstate travel or the interstate movement of goods in commerce. * * *"

Subparagraph (iii) sets up what is primarily a test of size. If an establishment is of significant size, its activities or operations will almost inevitably substantially affect interstate travel or the interstate movement of goods in commerce.

Subparagraph (iii) principally reaches those service establishments which do not provide services to a substantial degree to interstate travelers, and which are not covered by subparagraph (ii) because the latter reaches only businesses primarily selling goods. For example, a large cleaning establishment, serving primarily local customers, which purchases a large quantity of machinery and other supplies through interstate channels, is covered under subparagraph (iii). Barbershops and beauty salons, on the other hand, are not likely to purchase in interstate commerce enough goods to make a substantial impact upon commerce. They are excluded.

D. Integral parts of businesses otherwise covered

Finally, subparagraph (iv) outlaws discrimination in a retail establishment if "* * * such place or establishment is an integral part of an establishment included under this subsection * * *."

The term "integral part" is more specifically defined in the next sentence of subparagraph (iv). This subparagraph reaches businesses like barbershops, which are not otherwise ordinarily covered by section 202(a), if they are located within or contiguous to other establishments that are covered, like hotels, provided the requisite relationship, as stated in the act, exists between the covered establishment and the "contiguous" business.

IV. PRIVATE CLUBS

Subsection 202(b) exempts bona fide private clubs and other establishments not open to the public generally. Local fraternal organizations, private country clubs, and the like are beyond the reach of the bill, except to the extent that they make their facilities available to patrons of covered establishments.

Mr. CRAMER. Again referring to the thrust of this section, as I gather it, anyone, as for instance a Mr. Murphy, who comes within the provisions who denies a Negro the right to a room, then he is automatically subject to a possible complaint. You will advise the State and local authorities concerning the complaint, if there is a State law involved, or the Community Relations Service and then may follow up by court action, is that right?

Attorney General KENNEDY. Mr. Murphy does what now? He runs what kind of a place?

Mr. CRAMER. Mr. Murphy has a motel.

Attorney General KENNEDY. And he has one guest?

Mr. CRAMER. And he has a colored person come in and ask for a room and he denies him the room. He automatically comes under the provisions of this bill?

Attorney General KENNEDY. Yes; if it is a hotel, motel, or other public place.

Mr. CRAMER. Let us assume this person——

Attorney General KENNEDY. And he denies this man the room because he is a Negro, is that right?

Mr. CRAMER. He denies a colored person, period. Let us assume the colored person has liquor on his breath. If he were a white person and had liquor on his breath the owner can say that "I don't intend to take anyone in my motel that I don't think a proper guest." Therefore he would not be violating the law by keeping a white person out and he wouldn't be subject to having a complaint filed. In this instance, it is a colored person who has liquor on his breath. What out is there for the owner in such a case except defending a law suit?

Attorney General KENNEDY. He is not in the law suit immediately, Congressman. In the first place as far as the Government is concerned we would take it to the Community Relations Service and ask them if they could not settle it.

Mr. CRAMER. That is very interesting. I would like to pursue that one avenue, if you would, Mr. Attorney General. I see on page 17 in the case of any other complaint on line 13?

Attorney General KENNEDY. Where are you now?

Mr. CRAMER. Line 13.

Attorney General KENNEDY. Page 17, yes.

Mr. CRAMER. In the case of any other complaint, where there were no State or local laws outlawing discrimination, I assume the Community Relations Service comes into play for a period of 30 days. To do what? "Shall endeavor to secure compliance by volunteer procedures." What are they going to do with this motel owner who properly denies a person who does have race, color, religion, or national origin of minority nature?

Attorney General KENNEDY. They can tell them that they should not accept them. They were right in turning them down. Completely justified.

Mr. CRAMER. Then the Community Relations Service becomes a fact-finding body, is that right?

Attorney General KENNEDY. They will be of help to the community, of help whether it be the motel or hotel owner. They will be there to provide their services and be of assistance. I might say that is what we have attempted to do over the period of the last couple of years.

Mr. MCCULLOCH. If the gentleman will yield, would the advice of the Community Relations Service be binding on the Federal Government?

Attorney General KENNEDY. On the Federal Government itself, on us?

Mr. MCCULLOCH. Yes.

Attorney General KENNEDY. The Attorney General would consult with this community organization before he brought a law suit. You could conceivably bring a suit even if you had an adverse finding from the Community Relations Service, but I doubt if that would ever happen as a practical matter.

Mr. MCCULLOCH. I am trying to pursue our colleague's question. If the community relations service advises the businessman that he is not in violation, is the Department of Justice bound by that advise even though it later turns out that the advice wasn't correct and accurate and in accordance with law?

The CHAIRMAN. Isn't it only an advisory council?

Attorney General KENNEDY. We would not be bound by it. I would expect the Department of Justice would not be bound by it but cer-

tainly it would be consulting with them. Certainly that would play a major role in determining what the Department of Justice would do in that case.

Mr. McCULLOCH. The reason I pursue this line of questioning is that with the increasing activity of the Federal Government in all forms of business activity in the country, more and more citizens are seeking and sometimes getting advice from Federal officials and later find that that advice was not in accordance with law, even though they have acted on it. Recently I might add, and I am sure the atotrney General is familiar with the case, there was that kind of matter involved in one of the Federal courts in Ohio.

Mr. CRAMER. I appreciate the comments of the gentleman. In other words, what I am trying to get at is, the Community Relations Services at this stage has to be a factfinding body to determine whether the owner of the motel did or did not violate the intent of the law.

Attorney General KENNEDY. What they are trying to do, Congressman, what their major function is, is to determine what the facts are and try to settle the matter without litigation, without publicity, without a great deal of attention. That is what their function is going to be.

Mr. CRAMER. Let us assume that the Community Relations Services fails, and pursuant to page 16, line 11, you as the Attorney General determine to bring a case in the name of the United States. I assume before you bring into play the Community Relations Services or the Attorney General's request to State and local authorities, that the requirement that the person aggrieved be unable to initiate or maintain appropriate legal procedeings, that need not make a finding of that nature before those steps are taken by you as Attorney General?

Attorney General KENNEDY. I can't take any steps until after that finding has been made.

Mr. CRAMER. You have to refer it to the Community Relations Services?

Attorney General KENNEDY. Yes. But I also cannot take any legal action until after I have found that the matter cannot be handled by the individual because of intimidation or because of economic or financial problems. And, secondly, I also have to find that the purpose of the bill will be materially furthered by bringing such a law suit.

Mr. CRAMER. Those are very interesting discretionary powers.

Attorney General KENNEDY. Thank you, Congressman.

Mr. CRAMER. They are interesting. I didn't say they were good. They are very interesting discretionary powers. You have power under the bill at this stage to this motel owner who denied the Negro the right to a room for some reason which may be other than race or color, and you make the determination as to whether the person aggrieved is unable to initiate and maintain appropriate legal procedures. The inability to initiate appropriate legal action is defined in paragraph (c), is it not, as a case where such person is unable either directly or indirectly or through an interested person or organization to bear the expense of litigation, or to attain effective legal representation. Could you advise the committee as to what your test for effective legal representation would be in that instance?

Attorney General KENNEDY. Whether they can actually get a lawyer that would represent them.

Mr. CRAMER. Any lawyer? This says "effective legal representation."

Attorney General KENNEDY. So that they could obtain an attorney to represent them in a case.

Mr. CRAMER. You would not atempt to pass on the qualifications of any lawyer who may be acquired?

Attorney General KENNEDY. No, I would not.

Mr. CRAMER. I suggest perhaps the word "effective" is not a proper word. Or when there is reason to believe that the institution of such litigation by him would jeopardize the employment or economic standing of, or might result in injury or economic damage to such person, his family, or his property. That is a finding which you have to make as Attorney General, is that right?

Attorney General KENNEDY. That is right.

Mr. CRAMER. Before this person can be entitled to your services in representing him?

Attorney General KENNEDY. That is right.

Mr. CRAMER. Don't you think that is too broad discretionary power on your shoulders?

Attorney General KENNEDY. I thought you would like it, Congressman. It doesn't put us in every one of the cases. That is the purpose of it.

Mr. CRAMER. It does require you in every case to make these basic factual findings. Would it affect his employment or economic standing? Would it result in injury or economic damage? Have you thought of any standards to be applied to this language as yet?

Attorney General KENNEDY. No, I have not thought of any standards. I can give you a number of examples of where Negroes have been intimidated in their efforts to obtain equal rights and to remedy injustices. So I don't think we would have any difficulty about that.

Mr. CRAMER. Again I say it is an extremely broad discretionary power. There are other instances throughout the bill where the Attorney General is given extremely discretionary power not only in this section but in other sections. That is one reason why I wanted to call it to the attention of the committee. Now to get back to what happens to this motel owner.

Attorney General KENNEDY. May I make a comment on that, Congressman?

Mr. CRAMER. Yes.

Attorney General KENNEDY. The purpose really is so that we don't go into these cases automatically. The President feels and we in the Department of Justice feel it is much better to have these matters handled by the individual litigant. It is much better to have all of these matters handled at the local level rather than have the Federal Government involved at all. It is these safeguards that we have attempted to place in this bill. Obviously some determination is going to have to be made by somebody—that is, whether the Federal Government is going to get involved in a particular case. I am making those determinations every day as Attorney General of the United States and my predecessors who were Republicans were making those determinations every day. So I don't think this is a great deal more power that is being given. In addition I say the reason those qualifications are in there is just so that the Federal Government will not be automatically involved in every case. As I say, I thought you would like that.

Mr. CRAMER. They don't become involved unless you make a determination that they can't properly represent themselves or that the purpose would not be served by the filing of an action. I wanted to get this point. This motel owner has denied a Negro a room because he has liquor on his breath or for some other reason. Maybe he doesn't think he will pay his bill. The same would be true of white people. This is a right they have as it relates to white. But he runs the risk of these charges if it happens to be a minority person, isn't that correct?

Attorney General KENNEDY. That is right.

Mr. CRAMER. A minority person can file a complaint. Then this is the crux of it. If that is done, who is going to have to prove that this person was not denied his rights because of race, color, religion, or national origin but for some other reason? Whose burden of proof is it at that stage?

Attorney General KENNEDY. The burden of proof I would say, Congressman, is on the individual who claims that he was discriminated against because of his color.

Mr. CRAMER. It is on the defendant?

Attorney General KENNEDY. It is on the individual who brings the charge that he was discriminated against on the basis of color.

Mr. CRAMER. How is any owner going to prove that he properly denied a minority person a right to a room?

Attorney General KENNEDY. I suppose if he said he didn't pay his bill he would have the documents to show he didn't pay the bill. If his breath smells of liquor you can bring somebody in to smell his breath.

Mr. CRAMER. This is precisely the important point. The burden of proof shifts to the defendant to prove that the party involved did not come in within this accommodations section because he didn't deny it because of race, color, or religion or national origin but for some other reason.

Attorney General KENNEDY. Congressman, all he would have to do is to show that he has taken in other Negroes and they have not been discriminated against. If he can show that, and that should be quite simple if he has not discriminated against Negroes, his defense would be quite easy.

Mr. CRAMER. It is an interesting concept of law where a man must prove he is innocent rather than the Government proving he is guilty when the penalty that results could be that he goes to jail in contempt of court.

Attorney General KENNEDY. That is not true. It doesn't say that in that bill.

Mr. CRAMER. That is the result.

Attorney General KENNEDY. No, it isn't.

Mr. CRAMER. There is no use arguing.

Attorney General KENNEDY. Congressman, it doesn't say that now. We should stay with what the bill says. I don't mind if you disagree with the bill but disagree with the bill as it is. Don't add a provision. It doesn't say he goes to jail. There is nothing in the bill about that. He has to start serving Negroes as well as white people. That is the worst penalty that there can be.

Mr. CRAMER. The determination as to whether a person has violated the civil rights of another person depends upon the 14th amendment

and the specific language as to whether a person or persons have been entitled without discrimination or reservation on account of race, color, or national origin or religion to full and equal enjoyment. In many cases, the way to disprove would be for the defendant to prove it and the burden of proof shifts to the defendant.

The CHAIRMAN. I would say, Mr. Cramer, that you could envisage thousands of hypothetical cases that might come up. You can't have an answer for all these cases in the act itself. The act undoubtedly will be construed through the institution of many, many cases and finally there will be crystalized definite standards here. But we cannot cover the waterfront on all these matters. You could conjure up dozens and dozens of cases and you won't have an answer. There have to be court decisions on these things.

Attorney General KENNEDY. I think the thing to keep in mind is what the purpose of the bill is, which is to try to prevent discrimination. Ten percent of our population is subject to these daily abuses and injustices and we are trying to do something about it. This legislation is for that purpose. No legislation is perfect, but this legislation would take a long step toward rectifying the injustices that Negroes have been subjected to. I think we should keep in mind that is what we are intending and trying to do in this legislation.

Mr. CRAMER. Mr. Chairman, I have two other questions. I don't want to delay the proceedings. You refer to the 14th amendment and specifically you do refer to this on page 13, line 11 under the 14th amendment and the commerce clause of the United States. Then there has been included section 203 which refers to a "person acting under color of law or otherwise." Don't you think there is a serious question as to whether that "or otherwise" will make the section in itself unconstitutional? The Constitution does not protect "or otherwise." It protects only against State and local laws.

Attorney General KENNEDY. I think that refers to the commerce clause, Congressman.

Mr. CRAMER. "No person whether acting under color of law or otherwise." By "otherwise" you mean under the interstate commerce clause?

Attorney General KENNEDY. That is right.

Mr. ROGERS of Colorado. May I interrupt—"otherwise" could also mean the custom of the State in question as in the *New Orleans* case.

Mr. CRAMER. No. That is the very point. If it means that, that is another thing.

Mr. ROGERS of Colorado. That is how the Supreme Court interpreted it in the *New Orleans* case. They said if the custom, when the mayor and chief of police said the custom is to segregate, the Supreme Court said that is a violation of the 14th amendment.

Mr. FOLEY. Mr. Attorney General, in the *Raines* case in Georgia which upheld the constitutionality of the 1957 Civil Rights Act we added to section 204 of the Revised Statute a new subsection (b) which reads, "No person whether acting under color of law or otherwise shall intimidate, threaten, coerce" and it goes on like that. The *Raines* case upheld the constitutionality of that language. Is that not correct?

Attorney General KENNEDY. I believe it is.

The CHAIRMAN. Mr. Cramer.

Mr. CRAMER. The section with regard to the 14th amendment which you referred to in your statement, section 203, page 15, relies upon and is based upon section 202, is it not? If 202 falls, 203 falls, because the privileges and rights secured are those described in section 202.

Attorney General KENNEDY. Would you repeat that question?

Mr. CRAMER. Page 15, lines 20, 22, 24, this supposed 14th amendment provision of section 203 is tied in to section 202, and if 202 falls, 203 falls, so really what you are talking about is an interstate commerce clause.

Attorney General KENNEDY. Under the interstate commerce clause, Congressman, that is what we are using as our primary basis for this legislation rather than the 14th amendment.

Mr. CRAMER. The reason I bring it out is that the bill introduced by the gentleman from New York and others specifically describes the rights protected under the 14th amendment. This section does not describe a right protected under the 14th amendment although it does refer to "under color of law." It doesn't describe a right protected under the 14th amendment, but it goes back to the interstate commerce description, so it actually does not add anything to the bill. You actually prosecute under 202, 203 doesn't add anything.

The CHAIRMAN. Will you amplify a bit on that?

Mr. CRAMER. I want to know whether or not the Attorney General is intending in the legislation to rely upon the 14th amendment or not.

Attorney General KENNEDY. I think I tried to make it clear, Congressman.

Mr. CRAMER. In your statement you indicated you were relying on it in the alternative.

Attorney General KENNEDY. As I said in my statement and as I said a number of times here, relying primarily on the interstate commerce clause, article 1, section 8 and relying also on the 14th amendment. It is my judgment that the Supreme Court at this time would uphold it under the 14th amendment. But I think there are some that would disagree. There is a court decision at the present time which has declared these kinds of laws unconstitutional under the 14th amendment. I think it is clearly constitutional under the commerce clause.

Mr. CRAMER. It is because of that statement I asked the question. I assume the intention was to include a 14th amendment provision that would stand on its own two feet because of State law as was done in the Lindsay and other bills. But in reading section 203, you only refer back to the right under section 202 of the interstate commerce clause. So you are not adding anything to it.

Attorney General KENNEDY. I think section 203 and 204 indicate the processes that will be followed in carrying out 202—the methods by which it will be carried out. So it does add something.

Mr. CRAMER. It adds a method but it doesn't add a separate remedy.

Attorney General KENNEDY. I think it is important to have it in here because it is part of the entire operation.

Mr. CRAMER. It does not add a separate remedy under the 14th amendment exclusively.

Attorney General KENNEDY. That is right.

Mr. CRAMER. That is all, Mr. Chairman.

Mr. FOLEY. At this point, this particular point, Mr. Attorney General, as to a prosecution by you under section 241; even though you refer back basically to 242, without enacting a statute today you have actions brought under existing statutes for deprivation of rights under the 14th amendment; is that not correct?

Attorney General KENNEDY. That is right.

Mr. FOLEY. So therefore what you are doing, you are adding to the existing remedies today the possibility of going in on a remedy predicated upon the interstate commerce clause under the provisions of 241 and 242?

Attorney General KENNEDY. Yes.

Mr. CRAMER. If the gentleman would yield, perhaps then at this point we should read the existing statutes into the record. I have them in my hand. Section 241:

CONSPIRACY AGAINST RIGHTS OF CITIZENS.—If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or 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 of enjoyment of any right or privilege so secured * * * they shall be fined not more than $5,000 or imprisoned not more than ten years. (June 25, 1948, based on the act of 1909.)

The CHAIRMAN. That makes it a criminal statute.

Mr. CRAMER. Yes. Section 242:

DEPRIVATION OF RIGHTS UNDER COLOR OF LAW.—Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitants of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution of 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. (June 25, 1948, based on the act of 1909.)

These were previously passed in 1909 and amended in 1948. In addition title 42, United States Code, section 1987 dealing with the subject of prosecution of violations of certain laws including these laws where the U.S. attorneys, marshals, and deputy marshals, the commissioners appointed by the district and territorial courts, with power to arrest, imprison, or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506–5516 and 5518–5532 of the Revised Statutes, and to cause such persons to be arrested and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense. (R.S. 1982; June 25, 1948, ch. 646, 1, 62 Stat. 909.) (Sec. 1990. Marshal to obey precepts; refusing to receive or execute process.)

I think, Mr. Chairman, it would be well to place those in the record at this time. I think the counsel made a very important point.

The CHAIRMAN. They shall be included in the record.

(The documents referred to follow:)

TITLE 42, UNITED STATES CODE

Sec. 1987. Prosecution of violation of certain laws.

The United States attorneys, marshals, and deputy marshals, the commissioners appointed by the district and territorial courts, with power to arrest, imprison,

or bail offenders, and every other officer who is especially empowered by the President, are authorized and required, at the expense of the United States, to institute prosecutions against all persons violating any of the provisions of section 1990 of this title or of sections 5506–5516 and 5518–5532 of the Revised Statutes, and to cause such persons to be arrested, and imprisoned or bailed, for trial before the court of the United States or the territorial court having cognizance of the offense. (R.S. § 1982; June 25, 1948, ch. 646, § 1, 62 Stat. 909.)

DERIVATION

Acts April 9, 1866, ch. 31, § 4, 14 Stat. 28; May 31, 1870, ch. 114, § 9, 16 Stat. 142.

REFERENCES IN TEXT

R.S. §§ 5506–5516 and 5518–5532, referred to in this section, which related to crimes against the elective franchise and civil rights of citizens, were all repealed by acts of March 4, 1909, ch. 321, § 341, 35 Stat. 1153, or February 8, 1894, ch. 25, § 1, 28 Stat. 37. However, the provisions of sections 5508, 5510, 5516, 5518, and 5524–5532 were substantially reenacted by act of March 4, 1909, and were classified to former sections 51, 52, 54–59, 246, 428, and 443–445 of Title 18. Such sections of Title 18 were repealed by act June 25, 1948, ch. 645, § 21, 62 Stat. 862, and are now covered by sections 241, 242, 372, 592, 593, 752, 1071, 1581, 1583 and 1588 of Title 18: Crimes and Criminal Procedure.

CHANGE OF NAME

Act June 25, 1948, eff. September 1, 1948, substituted "United States attorneys" for "district attorneys." See section 501 of Title 28: Judiciary and Judicial Procedure.

Sec. 1990. Marshal to obey precepts; refusing to receive or execute process.

Every marshal and deputy marshal shall obey and execute all warrants or other process, when directed to him, issued under the provisions of section 1989 of this title. Every marshal and deputy marshal who refuses to receive any warrant or other process when tendered to him, issued in pursuance of the provisions of this section, or refuses or neglects to use all proper means diligently to execute the same, shall be liable to a fine in the sum of $1,000, for the benefit of the party aggrieved thereby. (R.S. §§ 1985, 5517.)

TITLE 18, UNITED STATES CODE

SECTION 241—CIVIL RIGHTS; CONSPIRACY AGAINST RIGHTS OF CITIZENS

If two or more persons conspire to injure, oppress, threaten or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or 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 of enjoyment of any right or privilege so secured—

They shall be fined not more than $5,000 or imprisoned not more than ten years. (June 25, 1948; based on act of 1909.)

SECTION 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. (June 25, 1948; based on act of 1909.)

Mr. FOLEY. Mr. Cramer, you were referring to the sections of title 18 of the United States Code?

Mr. CRAMER. Sections 241,242.

Mr. FOLEY. Then I think, Mr. Chairman, we should also include the provisions of section 1983 of title 42 of the United States Code which deals with civil rights from the standpoint of civil action, which is what I was referring to.

The CHAIRMAN. That shall be included.

(The document requested follows:)

TITLE 42, UNITED STATES CODE, SECTION 1983

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

The CHAIRMAN. Mr. Lindsay.

Mr. LINDSAY. Mr. Attorney General, I have just two questions. I hope that you have had a chance in the recess period to take a look at the 14th amendment approach to this issue that I and the gentleman from New Jersey and the gentleman from Minnesota and the gentleman from Maryland have long been urging on this question. From the questions of the chairman and the other members, you can understand the complexities of the interstate commerce clause route. In fact some of those question you have not been able to answer, understandably.

The 14th amendment route contained in this bill is very simple. It merely says, whoever, in the conduct of a business authorized by a State or political subdivision of a State or the District of Columbia providing accommodations, amusement, food or services to the public, segregates or otherwise discriminates against customers on account of their race or color shall be subject to the suit by the injured party in an action at law or suit of equity. Whoever, acting under color of law, custom and usage—custom and usage are important—requires or encourages an owner to segregate against customers shall be subject to suit by the injured power by an action at law or suit in equity. The next paragraph established the power of the Federal Government to bring an action on behalf of the individual to invoke these protections for him in the event he is not in a position to do so by himself. Either for reasons of fear or poverty or what have you. This is eminently simple. It is understandable, it is clear. The courts would work out the areas of difference in how close you come to what is authorized by the State and what is held out to the public for amusement and accommodations, and so forth. In the Mrs. Murphy situation it may or may not be included depending on the circumstances. I am impressed with your statement that you personally think the courts would sustain the constitutionality of this approach.

But in view of the fact that you apparently did not consider these bills at all I can't help but ask the question as to whether or not you really want public accommodations legislation or not. That is the question I would like to have the answer to. I should like to add this one comment to this question. Let us be frank about it. The rumor is all over the cloakrooms and corridors of Capitol Hill that the administration has made a deal with the leadership to scuttle the accommodations.

The CHAIRMAN. If I am part of the leadership I have not heard o this.

Mr. LINDSAY. I am not referring to the chairman.

The CHAIRMAN. Let us confine ourselves to specifics and withdraw all rumors.

Mr. LINDSAY. My question is: Is the administration prepared tc press for public accommodations legislation even though the Congress has to stay here until New Years to get it through? Will you settle, if necessary, for the 14th amendment approach, the Lindsay approach, in order to get a maximum number of votes to get a bill through? am not sure that you can get a bill through which is based on the interstate commerce clause.

Attorney General KENNEDY. There were an awful lot of statements made, Congressman. I am surprised by this, but maybe I shouldn't be, that you would come out here in this open hearing and say that you heard these rumors and have nothing more to substantiate them than the fact that you have heard rumors in the cloakroom. I think it has been made clear, and I don't think that the President nor I have to defend our good faith in our efforts here to you or to really anyone else.

I think we are making this effort. I would make a couple of comments on your bill. I haven't read your bill, Congressman. I said this morning I had not read your bill. That doesn't mean I have not considered the whole problem of the 14th amendment. It is possible that we might have considered this matter even though we have not read your bill personally. That is possible and it happens to be correct. We have considered this matter. You say there are a lot of difficulties under the commerce clause and that they would be avoided under the 14th amendment. Then you go on to say the problems can be decided by the courts. Maybe Mrs. Murphy's boardinghouse is covered and maybe it is not under the 14th amendment. I don't know how that gets us any closer. You say these cases go to the courts. I suppose under the commerce clause they will go to the courts. So we will all be in court whether it is under your approach or somebody else's approach. I think, Congressman, the problem is not whether Mrs. Murphy's roominghouse is covered or not. It is whether you want to cover Mrs. Murphy's roominghouse.

I think that is the problem. Your statement this morning indicated, I thought, that you missed that point and it does this afternoon. I think Congressmen Miller, Meader, Celler, McCulloch, and a number of the Democrats over here all are concerned with the question whether you should cover Mrs. Murphy's place. Obviously you can write some legislation that would cover Mrs. Murphy's boardinghouse but how much do you want to cover of Mrs. Murphy's boardinghouse? Do you want to cover her when she is bringing in two or three people who are living in a house with her? Is that the kind of place you want to cover? That is the key. Not on the question of whether you can write some legislation. You can write in our bill—which I said would be acceptable this morning, if the committee feels that these standards are too vague—you could describe in greater detail what you want as a cutoff point. Maybe the committee and Congress will decide that is what they want to do. Then it will be clear in the courts. But the problem, Congressman, as your colleague there has pointed out, on the

14th amendment, is that at the present time the Supreme Court has declared that this is unconstitutional and that is the law of the land at the present time.

As Senator Russell has said, it is unconstitutional. We will have to go through a battle if we think of putting this on the 14th amendment. With all the difficulties and problems we will have anyway with this legislation, all the problems that will be raised about interfering with private property and all the things we have heard about already, we will have to add to that burden by asking Congress to pass a piece of legislation which has been declared unconstitutional by the Supreme Court. I think that is taking on a tremendous burden in addition to the problems we have. I happen to agree with you. I think the Supreme Court would say it was constitutional. But I think other people legitimately and in good faith would claim that the Supreme Court would not declare this was constitutional. I think they can make a strong argument. I read over that case and I think you can make a strong argument, and I think very legitimately so. I would happen to disagree with it. I agree with the minority opinion. But I can see that you can make a strong argument for unconstitutionality. I don't think you can make that argument if you put it on the commerce clause. The reason I want this legislation is because I think it is so extremely important. The reason you are having the demonstrations and the picketing and the violence that is going on at the present time is because Negroes are flailing out at what they feel have been injustices and inequities in this very field.

If this legislation is not passed I think many of the problems we have at the present time will continue. I want this legislation to pass. I don't think, Congressman, that I have to defend myself to you about that matter.

Mr. LINDSAY. I think we can agree on one thing which is that we want a bill. We would like to have a public accommodations bill as soon as possible. I am frankly worried about the chances of getting a bill through. What I want to know from you as Attorney General is whether in the last analysis you would agree to and accept the 14th amendment route if it is necessary in order to get a bill on the floor and through the House?

Attorney General KENNEDY. If it is felt that is the best way of approaching the matter I take anything that is constitutional. I think if you put it on the basis of the 14th amendment your are asking for all kinds of difficulties and troubles.

Can I ask you a question? If it is——

Mr. LINDSAY. I have one last question for you.

Attorney General KENNEDY. May I ask you on the same point. If you would accept it if it is found in order to get legislation passed it has to be based on the commerce clause?

Mr. LINDSAY. If we have to have a combination of some kind, in order to get a bill through, I would look at it with a great deal of interest and would probably vote for it because I think we must have legislation on public accommodations.

Attorney General KENNEDY. I am delighted to hear that.

Mr. LINDSAY. I am not so sure that you have the votes or can get the votes if you insist on just the one method and this is what troubles me.

Attorney General KENNEDY. We are going to have to have everybody's help to get it passed.

Mr. LINDSAY. There has to be a bipartisan effort. Just one last question. Have you had occasion to study Senator Cooper's bill in the other body, which is tied into the word "licensing"? The bill I read uses the word "authorized." The concept is the same except that Senator Cooper, who I think introduced this bill about 2 months ago, ties it in with the licensing power of the State. Have you had occasion to examine that bill?

Attorney General KENNEDY. I am familiar with it, Congressman and I have the same problem about it that I have about this other bill.

Mr. LINDSAY. Would you have any less of a problem with it?

Attorney General KENNEDY. No. I think if you tie it to the 14th amendment, when this subject was specifically discussed in the civil rights cases of 1883 about the licensing, that I think is possessed major constitutional problems for some people. Again I call your attention to the statements that have been made by those who are opposed to this bill in the last 48 hours. They have all talked about this bill on the basis that we are trying to overrule a Supreme Court decision. We are not upholding the law of the land. This is the law of the land at the present time. What is this administration doing? It is trying to come in and saying they are not paying any attention to the Supreme Court. I think that is just what we will run into. I asked your colleague if he had that problem.

Mr. LINDSAY. I read the decisions of the Supreme Court much more favorably than you do.

Attorney General KENNEDY. I agree with you.

The CHAIRMAN. We are almost approaching 3 o'clock, and I must ask that the questions be limited. We have a vote on the defense appropriation bill. So considering those exigencies I hope the members will be very brief in their questions.

Mr. Cahill.

Mr. CAHILL. Mr. Chairman, out of respect for the Attorney General's time I think I will keep my criticisms and suggestions for the executive session of the committee. I would like to state publicy that I would like to join the Attorney General in expressing the very fervent hope that Congress will on a bipartisan basis translate the noble words that have been in the minds and mouths of a lot of Members into realistic action so we can get an effective civil rights bill regardless of which route we pursue.

Attorney General KENNEDY. Thank you. I might say you led this fight for a long period of time. So I acknowledge that.

Mr. MACGREGOR. Mr. Attorney General, I think that those of us who are very much interested in accomplishing legislation in the public accommodations field feel that in order for that legislation to serve its intended purpose we have to be concerned with the fairness of it, the acceptability of it on the part of the public generally.

Attorney General KENNEDY. That is right.

Mr. MACGREGOR. The workability, as well as our problems in getting it passed in the Congress.

Attorney General KENNEDY. Yes.

Mr. MACGREGOR. It is for some of those reasons I think that a few of us have felt on the basis of some intensive study of constitutional

law that the 14th amendment would be a better route. But be that as it may, I would like to talk with you for a moment about the constitutionality of the 14th amendment approach. You have referred to the 1883 decision in October, by the Supreme Court. I think we ought to make the record clear that part of the Civil Rights Act of 1875 predicated ont he 14th amendment was specifically held to be constitutional.

In other words, that part dealing with the makeup of grand or petit jury lists.

Attorney General KENNEDY. Yes. The part that they declared unconstitutional was specifically the aspects dealing with public accommodations.

Mr. MACGREGOR. The reason they held it to be unconstitutional was because it was direct rather than corrective legislation, to borrow from the terminology of the Supreme Court's opinion. Would you agree, sir?

Attorney General KENNEDY. Maybe we are talking about the same thing.

Mr. MACGREGOR. I am sure we are.

Attorney General KENNEDY. It is primarily based on the fact that there was not greater State involvement.

Mr. MACGREGOR. There was nothing tied to the action or failure to act on the part of any State official or any official of a municipality within a State.

Attorney General KENNEDY. May I read the 14th amendment or put it in the record, the first part:

All persons born or naturalized in the United States and subject to the jurisdiction thereof are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Then section 5 states that Congress shall have power to enforce by appropriate legislation the provisions of that article. I would think that is the appropriate part.

Mr. MACGREGOR. Yes. In that connection I find the following language from the 1883 opinion to be particularly helpful to us at this time. May I quote?

The legislation which Congress is authorized to adopt in implementation of the 14th amendment is such as may be necessary and proper for counteracting such laws as the States may adopt or enforce, and which by the amendment they are prohibited from making or enforcing, or such acts or provisions as the States may commit and take and which by the amendment they are prohibited from committing or taking.

In connection with the parts of the 14th amendment which you read, Mr. Attorney General, and the parts of the 1883 opinion which you read, would you not agree that this committee could work out public accommodations language predicated on the 14th amendment which would be constitutional in light of the language of the 1883 opinion and indeed the thrust of the opinion?

Attorney General KENNEDY. Yes. I would agree with you. I do not dispute it. I think that the Supreme Court would undoubtedly find that this was constitutional, in my judgment. But I can also see making an argument on the other side. I can see many people would hold for the other side.

Mr. MACGREGOR. I have just a few more comments. Let me try to destroy in advance that argument, which I know you do not support for the purpose of clarification. In connection with the language which you have before you, at the bottom of that page, Mr. Attorney General, where there is a quote from the 1883 opinion, I think it is important to note that the Supreme Court in specifically holding part of the 1875 statute to be constitutional said as follows:

> Whether the statute book of the State actually laid down any such rule of disqualification or not, the State through its officer enforced such a rule, and it is against such State action through its officers and agents that the last clause of the section is directed. The aspect of the law is deemed sufficient to divest it of its unconstitutional character and makes it differ widely from the first and second sections—the public accommodations sections—of the same act which we are now considering.

In other words, our job, if we were to determine the 14th amendment vehicle to be a more suitable one than the commerce clause, is to so draft the legislation in the words of the Supreme Court so as to divest it of what was held to be unconstitutional in the 1883 decision. Would you agree with that?

Attorney General KENNEDY. I would agree with it, Congressman. As I say, I think we are just going round and round.

Mr. MACGREGOR. I do not think we are, sir.

Attorney General KENNEDY. If you are going to try to convince me, Harlan convinced me in the minority opinion.

Mr. MACGREGOR. I am trying to suggest to you, that even in the majority opinion the Court in saying that corrective legislation was what the 14th amendment had in mind and in finding sections 1 and 2 to be direct rather than corrective legislation did not bar corrective legislation such as the type that Mr. Lindsay and Mr. Cahill and Mr. Mathias and myself and some 25 other Members of the House of Representatives sought to embody in the public accommodations legislation that we have introduced. It may be that in the course of the next week or so you will have some opportunity, and I appreciate the demands that are made upon your time, to look at some of this legislation that more than 30 Members of the House of Representatives have introduced in this field.

Attorney General KENNEDY. Can I just raise what the major point is?

Mr. MACGREGOR. I would be delighted if you would.

Attorney General KENNEDY. The paragraph that you read, means that the legislation the Congress is authorized to adopt is not general legislation on the rights of citizens but corrective legislation that is necessary and proper for counteracting such laws as the States may adopt and enforce. That is not concerned, because we do not have here laws by the States.

Mr. MACGREGOR. You in your statement specifically referred to laws which discriminate against Negroes.

Attorney General KENNEDY. Yes; but after the Supreme Court decision, in the sit-in case, those laws are no longer constitutional. What has existed in the past for the most part has been local ordinances. There have not been statewide laws frequently. It has been done by local ordinances. But now they are declared unconstitutional. In Albany, Ga., at the present time it is just a practice. In Jackson, Miss., it is a practice. You do not have laws that you can look to

that are involved in this particular matter at the present time. That is really the key problem. Amendment 14—I do not know whether you want to spend this much time—says, "No State shall make or enforce any law * * *." So the problem is where you are not dealing with laws but you are dealing with an individual who runs a department store, an individual who runs a hotel and says, "I don't want to serve Negroes." Nobody has an ordinance or law that says that he can't serve Negroes. He is just deciding he won't.

Mr. MACGREGOR. He operates establishments pursuant to a license, franchise or other authority existing in a municipality or State?

Attorney General KENNEDY. That is correct. But you could make a very strong argument that here you are not dealing with a law which is discriminating against Negroes per se. The law permits setting up a drugstore or restaurant or rooming establishment. I can see that you can make a very strong argument that direct discriminatory State action is not involved and therefore the Supreme Court would not overrule the cases that they have already declared unconstitutional.

As I say, I just want to get the legislation by. I think the same problems exist in the 14th amendment as exist under the commerce clause as to what institutions you are going to cover.

Mr. MACGREGOR. May I suggest to you, sir, and this is my last question, Mr. Chairman, that we might even have more difficulty in passing legislation if on the floor of the House of Representatives we had to answer questions as to whether or not a lunch counter with 15 stools could discriminate and one with 16 couldn't. A motel with three units could discriminate and one with four could not. A business doing a gross volume yearly of $120,000 could discriminate, one doing $121,000 couldn't. I think these criteria which must be established either by the legislative branch or judicial branch might cause us more difficulty as a practical matter in passing this legislation than would the simple approach of the 14th amendment.

Attorney General KENNEDY. Is it the simpler approach? I think there will be a good deal of opposition by Members of Congress in your own political party as well as Democrats who have some concern about covering every Mrs. Jones' motel.

Mr. MACGREGOR. You do not mean to discriminate against the Irish.

Attorney General KENNEDY. It just has one or two people. I have been through that.

The CHAIRMAN. Did you say Jones Hotel? Is that because your brother is now on the island?

Attorney General KENNEDY. I do not know what the reason is. I just thought I would switch.

Thank you, Congressman.

The CHAIRMAN. Mr. Mathias.

Mr. MATHIAS. Thank you, Mr. Chairman.

I would like to thank the Attorney General for coming today. It has been very helpful to me. The President has asked for bipartisan support for this legislation and I believe that preliminary to bipartisan support he needs some sort of bipartisan understanding of what we are talking about.

Attorney General KENNEDY. Yes.

Mr. MATHIAS. I think in this interchange today we are belatedly discovering what is on each other's minds on this subject and having

so discovered I hope we can go forward together and make some real progress. I believe with respect to the 1883 case, as indeed I am sure is the case with the Attorney General here today and every member of this committee, we are interested in civil rights for all Americans regardless of race, color, or creed, but we are also interested in the civil liberties of all Americans without respect to race, color, or creed. The Court, having some due regard for civil liberties as well as for civil rights, adopted the rationale of the 1883 case, the fact that the Congress was legislating directly on individual citizens of the United States. I am just wondering that in the double-barreled approach that has been suggested in H.R. 7152 if the provisions which relate to the interstate commerce clause, without any measurement or standard with respect to what is and what is not interestate commerce is not more nearly direct legislation on individual citizens than is the 14th amendment approach. Therefore, it is more nearly in violation of the rule laid down by the Court in 1883 than is the 14th amendment approach.

Attorney General KENNEDY. We have had under the commerce clause a great number of bills that have been passed which bear directly on an individual whether he is running a restaurant, hotel or motel, or department store.

Mr. MATHIAS. Not to interrupt you.

Attorney General KENNEDY. I have three pages of this.

Mr. MATHIAS. Each of those have been measured in interstate commerce. There has been some measure to them whether or not it is in the flow of interstate commerce.

Attorney General KENNEDY. The courts have attempted to measure it. Look at the case which considered whether a man who had a small wheat farm was actually in interstate commerce, and the implications of that case.

Mr. MATHIAS. What we are all interested in is ultimate equity for the American people.

Attorney General KENNEDY. Yes.

Mr. MATHIAS. Why postpone to some distant day when cases have run the gamut from the local courts to the Supreme Court, if we know that a standard has got to be applied? What I would suggest, since we will be obviously discussing this in this committee, is that perhaps you or your staff might want to make some suggestions in that regard in the coming days.

Attorney General KENNEDY. May I make a point that I tried to make this morning and perhaps did not make forcefully enough? The area where there is going to be a question about whether an organization, business, corporation, or individual is covered is going to be very minute. It is going to be quite clear to 99 percent of the people whether they are covered or not.

I think it is right we should be concerned. But when you talk about having to wait until it gets to the Supreme Court to determine the coverage of the bill, we really do not. This is going to have an immediate effect on 99 percent and much more.

Mr. MATHIAS. Not to prolong this point but I would say that we are dealing here with a terribly important principle which affects the liberties of all Americans. I think we have to legislate with great care in this area. I do not think that we can just use a shotgun approach in the hope that we are going to achieve a good purpose and

justify the means. I think this could be a very critical decision which is going to be made and I am sure the committee would find helpful your suggestion as to what can be done in this regard.

Attorney General KENNEDY. Thank you, Congressman.

The CHAIRMAN. The next category that the Attorney General touched upon is schools, which is part III of the omnibus bill.

Mr. Attorney General, you speak in several instances in your statement of indefinite delays in the Federal courts. In that connection, I should like to make a statement. The tempo of the Federal court enforcement of basic constitutional rights in my opinion must be sharply expedited. While most Federal judges have administered the law of the land in civil rights cases with fairness, dignity, and dispatch, indeed some have risen to heights of greatness in these difficult cases, nonetheless a few judges may have fallen short of the high standards we have a right to expect of our Federal judiciary. There have been too many instances of unconscionable delay in hearing and deciding civil rights cases, cases involving the most precious and sacred rights of all Americans. In one school desegregation case, for example, the complaint was filed in the district court in February 1956, over 7 years ago. After 5 years of litigation, in October 1961, a desegregation order became final, but only after the Supreme Court had acted. One would suppose that this would finally end the matter and that compliance would ensue, but no. The case is still pending in the district court over details of the manner and requirements of compliance. What is more, the district court's most recent opinion requiring submission of a desegregation plan by next month includes a gratuitous disapproval of the law of the land as embodied in the *Brown* case of 1954. Now 7 years have elapsed since the filing of this suit and 9 since the Supreme Court spoke and the end is not yet in sight.

A number of other cases filed in 1960, 6 years after the *Brown* case, have not yet been decided. Some have not even been tried. In some district courts, judges have apparently played the dilatory game of those who continue to resist the clear mandate of the Constitution and the *Brown* decision. The current crescendo of nationwide protest makes clear that similar needs for judicial expedition exists in other instances where the rights of Negroes are being systematically denied. It is imperative that the Federal judiciary assign to civil rights litigation and join with the rest of the Nation the recognition that justice delayed is justice denied. It is anomalous that some Federal district judges lag behind this onward movement of all citizens. I think it is proper for this Judiciary Committee to keep a watchful eye on these delayed cases and some of the judges who may in part be responsible for that delay.

Mr. MCCULLOCH. Mr. Chairman, I am very happy you have made such a statement. I noted on page 15 of the Attorney General's statement that the case in Ouachita Parish, La., was filed in January 1961 and in another county a case was filed in December 1961. I want the record to show what the law books show. Within the last 2 years, 89 new Federal judgeships were created by the Congress of the United States. It is my belief that there is in most judicial districts in the United States sufficient judicial manpower. I would like to ask, Mr. Chairman, what the Judicial Council has been doing about this inordi-

nate delay in these cases which should be terminated quickly. I would like to know what the Judicial Conference has been doing. Why has this dragging of feet been in so many places when the Congress has been trying to solve this problem?

I refer back to the Civil Rights Act of 1957 and of 1960 and an attempt to do what this committee has been doing for the last 2 years.

The CHAIRMAN. Are there any questions?

Mr. MILLER. I have one, Mr. Chairman.

Mr. Attorney General, I have only one question with regard to this Federal assistance to school desegregation. I might say in this connection you and I are on common ground. I am in full accord with your approach.

Attorney General KENNEDY. Thank you, Congressman Miller.

Mr. MILLER. I would like to point this out and have your reaction to it. This title III seems to make the achievement of racial balance in schools an objective of the Federal Government. First, I would like to ask you what in your opinion is racial balance, and does the administration interpret the decisions of the Supreme Court as requiring racial balance?

I other words, I agree and I know you do, that no child should be discriminated against because of his color. I do not agree that any school should say "You cannot come here because you are colored." No more do I believe in the desegregation system as practiced. I am in accord with the Supreme Court decision. But this presents a real physical and economic problem.

Attorney General KENNEDY. I understand.

Mr. MILLER. In other words, a school is located in a certain area. No one is discriminated against by the officials of the school. It happens though, that since the school is in this particular location, all or 90 percent or 95 percent of the children are colored. Where the school being located in this particular area, it just so happens that all the people living in that area and sending their children to that school are white. So you have in some cases schools which are 100 percent one way or 100 percent another way or 90 percent one way and 90 percent in another.

You know the problem we would have in New York City in some of the schools in the Harlem sections and Puerto Rican sections.

Attorney General KENNEDY. That is right.

Mr. MILLER. To the point where it would necessitate the cost of hundreds of thousands of dollars just to create a racial balance and would possibly require white students to spend 2 or 3 hours on a bus just to get to another school to comply with racial balance. It would require Negro students to spend a couple of hours on a bus a day just to get to another school and the cost to transport them back and forth would be almost exorbitant if not unconstitutional. I am just wondering whether or not the accomplishment of this does not rest more in the improvement of the economic status of the Negro and perhaps better housing projects or a hundred other things which might eventually by integration and by movement here and there eventually lead to a racial balance. It seems to me if it is going to be an objective of the administration to accomplish racial balance regardless of all economic and geographical factors and facts of life, this is going to impose a tremendous burden upon school districts and various States and localities.

Attorney General KENNEDY. I would agree with you. That is not our objective. We think, as you described it very well, that this is a problem. It is a problem in some of our major communities. It is a problem here in the District of Columbia. It is a problem in New York City and major metropolitan areas and its is being attacked and approached and people are concerned how it should be dealt with and what shall be done.

I think the Evening Star either today or yesterday had an excellent editorial summarizing what some of the problems are and what can be done and what might be done. All we are suggesting is this. For instance, New York is making an approach on trying to deal with New York City. Washington, D.C., has its difficulties.

What we wanted to do or suggest is that because each community is having to deal with it, that we obtain the best ideas and the best viewpoints and the best judgment on this problem and be able to disseminate that information across the country. If, in New York, we had some expertise for dealing with these difficulties we could be helpful—for example, if New York City needed some help on questions like whether it would be worthwhile picking people up on a bus and moving them to another area—and the effect on the children. The important thing is to give everybody the best possible education. Whether that improves their ability to get a good education or whether it causes many more problems than it resolves, this is the kind of idea we had in mind because it is a major problem in the northern metropolitan communities. We thought that we should begin to face up to it and see what the best ideas and the best judgment to deal with this might be.

It is not our objective to try to get balance because perhaps that is not the best way to proceed. But at least we felt it should start to be explored and communities which are dealing with this problem should have the benefit of expert advice and perhaps some economic incentive to try to deal with it. So I don't think there is any dispute on the situation.

The CHAIRMAN. Mr. Gilbert.

Mr. GILBERT. Mr. Attorney General, a statement was made by my colleague, Mr. Lindsay, with reference to a rumor in the cloakrooms. I would assume that Mr. Lindsay was referring to the Republican cloakrooms and not the Democratic cloakrooms because I have been in the Democratic cloakrooms and I have heard no such rumor nor any such conversation about scuttling of the public accommodations portions of this bill.

The CHAIRMAN. Let those rumors go to Mrs. Murphy's rooming house.

Mr. GILBERT. I am sure I cannot speak for the Attorney General or the administration, but I am not wedded to any particular language in a bill or any semantics in a bill, or any pride of authorship. All I am interested in is that effective legislation is passed so that we can get this show on the road and once and for all end this problem of of civil rights in our country.

Mr. LINDSAY. I would like to thank the gentleman. I concur completely. My objective is to get legislation through.

The CHAIRMAN. Well said.

Mr. MEADER. Mr. Attorney General, you said this morning that the legislation would cost a million and a half.

Attorney General KENNEDY. That is right.

Mr. MEADER. That would be the Department of Justice cost?

Attorney General KENNEDY. Yes.

Mr. MEADER. Do you have an estimate for title 3?

Attorney General KENNEDY. That includes title III for the Department of Justice.

Mr. MEADER. Apparently there will be some grant-in-aid funds for the schools.

Attorney General KENNEDY. I don't have the figures for that.

Mr. MEADER. Who has the responsibility for providing that?

Attorney General KENNEDY. The Commissioner of Education has that.

The CHAIRMAN. HEW would have that. We will have the Secretary of HEW here.

Attorney General KENNEDY. Also, Mr. Keppel, who is the Commissioner of Education, is the one who will have primary responsibility on this matter and it might be that you might want to hear him.

Mr. MCCULLOCH. Mr. Chairman, I am referring to paragraph B on page 20 and I ask the Attorney General if that in effect does not constitute Federal aid to public school cases?

Attorney General KENNEDY. Yes, it would.

Mr. MCCULLOCH. Has it not been our concept in large part, though not entirely up to this time, that teachers either pay for their own training or that the training of teachers be left to the States or localities? Is this not a new departure from existing practices?

Attorney General KENNEDY. It has been a subject of great debate in the Congress, of course. They are going to need this kind of assistance.

Mr. MCCULLOCH. Yes, I would agree with that statement for the purpose of this hearing. But I am particularly interested in having the record show whether or not in large part this is not a new departure in teacher training for public schools in America.

Attorney General KENNEDY. I think you are in a better position to know about the various bills that are on the books at the present time dealing with this subject. We felt in order to deal with this problem this is the best way to proceed.

Again, based on precedent here, if a different approach will accomplish the same objective, it will certainly be acceptable to us.

The CHAIRMAN. Mr. Attorney General, the bells have rung indicating a vote of ayes and nayes on the final passage of the Defense Department appropriation bill. We will now take a recess for 30 minutes.

Attorney General KENNEDY. All right, Mr. Chairman.

(Whereupon, a brief recess was taken.)

The CHAIRMAN. The committee will come to order, and we will resume. Mr. Cramer?

Mr. CRAMER. Mr. Chairman, the distinguished gentleman from New York discussed the terminology in this particular title. That is what I was particularly concerned about, and that is the reference to a new concept relating to discrimination known as racial imbalance.

I appreciate the Attorney General's comment. I would like to have permission, Mr. Chairman, that this be made a part of the record at this point.

The CHAIRMAN. Without objection.

(The material to be furnished follows:)

[From the Evening Star, Tuesday, June 25, 1963]

RACIAL IMBALANCE IN THE SCHOOLS

In the best of all possible worlds, there is no question but that the best school environment for Negro children would be one in which the students are of varied racial, cultural, economic, and religious backgrounds. It is equally clear that such an environment does not result automatically from meeting the letter of the school integration law.

This is what the education commissioner of New York State had in mind when he directed last week that "integration" is not enough—that "racial imbalance" also must be eliminated from public schools of the State. It was not a new idea, of course. A similar point, for instance, lay behind recent demonstrations by Negroes in Englewood, N.J. But the commissioner called for drastic action in New York. And for purposes of carrying out the order, he proposed to define a "racially imbalanced" school as one having 50 percent or more Negro pupils enrolled.

Whatever may be said for his motives, Commissioner Allen is playing an absurd numbers game. By his own admission, the cutoff ratio of 50 percent Negroes in any school is an arbitrary figure, selected because "we had to have some definition" of imbalance. The mounting reaction, moreover, demonstrates the futility of his action. The difficulty of enforcing such a policy in New York City schools, according to Calvin E. Gross, the city school superintendent, would be "insuperable." He characterizes the problem of transporting students under such a plan as "unbelievable." To meet Dr. Allen's definition, racial balances would have to be changed in 235 elementary schools in the city alone. Negro leaders, who generally applauded the directive, have conceded the impossibility of its total application.

The extreme example of the unworkability of this proposal is to imagine its fate in Washington. With an overall ratio of only 15 percent white pupils in public schools, the best "balance" Washington could possibly achieve if all the white students were distributed equally throughout the city would be 85 percent Negro in each school. The fact is, of course, that the ratio would go even higher, for such a policy would serve only to chase additional white families to the suburbs. No one would benefit.

The concept of a homogenized school system, in which the community is scientifically shaken up to provide an "ideal" social mix, is not only unworkable—it is philosophically unsound. The right position is that race should not be a factor in pupil assignment; once that principle is abandoned, an ethical Pandora's box opens up. It is better to stick to the time-proved concept that neighborhood schools should reflect the neighborhoods which they serve.

Where "legal segregation" in schools exists in cities such as Washington and New York, the answer does not lie in frantic artificial devices which attempt to make our schools shoulder all the burdens of the community. It lies—in the case of Washington, for example—in the attraction of more whites to the central city, and the accompanying spread of a part of the central city Negro population to the suburbs. The factors which eventually will accomplish these things also are clear: Urban renewal, the elimination of discrimination in housing, fuller employment, improvements in the economic status of the Negro—most of all, the growth of understanding and social maturity.

These are not the fast or easy means. But so far as we know they are the only means by which a realistic attack on this problem can be made.

Mr. CRAMER. The concept is one of an homogenized school system in which the community is scientifically shaken up to provide an ideal social mix but philosophically unsound and so forth.

Attorney General KENNEDY. I think there is a good deal more to that editorial. I wouldn't take one paragraph out of it.

Mr. CRAMER. The conclusions they reach are that these are not the fast or easy means but so far as we know they are the only means by which a realistic attack on this problem could be made with regard to integration.

Attorney General KENNEDY. I think there is a second or third paragraph. Just the first paragraph says in the best of all possible words that there is no quetsion but that the best school environment for Negro children would be one in which the students of various racial cultural and religious backgrounds are enrolled and so on.

Mr. CRAMER. Is that your impression of what is meant by that?

Attorney General KENNEDY. I think that covered that matter.

Mr. CRAMER. In section 304(B)(2) which appears on page 21, line 13, you refer to grants by the Commissioner to defray the cost of employing specialists in the problems incident to racial imbalance and providing other assistance to develop understanding of those problems by parents, schoolchildren, and the general public. Could you indicate what specifically your office has in mind with regard to that?

Attorney General KENNEDY. This would be under the Commissioner of Education. But from our own experience we have found that consultation and discussion of these problems prior to the time they occur can be very helpful to the parents, the teachers, the school districts, and the community.

I think of Atlanta, Ga., Dallas, Tex., Memphis, Tenn., the 70 or so school districts that made the transition in an orderly fashion without any violence last September and the September before.

There was a good deal of work and effort that went into that by people at the local level and by the Department of Justice so that the transition would be made in a peaceful and orderly fashion and so that it would accomplish the most and greatest good for the schoolchildren, both Negro and white.

That required, as I say, consultation with the local authorities and with the schoolchildren and with the parents. I think that can be very helpful. If it is done on a more organized basis, I think it could make a major difference in getting over this difficulty.

Mr. CRAMER. As I gather, (b)(2) also relates to developing understanding of the problems of racial imbalance, as well. On 304(d), relating to loans to the school board, under certain circumstances, is this provision for a loan to a school board or local government based upon a factual situation in the *Prince Edward County* case? Is that the basis for this provision?

The funds which would otherwise be available to any school board either directly or through the local government have been withheld or withdrawn by the State or local government action because of the actual or prospective desegregation; is that what gave rise to that?

Attorney General KENNEDY. No, it would not refer to Prince Edward County because the school board and the local government wouldn't be in favor of that kind of operation.

Mr. CRAMER. Isn't that case on appeal to the Supreme Court on the theory that if the State furnishes money to schools in one part of the State it must do so to schools in all parts of the State.

Attorney General KENNEDY. It is in the circuit court at the present time. I didn't hear the question but it is in the circuit court.

Mr. CRAMER. The issue is that if the State furnishes money to schools in one part of the State it must do so to schools in all parts of the State. Is that the issue?

Attorney General KENNEDY. That is correct. That is one issue.

Mr. CRAMER. Whether it was your intention or not would not this section apply to the Prince Edward situation?

Attorney General KENNEDY. It would be difficult here, Congressman, because as I said, the local school board and the local government of Prince Edward County would not be in favor of this kind of an operation and would not cooperate at least at the present time and have not indicated in any way that they would cooperate with that kind of method.

What we had in New Orleans was quite different. In 1961, in February and March, the school board was anxious to open up the schools and keep them operating. They had the opposition of the State legislature which was going to cut off all the funds to New Orleans schools.

I don't know if you remember that. We ultimately, through a good deal of effort over a period of some time, were able to work that out. Now the schools are desegregated and are operating satisfactorily.

It would give us a further weapon if that kind of situation arose again.

Mr. CRAMER. Just one other question. The suits to be brought by the Attorney General in section 2307 are, in effect, based upon a title III enforcement provision, but the Attorney General is given certain additional discretion which is very similar in nature to that which I pointed out in the accommodation section?

Attorney General KENNEDY. Yes.

Mr. CRAMER. The same discretion as to whether in your judgment the signers are unable to initate and maintain an appropriate action?

Attorney General KENNEDY. Yes.

Mr. CRAMER. And whether it materially furthers the orderly progress of the desegregation of public education. Whether they can obtain effective legal representation, whether it would jeopardize the employment, economic standing, economic damage and so forth. Those same discretions are in your hands in this section as well.

Attorney General KENNEDY. So that we will not be going automatically into these cases. There will be some discretion about which cases to take and which cases not to take and how to proceed.

Mr. CRAMER. Don't you think it would be better if the Congress wrote the standards instead of leaving it in the discretion of the Attorney General as to who is entitled to the services of the Attorney General? This and in the accommodation cases?

Attorney General KENNEDY. I am sure if it could be more definitive that would be fine. I think even if you would be willing to write into the bill the standards of desegregation of school districts, that might be helpful, too.

Mr. CRAMER. That is all I have.

Mr. LINDSAY. Mr. Attorney General, I think this is an excellently drawn section. You don't have any idea of the projected cost of this, do you?

Attorney General KENNEDY. I don't have for the Commissioner of Education. I have for our own operation.

Mr. LINDSAY. That is not included in the million and a half figure you gave?

Attorney General KENNEDY. It is.

Mr. LINDSAY. It is included?

Attorney General KENNEDY. That is correct. That would be both for the public accommodations part of this bill as well as the education bill. We anticipate it would be a million and a half.

Mr. LINDSAY. In regard to section 307(a) the suits by the Attorney General brought on behalf of an individual, had you considered including a broad "part three"?

Attorney General KENNEDY. We thought this was perhaps a better way to proceed, Congressman. Plans to have this added discretion as to which districts would be approached first and also putting the incumbent upon the plaintiff to show that he or she could not bring the suit themselves.

Mr. LINDSAY. I think that is a sound approach. Some of the bills that have been introduced have the full part three, that would enable the Government to invoke the Bill of Rights protection for individuals who can't do so for themselves in all areas involving equal protection of the laws, not just schools. I take it that was considered?

Attorney General KENNEDY. We thought that by the provisions of the public accommodations bill and the school bill, a good portion of "part three" was covered. This was a better way in which to do it.

Mr. LINDSAY. Thank you.

The CHAIRMAN. Mr. Mathias?

Mr. MATHIAS. Mr. Attorney General, I am wondering in the light of your previous statements to Mr. Lindsay whether you could make some comparison of title three as included in the Lindsay bill which was introduced on the third of June and with your own.

As I understand you have not read the Lindsay bill.

Attorney General KENNEDY. I am in trouble again.

Mr. MATHIAS. You are not in trouble at all. I understand the pressure you have been under. I would just comment this way on that. There has been an appeal for bipartisan support here.

We want to give you bipartisan support. I think it would be helpful for those 30-odd Republican Members who have introduced the so-called Lindsay bill on the third of June, and 40-odd Republican Members that introduced a bill in January if you had been prepared to compare some of the thoughts that we had labored over with sincerity and with some effort with those that you are advancing today.

Attorney General KENNEDY. Congressman, I think I am prepared to discuss the principles involved and I have been discussing them, I think, a good part of the day. I am delighted to discuss the principles.

Mr. MATHIAS. I just say perhaps your staff could prepare some comparison of the title 3 in each of the two proposals. It would be helpful to us to have your thoughts how they compare. That is all I have in mind to request.

The CHAIRMAN. Mr. Foley?

Mr. FOLEY. Mr. Attorney General, I notice in title III there is no specific statement relative to the court's jurisdiction. Is that because you feel it is not necessary as you did in title II?

Attorney General KENNEDY. That is correct.

Mr. FOLEY. Number two, in some of the legislation that has been proposed there is a provision that you must exhaust your State or administrative or other legal remedies before you can bring the action in the Federal district court.

I notice in title II you particularly take care of that problem. There is no mention made in III about the exhaustion of remedies. Is that because you feel as a matter of law today it is not necessary?

Attorney General KENNEDY. I think the Supreme Court decision quite clearly made this a constitutional right and under the Constitution an individual has a right to bring these cases.

So, therefore, I don't think there is any State remedy to go through.

Mr. FOLEY. Now, finally, comparing title III to title II, there is no provision in III as there is in II for expediting the consideration of these cases. Do you feel that there is any need to expedite the consideration of school cases?

Attorney General KENNEDY. I think that might be written into the bill, also. I think that would be fine. It would be helpful.

The CHAIRMAN. Now we come to the third subject, title I of the omnibus bill, concerning voting. Mr. Attorney General, I turn to page 5 in connection with literacy tests. I would like to ask you the following:

On line 4 you speak of instructions carried on predominantly in the English language. Would that mean that the applicant has to have an understanding of English or merely that he attends a school where the instruction is predominantly English?

Attorney General KENNEDY. Where is this you are reading from, Mr. Chairman? What line?

The CHAIRMAN. Page 5.

Mr. FOLEY. Lines 3, 4, and 5.

The CHAIRMAN. The reason why I ask that is that in some States it is not a condition precedent that the applicant for voting understand English. This bill reads:

> Completed sixth grade in a public school or private school accredited by any State or territory where instruction is carried on predominantly in the English language.

Suppose an individual has gone to such a school and still doesn't know or understand English, would he still be eligible to vote?

Attorney General KENNEDY. Yes. Under this bill where the instruction is carried on predominantly in the English language he has been through the sixth grade with that kind of education, then he would be eligible. There would be presumption that he was literate.

The CHAIRMAN. If he attends a school where English is taught it is presumed that he understands English?

Attorney General KENNEDY. That is right. The presumption that he was literate.

The CHAIRMAN. Mr. Attorney General, I have before me a telegram sent to me by Mr. Clarence Mitchell, director of the Washington bureau of the NAACP. It is a rather long wire but it is important enough for me to read:

> We were advised by long-distance telephone last night that shots were fired at colored citizens active in registering and voting campaigns, in Canton, Miss.
>
> We were also told that in Jackson hundreds of colored persons who were trying to register and vote are being frustrated by oral examinations while white voters are not required to take such examinations.
>
> We are further advised that voting officials have asked some colored persons what is the State seal used for? and other similar irrelevant matters.
>
> We are certain you have noted reports in the morning papers that 10 persons were arrested in Greenwood for "refusing to disperse" when they were attempting to register.
>
> These incidents emphasize the importance of Federal presence in enforcing existing law. Respectfully urge that you impress on the Attorney General the need to continue to keep a watchful eye and a Federal marshal on the scene to prevent intimidation and discrimination against colored citizens seeking the right to cast their ballots in free elections.

Would you care to comment on that wire? It is rather a lengthy one.

Attorney General KENNEDY. I would say this: What was the first incident?

The CHAIRMAN. The first declaration was that shots were fired at colored citizens in registering and voting in Canton, Miss.

Attorney General KENNEDY. We began investigations yesterday when we received a report of it, Mr. Chairman. The FBI is in that matter at the present time. What was the second?

The CHAIRMAN. We were told also that in Jackson hundreds of colored persons who are trying to register and vote are being frustrated by oral examinations while white voters are not required to take such examinations.

Attorney General KENNEDY. We had an investigation going for some time in Jackson of discrimination against Negroes in their efforts to register and participate in elections. That investigation is continuing. We are aware of that information. We are looking into those specific complaints. But we have been looking into the situation in Jackson, Miss., for some period of time.

The CHAIRMAN. The third declaration was, "we are certain you have noted reports in the morning papers that 10 persons were arrested in Greenwood for refusing to disperse when they were attempting to register."

Attorney General KENNEDY. We are planning to file a complaint in connection with that matter, Mr. Chairman, either today or tomorrow. We have been looking into that.

The CHAIRMAN. Then the suggestion is made of the importance of having the Federal presence enforcing existing law and urging that you continue to keep a watchful eye—I take it you are doing that—and a Federal marshal on the scene to prevent intimidation and discrimination against colored citizens seeking the right to cast their ballots in free elections.

Attorney General KENNEDY. We are keeping a watchful eye on the thing.

The CHAIRMAN. What about the suggestion of having a Federal marshal on the premises?

Attorney General KENNEDY. On which premises?

The CHAIRMAN. Beg pardon?

Attorney General KENNEDY. I don't know where he wants the marshal. At Jackson?

The CHAIRMAN. I guess he wants it in all those places where there have been undue interruptions of the right to vote. Is that possible?

Attorney General KENNEDY. Neither the Federal Bureau of Investigation nor the marshals are a police department. We don't have a national police department in the United States.

Our authority in these matters is limited. Where there are allegations of discrimination we have had the FBI present and they are studying it.

Our lawyers and the FBI are looking into the records in a number of these matters in Mississippi, in large numbers of the counties. They will report to us if there is any information to show that there is any kind of discrimination.

We are lookng at it. I think we are taking all the steps that can be legally taken.

The CHAIRMAN. Of course, you can appreciate it is understandable for leaders of these people to request that there be some Federal protection.

As a responsible Member of Congress, I understand the limitations of your own office. You have no national police force. You do the best you can with the means at your command.

You take it that it would be quite impossible to have a marshal at every twist and turn, is that correct?

Attorney General KENNEDY. That is, Mr. Chairman. There are cases where we have tried to take extraordinary steps to try to deal with some of these problems, but we don't have the authority to send marshals or anyone else into all these areas at the present time.

We don't have that authority. To be given that authority would be a major step by Congress. What Congress would be doing is really establishing a national police force. I would think a good deal of thought would go into that before that step was taken.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask the Attorney General if the Federal grand juries down there are now made up of both whites and Negroes.

Attorney General KENNEDY. Yes, they are, Congressman.

Mr. MILLER. I have just one question on this voting section. What would the administration's attitude be to the inclusion in the bill of a requirement that the voting referees provided for in the bill be bipartisan; that is, one Democrat and one Republican?

Attorney General KENNEDY. That would be fine. We would have no objection to that.

The CHAIRMAN. Mr. Meader?

Mr. MEADER. I understand that we would have an easier time finding Republicans in some of these areas now.

The CHAIRMAN. Mr. Cramer?

Mr. CRAMER. I was interested in the Attorney General's comment with regard to the request for marshals in the registration areas which has been a demand made by a number of witnesses that have appeared before this committee in the past weeks as I am sure the distinguished Attorney General is familiar.

That has been my concern. If Congress or the executive branch should acquiesce in such an approach, it would have to result in a national police force which I don't think anyone is presently wanting to accept.

On page 4, line 6, the literacy tests administered to each individual are required to be wholly in writting. May I ask a question concerning that? Does this requirement that the literacy test be administered wholly in writing perhaps mean that whoever cannot write but who otherwise might qualify—in fact, I understand there are a number qualified now—would be denied the right to vote?

Attorney General KENNEDY. If he had a literacy test, Congressman as we have found the practice has been to use a subjective test and therefore to exclude Negroes.

The only way that we can work to get around that is to have it in writing so that you have an objective test and the individual then has the opportunity to examine what the answers to the questions that were given to him were.

Mr. CRAMER. I can understand that is a problem. Isn't there a problem on the other side from the standpoint of the voter himself

who is not able to write who otherwise would be qualified? He may not be disqualified under a State law.

Attorney General KENNEDY. The State can qualify him. They don't have to give him a written test.

Mr. CRAMER. In other words, he would have no test whatsoever. That is the only way he could be qualified, by no test at all?

Attorney General KENNEDY. If the State feels, and there are some States that don't have these kinds of tests, if it wants everybody to register, it has the authority to do so. If it is going to give a test then it has to be the same for every individual. The way to make sure that is done is to have it written so that the individual can then examine his questions and his answers.

Mr. CRAMER. What happens to the person in that State where there is such a requirement who can't write? Isn't he automatically disqualified and is that right?

Attorney General KENNEDY. On the basis that he is illiterate?

Mr. CRAMER. Yes.

Attorney General KENNEDY. The State can put in other standards if the standards are objective and apply to everyone. Negro and white alike.

Mr. CRAMER. Not under this wording. The test has to be administered to each individual wholly in writing?

Attorney General KENNEDY. That is, if there is a literacy test, Congressman. That is correct.

Mr. CRAMER. Don't you think that poses a very serious question in regard to written literacy tests exclusively? The result will obviously be that those who can't write will be excluded from voting, many of whom may be able to vote today?

The CHAIRMAN. You mean, for example, a paraplegic who could not use his hands?

Mr. CRAMER. I mean that. Or someone who is literate but does not write.

The CHAIRMAN. Or a blind person?

Mr. CRAMER. I also mean someone who is literate and can't write.

Attorney General KENNEDY. I don't think there is an overwhelming large number.

Mr. CRAMER. There are an awful lot that sign their name with an X.

Attorney General KENNEDY. Would you call that a literate person?

Mr. CRAMER. It is not up to me to judge. The statute says it has to be answered in writing.

Attorney General KENNEDY. We are talking about literacy tests.

Mr. CRAMER. Exactly.

Attorney General KENNEDY. I thought it was to see if they are literate. If they can't sign their name except by an X, I suppose the State would not want them to vote.

Mr. CRAMER. In other words, anybody who cannot write in a State where a literacy test exists would automatically be excluded in voting. That would be the result?

Attorney General KENNEDY. I suspect it would. Any place they have a literacy test and you can't write, then you are in trouble.

Mr. CRAMER. You are in trouble under this statute but you may not be in trouble today. That is the point.

Mr. MEADER. Would the gentleman yield?

Mr. CRAMER. Yes. I would be glad to.

Mr. MEADER. I did not appreciate that problem until my colleague from Florida raised the question. Does this involve the Congress in prescribing qualifications for voters which is a matter of State law ordinarily?

Attorney General KENNEDY. I don't believe so, Congressman.

Mr. MEADER. They might have a literacy test where they ask some questions about the history of the United States and the Constitution.

Attorney General KENNEDY. They can still do that.

Mr. MEADER. But they do it all orally. Doesn't this require any such test to be a written test?

The CHAIRMAN. If the gentleman would yield, as I understand this, the Census Bureau has said that a person is literate if he can read and write. My own State provides that in certain instances a literate person may not be able to write because of physical disabilities—such as one who is blind or one who is a paraplegic and can't use his hands.

That doesn't mean that the State law which would permit a man to vote, although he can't write due to physical disability, would be overriden by the wording of the statute here on page 4. The State law would not be inconsistent with it.

I think both laws could dovetail, one with the other. I think you will find most States provide that where, due to physical inability, a man can't write, he can vote, if he is literate.

Mr. CRAMER. I think in order to get the matter in focus, there are many States that permit a person to vote even though he can't write.

There are also many places that permit a person to vote even though he can't read. Whoever is on the polling place at the time can go into the polling place and read the names to him and vote for him, as a matter of fact, on his instructions.

I don't see why those people should be denied the right to vote.

Attorney General KENNEDY. They are not.

Mr. CRAMER. I think it would be well to place in the record, or I would like to ask the Justice Department to do so, those State statutes where such would be the case, instances where you have literacy tests that are not in writing and where this would then possibly be a result.

Attorney General KENNEDY. Let me say that in those States that don't choose to give a literacy test—and there are many States that do not—there is no problem about that.

If you are going to give a literacy test then it has to be in writing. The purpose of the literacy test is to find out if the individual is literate.

Mr. CRAMER. What you are saying is that in every State where there is a literacy test if a man can't write he can't vote?

Attorney General KENNEDY. Yes.

The CHAIRMAN. Mr. Corman?

Mr. CORMAN. I wanted to ask the Attorney General on this point—you don't anticipate much activity on your part in attempting to prove that people are not qualified to vote under this act when the State says they are qualified?

Attorney General KENNEDY. That is right.

Mr. CORMAN. If the State determines they are qualified to vote whether they can write or not you don't anticipate attempting to stop them?

Attorney General KENNEDY. Thank you. They don't have to put any of this in. A majority of the States don't have any kind of test at all. They are home free. But the problem has been, in some of our Southern States, that the literacy test has been used this way:

The registrar sits here and a white man comes up who finished second grade and the registrar says, "You are literate." And a Negro comes up who is teaching at a local college and is declared illiterate because the registrar says, "I can tell by listening to you," and he is not permitted to vote. If the test is in writing then you will not have discrimination against Negroes.

Mr. MCCULLOCH. I have a couple of questions. Referring to page 5 and lines 17 and 18; and I read several words:

> And allegations that in the affected area fewer than 15 percent of the total number of voting age persons have the same race as the persons alleged in the complaint to be discriminated against are registered.

Do you know how many counties in the United States where there are 15 percent or less of the Negroes registered?

Attorney General KENNEDY. About 200.

Mr. MCCULLOCH. From what source do we get that information and what test is used to get it?

Attorney General KENNEDY. For the most part it comes from the Civil Rights Commission. They have made studies of these various districts. Also over the period of the last few years, we have obtained a good deal of information ourselves.

Mr. MCCULLOCH. Then I take it from these surveys, not actual head counts like the census carries on, that the Attorney General would be willing to allege in his suit that less than 15 percent of the people of the Negro race in X country are registered to vote, and therefore allege a pattern of practice?

Attorney General KENNEDY. That is correct.

Mr. MCCULLOCH. That would be the basis?

Attorney General KENNEDY. That is right. It is not that difficult to obtain those figures because the list is made up so that you can determine who is Negro and who is a white person.

Mr. MCCULLOCH. What lists are made up?

Attorney General KENNEDY. The voting lists.

Mr. MCCULLOCH. If they are not registered and they have not tried to register where would there be a voting list?

Attorney General KENNEDY. You can find out how many Negroes are in the county and then determine how many Negroes are registered and then determine whether that is 15 percent.

Mr. MCCULLOCH. But we only have census records of 10 years and we might be called upon to make allegations based upon records of that age which ordinarily are not always reliable.

I ask some of these questions because later on I hope to get into some of the provisions of the series of bills that were introduced in late January of this year which attempt to give that information accurately if the legislation be adopted. I think it is an important question of detail in this type of legislation.

Attorney General KENNEDY. I think that information can be obtained. As I say, the Civil Rights Commission has a good deal of information along those lines. Working with the Census Bureau and our own records you could obtain that information quite accurately.

Mr. McCULLOCH. I am particularly interested in the statement of the Attorney General that the Civil Rights Commission may have that information. That bears upon another proposal in the bills introduced in January.

Of course, I am sure the Attorney General knows from those bills that we there proposed to make the Civil Rights Commission a permanent commission so that this material could be collected on a continuing basis.

I would be pleased to hear the Attorney General say that he has no objection to the Civil Rights Commission being made a permanent commission in view of those and other facts.

Attorney General KENNEDY. I think our bill would go as far as 4 years, as you know. I would hope that 4 years from now we have made a major step toward resolving some of these racial problems.

And No. 2, I think it is important that Congress, with a body such as the Civil Rights Commission which has a good deal of authority, the Congress have an opportunity to look at it periodically and not just establish it ad infinitum.

Mr. McCULLOCH. I am very anxious that we make great progress in the next 4 years. At the risk of prophesying, which I am willing to take in this case, I am fearful that the civil rights problem is not going to be settled in 4 years or maybe even 10 times 4 years.

In that connection, I wonder if the Attorney General read the comment of Dr. Hannah, Chairman of the Civil Rights Commission, in the matter of the existence of this Commission. He recommended, as I recall, that it be made permanent.

Attorney General KENNEDY. I personnally am in favor of 4 years. If Congress wants to make it permanent they certainly have the authority.

Mr. McCULLOCH. The Attorney General would not object to a permanent commission if we could get the votes therefor?

Attorney General KENNEDY. I would not object to it.

Mr. FOLEY. Mr. Attorney General, I have a couple of questions of a technical nature. Turning to page 5 on lines 2, 3, and 4, you refer to a public school or a private school accredited by any State, territory, or the District of Columbia where instruction is carried on predominantly in the English language.

By that do you mean to exclude the person who attended school where English was predominantly taught in the Commonwealth of Puerto Rico? Technically, it is not within the scope of the word "territory."

Attorney General KENNEDY. We put the District of Columbia in to cover that.

Mr. FOLEY. What about the Commonwealth of Puerto Rico?

Attorney General KENNEDY. Yes, I meant the Commonwealth of Puerto Rico.

Mr. FOLEY. Then, again, turning to page 9 where you define the word "election," you refer to all Federal officers but there is no reference to the Resident Commissioner of the Commonwealth of Puerto Rico and that is in the 1960 act.

Attorney General KENNEDY. That would be fine, Mr. Foley.

Mr. FOLEY. The next to final question, have any voting referees been appointed as yet under the 1960 act?

Attorney General KENNEDY. There have not been any appointed. The judge in one case acted as a referee himself and did the registering.

Mr. FOLEY. Finally, it has been brought to our attention as a result of section 301 of the 1960 act, where the provision is made for preserving election records for 22 months, as imposing a financial burden on some communities because of the high cost of storage.

It has been suggested to us also that perhaps the Attorney General's Office be given the discretionary power at the request of the State officials to permit them to dispose of those records in less than 22 months. Have you ever thought about that question?

Attorney General KENNEDY. No, I think that would be acceptable. The incentive would come from them to ask if they could destroy the records.

Mr. FOLEY. That is all, Mr. Chairman.

Mr. LINDSAY. Mr. Attorney General, further on the 15-percent question on page 5 of the bill, did I understand correctly that the Census Bureau does have figures that give the number of voting age Negroes in communities and then you put side by side the number from the registration list who are registered to vote.

Attorney General KENNEDY. I believe they do, Congressman. I would say the basic information, however, would come from the Civil Rights Commission which does have this information in a good deal of detail. I think we would also be receiving information from the Census Bureau.

Mr. LINDSAY. At the present time, they do not have it as far as you know, or do they have it?

Attorney General KENNEDY. Which group?

Mr. LINDSAY. The Census Bureau.

Attorney General KENNEDY. I believe they have some of this information. I don't know whether they have it all. That, together with what the Civil Rights Commission has, I believe the Civil Rights Commission has the information and that is who we would depend upon primarily. But also the Census Bureau has a good deal of information.

Mr. LINDSAY. In other words, what you are saying is that you have enough information between the Civil Rights Division, the Bureau of Census to be able to implement this section of the bill?

Attorney General KENNEDY. Yes.

Mr. LINDSAY. The last question, then, would be, the only standard or criteria that you would apply would be Negroes of voting age?

Attorney General KENNEDY. That is correct.

Mr. LINDSAY. There would be no other kind of qualification that would be relevant at that point, would there?

Attorney General KENNEDY. That is correct.

Mr. LINDSAY. Thank you.

Mr. COPENHAVER. General, with regard to this allegation in title I by the Attorney General that 15 percent or less Negroes are registered, do I understand that the information would come through the examination of the registration lists at the State or local level which would show who was Negro or who was white.

Attorney General KENNEDY. You would have to have an allegation that there was discrimination in a district. Then you would find

that less than 15 percent of the Negroes were registered. You would make a claim before the courts that the reason there was such a small percentage was because of discrimination. You would be making a record examination.

Mr. COPENHAVER. But in getting the information to sustain the allegation of 15 percent or less, would that information come through the examination of the local registration lists?

Attorney General KENNEDY. No, as I answered Congressman Lindsay, the information is already available in large part from the Civil Rights Commission. That is how we arrived at the figure of 200 counties. We have a good deal of information now in connection with that.

Mr. COPENHAVER. Do you know, sir, how the Civil Rights Commission acquired their information?

Attorney General KENNEDY. How they what?

Mr. COPENHAVER. How they acquired their information as to the accurate count of who is registered and who is voting.

Attorney General KENNEDY. I believe they examined the records and also consulted with the Census Bureau.

Mr. COPENHAVER. The records would show who was Negro and who is white.

Attorney General KENNEDY. That is correct.

Mr. COPENHAVER. My question is, if the local subdivision should do away with this segregated practice of maintaining separate registration lists, How would the Department then proceed to sustain its 15-percent allegation?

Attorney General KENNEDY. It would be 15 percent at the present time. You have 200 countries at the present time that have less than 15 percent of the Negroes who are registered. You would base your claim on the information that we have at the present time. Maybe this will change in a couple of years from now and you will have to go in and make another examination and determine the information in some other fashion. There is enough information at the present time so that we can proceed in 200 counties.

Mr. COPENHAVER. Assuming that the court accepts that information. I am trying to raise a practical point. In examining the provisions, I see a great deal of difficulty in the Department of Justice, perhaps in a year or two, being able to gather the information to sustain its allegation of less than 15 percent.

Attorney General KENNEDY. That is not subject to question under the bill—the contention by the Attorney General is that less than 15 percent of the Negroes are registered.

Mr. COPENHAVER. It is not subject to question by a private party but the court could question it itself?

Attorney General KENNEDY. Actually, they couldn't.

Mr. COPENHAVER. They could not?

Attorney General KENNEDY. No, not under the bill.

Mr. COPENHAVER. So, therefore, what you are saying is that a temporary referee will be automatically appointed upon the allegation of the Attorney General which would permit people to vote prior to any determination that segregation actually exists?

Attorney General KENNEDY. No. We have a finding by the Attorney General that 15 percent of the Negroes in a particular county,

or less that 15 percent are registered to vote. Then you have a record demand and examine the records and interview witnesses and determine whether there had been discrimination. That would be presented to the court. The court would receive the allegations from the Attorney General that less than 15 percent of the Negroes are registered to vote and there was a matter of discrimination. The referee then could be appointed by the judge. What would the referee do? The referee would not register anybody but the ones that came after the case was brought. The individual Negro would have to go to the local registrar. If the local registrar refused to register him, he could go to the referee who would apply the State law and make a finding to the court. That would be subject by the local authorities to the claim that that particular individual should not be registered.

So you would have that litigated in the courts. Then if there is a pattern that had been established, these individuals registered by the referee, appointed by the court, would be permitted to participate in the elections that followed. If he court ultimately found there was no pattern of discrimination, those individuals that had been registered by the referee would have to go back to the local registrar and register over again.

Mr. COPENHAVER. Although their vote would have been counted during an election while court proceedings are still pending?

Attorney General KENNEDY. That is correct.

Mr. COPENHAVER. Would you agree with me that the procedure even under the temporary referee proposal would be very time consuming.

Attorney General KENNEDY. Yes. I think what you do establish is the fact that Negroes now, election after election—and the chairman mentioned some and Congressman McCulloch mentioned this point—cannot vote because of the fact that there has been no final determination in these cases. Once they have lost a right to vote in that particular election they have lost it forever. What we art trying to do is to make it possible, where there is a pattern of discrimination and where less than 15 percent of the Negroes are registered in that particular county, to permit the Negroes to register and vote with the referee applying the State law.

Mr. COPENHAVER. In section 1971, subsection (e), there already exists a provision which would permit a person to vote provisionally. The idea of that would be that it would permit people to vote provisionally. Would that not possibly induce the court to speed up its conclusion of the case because an individual who is running for election may well not be certified as having won the election until the decision on the provisional voters has been determined.

Therefore, there would be a local impetus to actually induce the court to move more rapidly. Wouldn't that be actually a more speedy practice and perhaps a sounder practice than the temporary referee provision?

Attorney General KENNEDY. I think we follow the same procedures in this bill.

Mr. COPENHAVER. It already exists in existing law.

Mr. MCCULLOCH. I should like to ask this question, Mr. Chairman. Following the statement of the Attorney General that there is a desire to have qualified people vote, and that inordinate delay did not pre-

vent his vote from being cast or counted. If there were a court orde issued finding this pattern and later the order has been reversed anc the vote has been cast and counted, where do we find ourselves, par ticularly in view of the paragraph at the top of page 7 of this bill. I says—

An application for an order pursuant to this subsection shall be heard withir ten days and the discussion of any order disposing of such application shall no be stayed if the effect of such stay would be to delay the effectiveness of the order beyond the date of any election at which the aplpicant would otherwise be enabled to vote.

My quick reading of this proposal is that if everything is regula and the relief requested is granted, the vote might be cast and counted and the result certified and then the original order could be reversed with no redress for a vote having been cast and counted contrary t State law.

Attorney General KENNEDY. I would say this, Congressman. Yo have to consider that the judges are going to be men of good will anc appoint referees who are men or good will and try to administer thei responsibilities properly and meet their oath of office. They com along and they find a particular individual has been discriminated against and they report that back to the court.

It can be litigated there as to whether a particular individual shoulc be registered or not. Then he is finally permitted to register. Th court would have to find that there was some pattern of discriminatio and that this individual should be permitted to register. I think ther are a good number of safeguards built into this bill.

Mr. MCCULLOCH. I am glad to hear the Attorney General say that However, I think there may be the need for votes which remain chal lenged as of the date of casting and counting to be separated so tha thereafter, if an appellant tribunal decides that votes have bee illegally cast, they will not be counted.

Attorney General KENNEDY. It is on page 7, on line 17.

The procedure for processing applications under this subsection and for the entry of orders shall be the same as that provided in the fourth and fifth paragraphs of subsection (e).

The CHAIRMAN. I am going to terminate this hearing at 5 o'clock Mr. Mathias.

Mr. MATHIAS. Thank you, Mr. Chairman. The Attorney Genera has been with us with a good deal of patience for a long time. There i one phrase that reoccurs in his testimony that has troubled me. A we reached the various sections, it has been suggested that the opera tion of the sections would adversely affect some segment of the Ameri can people. In each case, Mr. Attorney General, your answer has been well, a small number, or something of this sort. I just wondered very very briefly if you could give us the philosophy of the administratio and the Justice Department in dealing with this somewhat difficul and delicate question which goes to the basic rights of all Americans

Attorney General KENNEDY. I wouldn't know to what you are re ferring.

Mr. MATHIAS. For instance, the incident that Mr. Cramer raised, o some people who might be illiterate but today are allowed to vote. myself, know such people.

Attorney General KENNEDY. Let me ask you this: Do you know such people in an area where they give a literacy test?

Mr. MATHIAS. I don't want to bog down on the technicalities of any one point. But I would like to know the general philosophy of the administration in safeguarding civil liberties, such as protecting people from the interference of Government while attempting to meet the justifiable demands for civil rights.

Attorney General KENNEDY. I am interested in that, but merely saying so is not going to make it so. Getting back to what Congressman Cramer said, you say you know people who are illiterate but today are allowed to vote. We are not going to interfere with that. If a State wants to establish qualifications that anybody who can't read and write can vote in elections and not have literacy tests, they can vote. You made a statement that I have made a number of times.

Mr. MATHIAS. I hate to resurrect Mrs. Murphy but she was relegated to the category of one of a minimum number of people. I don't say a number of times, but it has occurred several times.

Attorney General KENNEDY. I am concerned about Mrs. Murphy. You are right, maybe we don't want to resurrect her but I am concerned about Mrs. Murphy as much as you are.

Mr. MATHIAS. What we are really getting down to, then, is that you say let us pass the bill regardless of philosophies. I want a bill just as much as you want a bill. I have been working on this area for a long time as a member of the Maryland Legislature and a Member of the Congress.

Attorney General KENNEDY. The problems you raised that exist for the legislation under the commerce clause also exist under the 14th amendment.

Mr. MATHIAS. Perhaps I can boil it down. Have you developed a philosophy within the Justice Department on what is going to be done about people whose civil liberties may collide with this civil rights legislation as it is proposed here?

Attorney General KENNEDY. Those individuals would be protected. I would have to know whom specifically you are talking about. I can make a speech for 3 minutes about civil liberties and that is not going to prove anything.

Mr. MATHIAS. Perhaps as the chairman has suggested, the lateness of the hour moves us to get along but I can direct some specific inquiries to you.

Attorney General KENNEDY. I go back to Congressman Miller and a number of other Congressmen who have raised a question of how far are you going down into the business of the United States. The same problem rests with passing any bill under the 14th amendment.

Mr. MATHIAS. That is precisely it. This is what we are asking your advice and your opinion on.

Attorney General KENNEDY. I thought you said it was a different approach by you and by us.

Mr. MATHIAS. No, I am asking your opinion on the same problem. There is no difference in approach. We are all faced with the same problem. We would just appreciate the benefit of your views on it.

Attorney General KENNEDY. Are you interested in hearing them again? Do you want to go through with that?

Mr. MATHIAS. Mr. Chairman, that is all.

The CHAIRMAN. As I say, we will terminate these hearings at 5 o'clock and there are still some more subjects open for discussion, namely: the Commission on Civil Rights, Equal Employment Opportunities, use of Federal funds, community relation services. My suggestion is, Mr. Attorney General, we hold you here to 5 o'clock and then at some subsequent meeting, we should like to have Mr. Burke Marshall here to discuss a lot of these technical questions. We could have Mr. Marshall back in executive sessions when the subcommittee goes into details concerning the bill.

Attorney General KENNEDY. That will be fine, Mr. Chairman.

Mr. CRAMER. Mr. Chairman, is there any reason why such a session should be in executive session. This would involve basic policy questions in which testimony from the Attorney General's office is vital. Why should it be held secretly and in executive session, rather than to proceed in a public session?

The CHAIRMAN. If you make it public, I don't mind that.

Mr. MILLER. Mr. Chairman, I have one question. Mr. Attorney General, I am looking for information. I am not trying to politic in this question. The President's message of June 19, 1963, states, "I renew my support of pending Federal fair employment practices, legislation applicable to both employers and unions."

What legislation is referred to?

Attorney General KENNEDY. I think there are a number of bills that are before the Congress at the present time.

The CHAIRMAN. We do not have that bill before us. That is before Education and Labor.

Mr. MILLER. When did the President previously indicate his support of such legislation?

Attorney General KENNEDY. Arthur Goldberg testified before that committee a year ago or 2 years ago.

Mr. MILLER. As a matter of fact, the Assistant Labor Secretary and Director of Labor's Bureau on Apprenticeship testified in open session to H.R. 10144 providing for an Equal Employment Opportunity Commission and power to eliminate discrimination in employment practices. Mr. Goshen said the bill would "not be helpful to any group and we do not support it." I have never seen a statement where the President does support this. Could you supply this committee with some quote from the President or some statement by him?

Attorney General KENNEDY. Arthur Goldberg appeared before the committee on behalf of it. I can't tell you specifically about that particular bill. But he appeared on FEPC legislation and said although the administration was not tied to any particular bill, that it supported FEPC in principle. I don't know what the date was. But he spoke on behalf of the administration.

Mr. MCCULLOCH. Mr. Chairman, I have a question. Mr. Attorney General, Are labor unions covered under title VII of the administration bill entitled, "Commission on Equal Employment Opportunities"?

Attorney General KENNEDY. Yes; they are.

Mr. MCCULLOCH. Will you tell me? I read it and I could not find where labor unions were covered.

Attorney General KENNEDY. It is just Government contracts or subcontractors and labor organization that have dealings with them.

I don't think our authority goes beyond that. What we have attempted to do is to bring in——

Mr. McCULLOCH. Can you point it out to me because I read it two or three times and have not been able to find it, or if that is an improper question today, point it out for the record tomorrow.

Attorney General KENNEDY. Very Well.

Mr. CRAMER. It is not in there.

Mr. MILLER. Mr. Marshall, could you point out where the labor unions are covered in title VI?

Attorney General KENNEDY. I expect it is probably in the Executive order.

Mr. McCULLOCH. The reason I ask that was because the legislation which was introduced by me late in January has a title which unequivocally and unmistakably covers labor unions. I should like to say this: I think this is one of the most effective approaches to equal employment opportunity in America.

Attorney General KENNEDY. I would agree with you.

Mr. McCULLOCH. Because if apprentices are not accepted by labor unions at an age when they will begin their job training there is going to be discrimination against them as long as they live.

Attorney General KENNEDY. I agree.

Mr. McCULLOCH. I hope the Attorney General, if the administration bill does not have that specific provision, will support this title in our bill because it is very carefully drawn.

Mr. MILLER. It does not have it, does it, Mr. Marshall?

Attorney General KENNEDY. Congressman, I think it is fundamental. It is included in the Executive order. I have been on the committee that has dealt with these problems. We have done a great deal of work with labor organizations. A number of them, a large number, a high percentage have signed these agreements. But I think what you say is fundamental to this whole operation.

Mr. McCULLOCH. I am very happy to hear you say that and would be glad to have you join in this title of our bill.

Attorney General KENNEDY. Fine. I think if it is not clear in the bill that it should cover labor organizations, I am sure we can clear that up.

The CHAIRMAN. The counsel wishes to call attention to the Executive order which contains this provision.

Attorney General KENNEDY. If you want it in the bill, it would be fine because I think it is essential.

Mr. McCULLOCH. The reason we want it in the bill is to give it legislative status and dignity. We can work on that with your representatives.

Mr. FOLEY. I am referring to part III, superpart (a) under section 302(c). It reads as follows:

Whenever the contractor or subcontractor has a collective bargaining agreement or other contractor understanding with a labor union, or other representative of workers, the compliance report shall include such information as to the labor unions or other representatives' practices and policies affecting the compliance as the committee may prescribe. *Provided*, That to the extent that such information is within the exclusive possession of a labor union or other workers' representative and the labor union or representative shall refuse to furnish such information to the contractor, the contractor shall so certify to the contracting agency as part of its compliance report and set forth what efforts he has made to obtain such information.

Mr. McCULLOCH. I would like to again ask if there are any sanctions if it be violated by labor unions?

Mr. FOLEY. Only to the enforcement of the contract itself.

Mr. McCULLOCH. And that is against the contractor and not against the union?

Mr. FOLEY. That is correct.

Mr. McCULLOCH. That is one of the points we were trying to make and which we think is so important.

Mr. CRAMER. That refers also not only to title VII, but also to title VI. Nondiscrimination in federally assisted programs relates only to the contractor or subcontractor and has no relationship whatsoever to unions either.

Mr. McCULLOCH. Yes, if I might interrupt again. There was lengthy testimony in this committee within the last 2 or 3 weeks that on the interstate highway program in several Southern States there was coninued discrimination by reason of color. Is my memory correct?

Mr. MILLER. That is correct.

Attorney General KENNEDY. May I point out title VII and perhaps, Congressman, it should be clearer, but it does say the President is authorized to establish a Commission on Equal Employment Opportunity hereinafter referred to as the Commission, and just a second sentence therein that it shall be the function of the Commission to prevent discrimination against employees or applicants for employment because of race, color, or religion. Although it doesn't spell out labor unions, it spells out people who are employees which should obviously cover labor unions. If there is any question about it, we will be glad to put it in.

Mr. McCULLOCH. We are very glad to hear that. We carefully studied this title in this bill.

Mr. CRAMER. Assuming if it were in title VII, or title VI, or both, what form of sanctions against labor unions could be employed? You are talking about withdrawing contracts with relation to the employer. What sanctions against the labor unions?

Attorney General KENNEDY. I think then the employer would have a suit against the labor organization if through their discrimination the contract had to be withdrawn.

Mr. CRAMER. Then the responsibility is on the employer to bring the suit.

Attorney General KENNEDY. It is also possible that we would have some authority.

Mr. CRAMER. I would like to suggest that proper language proposing sanctions relating to both contractors and labor unions and proper amendments to bring both title VI and title VII in line consistent with what the Attorney General has stated, should be submitted by the Attorney General's Office for consideration.

Attorney General KENNEDY. Would you be in favor of both VI and VII?

Mr. CRAMER. If you are going to put management in, you should put labor in; yes, I certainly would.

Attorney General KENNEDY. Would the gentleman vote for the bill if we put that in?

Mr. CRAMER. I reserve my right to see what kind of bill we get out.

Mr. McCULLOCH. I will be glad to answer the chairman, with the perfecting amendments, I will join with him as I joined in 1957 and 1959 in this field.

Mr. LINDSAY. In section 7, do you think the bill would be strengthened if there were a subpena power provision inserted?

Attorney General KENNEDY. Could I study that and submit it?

Mr. MEADER. Mr. Chairman, before the deadline, may I ask one question about the community relations service.

The CHAIRMAN. Certainly.

Mr. MEADER. I notice on page 26 you appoint a Director at $20,000 a year but do not require confirmation by the Senate. Is there a reason for that?

Attorney General KENNEDY. No. I never really got into much of a discussion about it, Congressman. I just do not know whether we would suggest that or not.

Mr. MEADER. Is there any objection to requiring Senate confirmation of a position of that importance?

Attorney General KENNEDY. No. I would like to reserve my answer on that. I think there are more advantages in having the individual operate out of the personal household of the President and possibly there might be some disadvantage in having ratification by the Senate. Let me think about that.

The CHAIRMAN. Could you get confirmation under these circumstances?

Attorney General KENNEDY. I think that is something that would have to be considered.

Mr. McCULLOCH. Would the gentleman yield at that point?

Mr. MEADER. Yes.

Mr. McCULLOCH. The Equal Employment Opportunities Commission provided in H.R. 3139 would require the Commissioner to be nominated by the President and confirmed by the Senate. Would the Attorney General have the same tentative objection to that proposal as he would to the way in which the members of the community service organizations are to be selected?

Attorney General KENNEDY. That is the Civil Rights Commission you are talking about?

Mr. McCULLOCH. No. I am talking about the Equal Job Opportunity Commission. The Commission on Equality of Opportunity in Employment. We proposed that the members of this Commission have staggered terms and that they be nominated by the President and confirmed by the Senate. That it be a bipartisan Commission. Would there be objection to that?

Attorney General KENNEDY. I think it should be bipartisan. I would like to think a little bit more about whether it should be confirmed by the Senate. I would like to give it a little more thought. Maybe that is the answer. Maybe it should be. I don't know.

Mr. McCULLOCH. The last sentence of section 401 on page 26 reads:

> The Director is authorized to appoint such additional officers and employees as he deems necessary to carry out the purpose of this title.

There is no reference to the civil service or classification laws. Is it intended that the Director shall have power to appoint assistants without regard to the classification and civil service laws?

Attorney General KENNEDY. No. It would be covered by the classification and civil service regulations.

Mr. McCULLOCH. I notice this office is not created in any existing department or even in the office of the President; it seems to be a completely autonomous agency that is being created here. I wonder if that is the intent here in light of the statement you made recently that it ought to be close to the White House. Should this be an office created in the office of the President?

Attorney General KENNEDY. That is the intention—that it should operate out of the White House or out of the Executive Office Building.

Mr. McCULLOCH. Is there any estimate of the number of personnel and the cost that this agency will involve?

Attorney General KENNEDY. No, we have none. I would expect that it would be quite small and as much as possible perhaps you could utilize people on a voluntary basis who would come down and devote their services.

Mr. McCULLOCH. From the discussion in the President's message, it would appear that there is a desire that this not be an office in the Department of Justice.

Attorney General KENNEDY. That is correct.

Mr. McCULLOCH. Althought such mediation as has occurred has occurred under your Civil Rights Division.

Attorney General KENNEDY. Yes. But our responsibility really is the enforcement of the law and to see that the statutes are enforced. We have gotten into this because there has not been any other group to do it. I think it would be better if that responsibility was taken from us and put over into another department. I think the best way that can be done, as I said.

Mr. McCULLOCH. As you know, Mr. Attorney General, I served on the Government Operations Committee on which you served as counsel in the Senate for many years, and there is a reluctance on the part of Congress to create new independent agencies without being responsible to anyone in the established executive branch of the Government. I am just wondering if there is any reason why this mediation service could not be performed under the Civil Rights Commission rather than to have a new autonomous agency in orbit without control by anybody.

Attorney General KENNEDY. I think it has a different function than the Civil Rights Commission, Congressman. It is to examine, and offer its good services in particular problem areas. The Civil Rights Commission has a broader responsibility. I think it can have a very valuable function if it has the right kind of people running it, in bringing white persons and Negroes together in discussing the facts and trying to work out some of these matters at a local level rather than having the Federal Government involved. I don't think it is going to require a large number of personnel. I don't envision that it will be more than a half-dozen people altogether, which would include the staff. I don't look upon it as a major operation. I think they can call on people to volunteer their services as well. So I think it would be better if it operated out of the White House and the Executive Offices rather than the Civil Rights Commission or Department of Justice.

Mr. McCULLOCH. I understand you do intend to provide the committee with some kind of estimate of how many people and how much this new agency would cost.

Attorney General KENNEDY. I would be happy to. I might say we gave a good deal of thought whether it should be in the Department

of Justice or in the Executive Offices, and we decided we thought it could function better in the White House.

Mr. McCULLOCH. The message indicated that the President intended to establish such a service by Executive order. That message was dated June 19. I presume he has not yet done so.

Attorney General KENNEDY. He has not. We are giving some thought to some people that might head it up. We make our report to the President when he returns from Europe. I hope it would be done quickly. I say, Congressman, right at this very time we have probably a half-dozen people from the Department of Justice in areas across the South trying to perform this function. I have my administrative assistant away. Mr. Marshall has a number of people who would otherwise be meeting other responsibilities. I think this is extremely valuable and helpful at this time and perhaps can head off a good deal of difficulty in some of these areas.

The CHAIRMAN. I think we have reached a little after 5 o'clock. I want to say, Mr. Attorney General, you have been patient and helpful and forthright and cooperative, and we are very grateful to you as we are to Mr. Marshall. At this point I wish to insert the presidential message of June 19, 1963.

(The message follows:)

THE WHITE HOUSE.

MESSAGE ON CIVIL RIGHTS AND JOB OPPORTUNITIES

To the Congress of the United States:

Last week I addressed to the American people an appeal to conscience—a request for their cooperation in meeting the growing moral crisis in American race relations. I warned of "a rising tide of discontent that threatens the public safety" in many parts of the country. I emphasized that "the events in Birmingham and elsewhere have so increased the cries for equality that no city or State or legislative body can prudently choose to ignore them." "It is a time to act," I said, "in the Congress, in State, and local legislative bodies and, above all, in all of our daily lives."

In the days that have followed, the predictions of increased violence have been tragically borne out. The "fires of frustration and discord" have burned hotter than ever.

At the same time, the response of the American people to this appeal to their principles and obligations has been reassuring. Private progress—by merchants and unions and local organizations—has been marked, if not uniform, in many areas. Many doors long closed to Negroes, North and South, have been opened. Local biracial committees, under private and public sponsorship, have mushroomed. The mayors of our major cities, whom I earlier addressed, have pledged renewed action. But persisting inequalities and tensions make it clear that Federal action must lead the way, providing both the Nation's standard and a nationwide solution. In short, the time has come for the Congress of the United States to join with the executive and judicial branches in making it clear to all that race has no place in American life or law.

On February 28, I sent to the Congress a mesage urging the enactment this year of three important pieces of civil rights legislation:

1. *Voting.*—Legislation to assure the availability to all of a basic and powerful right—the right to vote in a free American election—by providing for the appointment of temporary Federal voting referees while voting suits are proceeding in areas of demonstrated need; by giving such suits preferential and expedited treatment in the Federal courts; by prohibiting in Federal elections the application of different tests and standards to different voter applicants; and by providing that, in voting suits pertaining to such elections, the completion of the sixth grade by any applicant creates a presumption that he is literate. Armed wih the full and equal right to vote, our Negro citizens can help win other rights through political channels not now open to them in many areas.

2. *Civil Rights Commission.*—Legislation to renew and expand the authority of the Commission on Civil Rights, enabling it to serve as a national civil rights

clearinghouse offering information, advice and technical assistance to any public or private agency that so requests.

3. *School desegregation.*—Legislation to provide Federal technical and financial assistance to aid school districts in the process of desegregation in compliance with the Constitution.

Other measures introduced in the Congress have also received the support of this administration, including those aimed at assuring equal employment opportunity.

Although these recommendations were transmitted to the Congress some time ago, neither House has yet had an opportunity to vote on any of these essential measures. The Negro's drive for justice, however, has not stood still—nor will it, it is now clear, until full equality is achieved. The growing and understandable dissatisfaction of Negro citizens with the present pace of desegregation, and their increased determination to secure for themselves the equality of opportunity and treatment to which they are rightfully entitled, have underscored what should already have been clear: The necessity of the Congress enacting this year—not only the measures already proposed—but also additional legislation providing legal remedies for the denial of certain individual rights.

The venerable code of equity law commands "for every wrong, a remedy." But in too many communities, in too many parts of the country, wrongs are inflicted on Negro citizens for which no effective remedy at law is clearly and readily available. State and local laws may even affirmatively seek to deny the rights to which these citizens are fairly entitled—and this can result only in a decreased respect for the law and increased violations of the law.

In the continued absence of congressional action, too many State and local officials as well as businessmen will remain unwilling to accord these rights to all citizens. Some local courts and local merchants may well claim to be uncertain of the law, while those merchants who do recognize the justice of the Negro's request (and I believe these constitute the great majority of merchants, North and South) will be fearful of being the first to move, in the face of official, customer, employee, or competitive pressures. Negroes, consequently, can be expected to continue increasingly to seek the vindication of these rights through organized direct action, with all its potentially explosive consequences, such as we have seen in Birmingham, in Philadelphia, in Jackson, in Boston, in Cambridge, Md., and in many other parts of the country.

In short, the result of continued Federal legislative inaction will be continued, if not increased, racial strife—causing the leadership on both sides to pass from the hands of reasonable and responsible men to the purveyors of hate and violence, endangering domestic tranquillity, retarding our Nation's economic and social progress and weakening the respect with which the rest of the world regards us. No American, I feel sure, would prefer this course of tension, disorder and division—and the great majority of our citizens simply cannot accept it.

For these reasons, I am proposing that the Congress stay in session this year until it has enacted—preferably as a single omnibus bill—the most responsible, reasonable, and urgently needed solutions to this problem, solutions which should be acceptable to all fairminded men. This bill would be known as the Civil Rights Act of 1963, and would include—in addition to the aforementioned provisions on voting rights and the Civil Rights Commission—additional titles on public accommodations, employment, federally assisted programs, a Community Relations Service, and education, with the latter including my previous recommendation on this subject. In addition, I am requesting certain legislative and budget amendments designed to improve the training, skills and economic opportunities of the economically distressed and discontented, white and Negro alike. Certain executive actions are also reviewed here; but legislative action is imperative.

I. EQUAL ACCOMMODATIONS IN PUBLIC FACILITIES

Events of recent weeks have again underlined how deeply our Negro citizens resent the injustice of being arbitrarily denied equal access to those facilities and accommodations which are otherwise open to the general public. That is a daily insult which has no place in a country proud of its heritage—the heritage of the melting pot, of equal rights, of one nation and one people. No one has been barred on account of his race from fighting or dying for America—there are no "white" or "colored" signs on the foxholes or graveyards of battle. Surely, in 1963, 100 years after emancipation, it should not be necessary for any Ameri-

can citizen to demonstrate in the streets for the opportunity to stop at a hotel, or to eat at a lunch counter in the very department store in which he is shopping, or to enter a motion picture house, on the same terms as any other customer. As I stated in my message to the Congress of February 28, "no action is more contrary to the spirit of our democracy and Constitution—or more rightfully resented by a Negro citizen who seeks only equal treatment—than the barring of that citizen from restaurants, hotels, theaters, recreational areas and other public accommodations and facilities."

The U.S. Government has taken action through the courts and by other means to protect those who are peacefully demonstrating to obtain access to these public facilities; and it has taken action to bring an end to discrimination in rail, bus, and airline terminals, to open up restaurants and other public facilities in all buildings leased as well as owned by the Federal Government, and to assure full equality of access to all federally owned parks, forests, and other recreational areas. When uncontrolled mob action directly threatened the nondiscriminatory use of transportation facilities in May 1961, Federal marshals were employed to restore order and prevent potentially widespread personal and property damage. Growing nationwide concern with this problem, however, makes it clear that further Federal action is needed now to secure the right of all citizens to the full enjoyment of all facilities which are open to the general public.

Such legislation is clearly consistent with the Constitution and with our concepts of both human rights and property rights. The argument that such measures constitute an unconstitutional interference with property rights has consistently been rejected by the courts in upholding laws on zoning, collective bargaining, minimum wages, smoke control, and countless other measures designed to make certain that the use of private property is consistent with the public interest. While the legal situations are not parallel, it is interesting to note that Abraham Lincoln, in issuing the Emancipation Proclamation 100 years ago, was also accused of violating the propery rights of slave owners. Indeed, there is an age-old saying that "property has its duties as well as its rights"; and no property owner who holds those premises for the purpose of serving at a profit the American public at large can claim any inherent right to exclude a part of that public on grounds of race or color. Just as the law requires common carriers to serve equally all who wish their services, so it can require public accommodations to accommodate equally all segments of the general public. Both human rights and property rights are foundations of our society—and both will flourish as the result of this measure.

In a society which is increasingly mobile and in an economy which is increasingly interdependent, business establishments which serve the public—such as hotels, restaurants, theaters, stores, and others—serve not only the members of their immediate communities but travelers from other States and visitors from abroad. Their goods come from all over the Nation. This participation in the flow of interstate commerce has given these business establishments both increased prosperity and an increased responsibility to provide equal access and service to all citizens.

Some 30 States,[1] the District of Columbia, and numerous cities—covering some two-thirds of this country and well over two-thirds of its people—have already enacted laws of varying effectiveness against discrimination in places of public accommodation, many of them in response to the recommendation of President Truman's Committee on Civil Rights in 1947. But while their efforts indicate that legislation in this area is not extraordinary, the failure of more States to take effective action makes it clear that Federal legislation is necessary. The State and local approach has been tried. The voluntary approach has been tried. But these approaches are insufficient to prevent the free flow of commerce from being arbitrarily and inefficiently restrained and distorted by discrimination in such establishments.

Clearly the Federal Government has both the power and the obligation to eliminate these discriminatory practices: first, because they adversely affect the national economy and the flow of interstate commerce; and secondly, because

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[1] Alaska, California, Colorado, Connecticut, Idaho, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, and Wyoming.

Cities with public accommodations ordinances which are outside the above States include Washington, D.C., Wilmington, Del., Louisville, Ky., El Paso, Tex., Kansas City, Mo., and St. Louis, Mo.

Congress has been specifically empowered under the 14th amendment to enact legislation making certain that no State law permits or sanctions the unequal protection or treatment of any of its citizens.

There have been increasing public demonstrations of resentment directed against this kind of discrimination—demonstrations which too often breed tension and violence. Only the Federal Government, it is clear, can make these demonstrations unnecessary by providing peaceful remedies for the grievances which set them off.

For these reasons, I am today proposing, as part of the Civil Rights Act of 1963, a provision to guarantee all citizens equal access to the services and facilities of hotels, restaurants, places of amusement, and retail establishments.

This seems to me to be an elementary right. Its denial is an arbitrary indignity that no American in 1963 should have to endure. The proposal would give the person aggrieved the right to obtain a court order against the offending establishment or persons. Upon receiving a complaint in a case sufficiently important to warrant his conclusion that a suit would materially further the purposes of the act, the Attorney General—if he finds that the aggrieved party is unable to undertake or otherwise arrange for a suit on his own (for lack of financial means or effective representation, or for fear of economic or other injury)—will first refer the case for voluntary settlement to the Community Relations Service described below, give the establishment involved time to correct its practices, permit State and local equal access laws (if any) to operate first, and then, and only then, initiate a suit for compliance. In short, to the extent that these unconscionable practices can be corrected by the individual owners, localities, and States (and recent experience demonstrate how effectively and uneventfully this can be done), the Federal Government has no desire to intervene.

But an explosive national problem cannot await city-by-city solutions; and those who loudly abhor Federal action only invite it if they neglect or evade their own obligations.

This provision will open doors in every part of the country which never should have been closed. Its enactment will hasten the end to practices which have no place in a free and united nation, and thus help move this potentially dangerous problem from the streets to the courts.

II. DESEGREGATION OF SCHOOLS

In my message of February 28, while commending the progress already made in achieving desegregation of education at all levels as required by the Constitution, I was compelled to point out the slowness of progress toward primary and secondary school desegregation. The Supreme Court has recently voiced the same opinion. Many Negro children entering segregated grade schools at the time of the Supreme Court decision in 1954 will enter segregated high schools this year, having suffered a loss which can never be regained. Indeed, discrimination in education is one basic cause of the other inequities and hardships inflicted upon our Negro citizens. The lack of equal educational opportunity deprives the individual of equal economic opportunity, restricts his contribution as a citizen and community leader, encourages him to drop out of school, and imposes a heavy burden on the effort to eliminate discriminatory practices and prejudices from our national life.

The Federal courts, pursuant to the 1954 decision of the U.S. Supreme Court and earlier decisions on institutions of higher learning, have shown both competence and courage in directing the desegregation of schools on the local level. It is appropriate to keep this responsibility largely within the judicial arena. But it is unfair and unrealistic to expect that the burden of initiating such cases can be wholly borne by private litigants. Too often those entitled to bring suit on behalf of their children lack the economic means for instituting and maintaining such cases or the ability to withstand the personal, physical, and economic harassment which sometimes descends upon those who do institute them. The same is true of students wishing to attend the college of their choice but unable to assume the burden of litigation.

These difficulties are among the principal reasons for the delay in carrying out the 1954 decision; and this delay cannot be justified to those who have been hurt as a result. Rights such as these, as the Supreme Court recently said, are "present rights. They are not merely hopes to some future enjoyment of some formalistic constitutional promise. The basic guarantees of our Constitution are warrants for the here and now * * *."

In order to achieve a more orderly and consistent compliance with the Supreme Court's school and college desegregation decisions, therefore, I recommend that the Congress assert its specific constitutional authority to implement the 14th amendment by including in the Civil Rights Act of 1963 a new title providing the following:

(A) Authority would be given the Attorney General to initiate in the Federal district courts appropriate legal proceedings against local public school boards or public institutions of higher learning—or to intervene in existing cases—whenever—

(1) He has received a written complaint from students or from the parents of students who are being denied equal protection of the laws by a segregated public school or college; and

(2) He certifies that such persons are unable to undertake or otherwise arrange for the initiation and maintenance of such legal proceedings for lack of financial means or effective legal representation or for fear of economic or other injury; and

(3) He determines that his initiation of or intervention in such suit will materially further the orderly progress of desegregation in public education. For this purpose, the Attorney General would establish criteria to determine the priority and relative need for Federal action in those districts from which complaints have been filed.

(B) As previously recommended, technical and financial assistance would be given to those school districts in all parts of the country which, voluntarily or as the result of litigation, are engaged in the process of meeting the educational problems flowing from desegregation or racial imbalance but which are in need of guidance, experienced help, or financial assistance in order to train their personnel for this changeover, cope with new difficulties, and complete the job satisfactorily (including in such assistance loans to a district where State or local funds have been withdrawn or withheld because of desegregation).

Public institutions already operating without racial discrimination, of course, will not be affected by this statute. Local action can always make Federal action unnecessary. Many school boards have peacefully and voluntarily desegregated in recent years. And while this act does not include private colleges and schools, I strongly urge them to live up to their responsibilities and to recognize no arbitrary bar of race or color—for such bars have no place in any institution, least of all one devoted to the truth and to the improvement of all mankind.

III. FAIR AND FULL EMPLOYMENT

Unemployment falls with special cruelty on minority groups. The unemployment rate of Negro workers is more than twice as high as that of the working force as a whole. In many of our larger cities, both North and South, the number of jobless Negro youth—often 20 percent or more—creates an atmosphere of frustration, resentment, and unrest which does not bode well for the future. Delinquency, vandalism, gang warfare, disease, slums, and the high cost of public welfare and crime are all directly related to unemployment among whites and Negroes alike—and recent labor difficulties in Philadelphia may well be only the beginning if more jobs are not found in the larger northern cities in particular.

Employment opportunities, moreover, play a major role in determining whether the rights described above are meaningful. There is little value in a Negro's obtaining the right to be admitted to hotels and restaurants if he has no cash in his pockets and no job.

Relief of Negro unemployment requires progress in three major areas:

(1) *More jobs must be created through greater economic growth.*—The Negro—too often unskilled, too often the first to be fired and the last to be hired—is a primary victim of recessions, depressed areas, and unused industrial capacity. Negro unemployment will not be noticeably diminished in this country until the total demand for labor is effectively increased and the whole economy is headed toward a level of full employment. When our economy operates below capacity, Negroes are more severely affected than other groups. Conversely, return to full employment yields particular benefits to the Negro. Recent studies have shown that for every 1 percentage point decline in the general unemployment rate there tends to be a 2-percentage point reduction in Negro unemployment.

Prompt and substantial tax reduction is a key to achieving the full employment we need. The promise of the area redevelopment program—which harnesses local initiative toward the solution of deep-seated economic distress—

must not be stifled for want of sufficient authorization or adequate financing. The accelerated public works program is now gaining momentum; States, cities, and local communities should press ahead with the projects financed by this measure. In addition, I have instructed the Departments of Labor, Commerce, and Health, Education, and Welfare to examine how their programs for the relief of unemployment and economic hardship can be still more intensively focused on those areas of hard-core, long-term unemployment, among both white and nonwhite workers. Our concern with civil rights must not cause any diversion or dilution of our efforts for economic progress—for without such progress the Negro's hopes will remain unfulfilled.

(2) *More education and training to raise the level of skills.*—A distressing number of unemployed Negroes are illiterate and unskilled, refugees from farm automation, unable to do simple computations or even to read a help-wanted advertisement. Too many are equipped to work only in those occupations where technology and other changes have reduced the need for manpower—as farm labor or manual labor, in mining or construction. Too many have attended segregated schools that were so lacking in adequate funds and faculty as to be unable to produce qualified job applicants. And too many who have attended nonsegregated schools dropped out for lack of incentive, guidance, or progress. The unemployment rate for those adults with less than 5 years of schooling is around 10 percent; it has consistently been double the prevailing rate for high school graduates; and studies of public welfare recipients show a shockingly high proportion of parents with less than a primary school education.

Although the proportion of Negroes without adequate education and training is far higher than the proportion of whites, none of these problems is restricted to Negroes alone. This Nation is in critical need of a massive upgrading in its education and training effort for all citizens. In an age of rapidly changing technology, that effort today is failing millions of our youth. It is especially failing Negro youth in segregated schools and crowded slums. If we are ever to lift them from the morass of social and economic degradation, it will be through the strengthening of our education and training services—by improving the quality of instruction; by enabling our schools to cope with rapidly expanding enrollments; and by increasing opportunities and incentives for all individuals to complete their education and to continue their self-development during adulthood.

I have therefore requested of the Congress and request again today the enactment of legislation to assist education at every level from grade school through graduate school.

I have also requested the enactment of several measures which provide, by various means and for various age and educational groups, expanded job training and job experience. Today, in the new and more urgent context of this message, I wish to renew my request for these measures, to expand their prospective operation and to supplement them with additional provisions. The additional $400 million which will be required beyond that contained in the January budget is more than offset by the various budget reductions which I have already sent to the Congress in the last 4 months. Studies show, moreover, that the loss of 1 year's income due to unemployment is more than the total cost of 12 years of education through high school; and, when welfare and other social costs are added, it is clear that failure to take these steps will cost us far more than their enactment. There is no more profitable investment than education, and no greater waste than ill-trained youth.

Specifically, I now propose:

(A) That additional funds be provided to broaden the manpower development and training program, and that the act be amended, not only to increase the authorization ceiling and to postpone the effective date of State matching requirements, but also (in keeping with the recommendations of the President's Committee on Youth Employment) to lower the age for training allowances from 19 to 16, to allocate funds for literacy training, and to permit the payment of a higher proportion of the program's training allowances to out-of-school youths, with provisions to assure that no one drops out of school to take advantage of this program;

(B) That additional funds be provided to finance the pending youth employment bill, which is designed to channel the energies of out-of-school, out-of-work youth into the constructive outlet offered by hometown improvement projects and conservation work;

(C) That the pending vocational education amendments, which would greatly update and expand this program of teaching job skills to those in school, be strengthened by the appropriation of additional funds, with some of the added money earmarked for those areas with a high incidence of school dropouts and youth unemployment, and by the addition of a new program of demonstration youth training projects to be conducted in these areas;

(D) That the vocational education program be further amended to provide a work-study program for youth of high school age, with Federal funds helping their school or other local public agency employ them part time in order to enable and encourage them to complete their training;

(E) That the ceiling be raised on the adult basic education provisions in the pending education program, in order to help the States teach the fundamental tools of literacy and learning to culturally deprived adults. More than 22 million Americans in all parts of the country have less than 8 years of schooling; and

(F) That the public welfare work-relief and training program, which the Congress added last year, be amended to provide Federal financing of the supervision and equipment costs, and more Federal demonstration and training projects, thus encouraging State and local welfare agencies to put employable but unemployed welfare recipients to work on local projects which do not displace other workers.

To make the above recommendations effective, I call upon more States to adopt enabling legislation covering unemployed fathers under the aid-to-dependent-children program, thereby gaining their services for "work relief" jobs, and to move ahead more vigorously in implementing the manpower development and training program. I am asking the Secretaries of Labor and HEW to make use of their authority to deal directly with communities and vocational schools whenever State cooperation or progress is insufficient, particularly in those areas where youth unemployment is too high. Above all, I urge the Congress to enact all of these measures with alacrity and foresight.

For even the complete elimination of racial discrimination in employment—a goal toward which this Nation must strive (as discussed below)—will not put a single unemployed Negro to work unless he has the skills required and unless more jobs have been created—and thus the passage of legislation described above (under both secs. (1) and (2)) is essential if the objectives of this message are to be met.

(3) *Finally racial discrimination in employment must be eliminated.*—Denial of the right to work is unfair, regardless of its victim. It is doubly unfair to throw its burden on an individual because of his race or color. Men who served side by side with each other on the field of battle should have no difficulty working side by side on an assembly line or construction project.

Therefore, to combat this evil in all parts of the country,

(A) The Committee on Equal Employment Opportunity, under the chairmanship of the Vice President, should be given a permanent statutory basis, assuring it of adequate financing and enforcement procedures. That Committee is now stepping up its efforts to remove racial barriers in the hiring practices of Federal departments, agencies and Federal contractors, covering a total of some 20 million employees and the Nation's major employers. I have requested a company-by-company, plant-by-plant, union-by-union report to assure the implementation of this policy.

(B) I will shortly issue an Executive order extending the authority of the Committee on Equal Employment Opportunity to include the construction of buildings and other facilities undertaken wholly or in part as a result of Federal grant-in-aid programs.

(C) I have directed that all Federal construction programs be reviewed to prevent any racial discrimination in hiring practices, either directly in the rejection of presently available qualified Negro workers or indirectly by the exclusion of Negro applicants for apprenticeship training.

(D) I have directed the Secretary of Labor, in the conduct of his duties under the Federal Apprenticeship Act and Executive Order No. 10925, to require that the admission of young workers to apprenticeship programs be on a completely nondiscriminatory basis.

(E) I have directed the Secretary of Labor to make certain that the job counseling and placement responsibilities of the Federal-State Employment Service are carried out on a nondiscriminatory basis, and to help assure that full and equal employment opportunity is provided all qualified Negro applicants. The selection and referral of applicants for employment and for train-

ing opportunities, and the administration of the employment offices' other services and facilities, must be carried on without regard to race or color. This will be of special importance to Negroes graduating from high school or college this month.

(F) The Department of Justice has intervened in a case now pending before the NLRB involving charges of racial discrimination on the part of certain union locals.

(G) As a part of its new policy on Federal employee organizations, this Government will recognize only those that do not discriminate on grounds of race or color.

(H) I have called upon the leaders of organized labor to end discrimination in their membership policies; and some 118 unions, representing 85 percent of the AFL-CIO membership, have signed nondiscrimination agreements with the Committee on Equal Employment Opportunity. More are expected.

(I) Finally, I renew my support of pending Federal fair employment practices legislation, applicable to both employers and unions. Approximately two-thirds of the Nation's labor force is already covered by Federal, State, and local equal employment opportunity measures—including those employed in the 22 States and numerous cities which have enacted such laws as well as those paid directly or indirectly by Federal funds. But, as the Secretary of Labor testified in January 1962, Federal legislation is desirable, for it would help set a standard for all the Nation and close existing gaps.

This problem of unequal job opportunity must not be allowed to grow as the result of either recession or discrimination. I enlist every employer, every labor union, and every agency of government—whether affected directly by these measures or not—in the task of seeing to it that no false lines are drawn in assuring equality of the right and opportunity to make a decent living.

IV. COMMUNITY RELATIONS SERVICE

I have repeatedly stressed the fact that progress in race relations, while it cannot be delayed, can be more solidly and more peacefully accomplished to the extent that legislation can be buttressed by voluntary action. I have urged each member of the U.S. Conference of Mayors to establish biracial human relations committees in every city; and I hope all communities will establish such a group, preferably through official action. Such a board or committee can provide invaluable services by identifying community tensions before they reach the crisis stage, by improving cooperation and communication between the races, and by advising local officials, merchants, and organizations on the steps which can be taken to insure prompt progress.

A similar agency is needed on the Federal level—to work with these local committees, providing them with advice and assistance—to work in those communities which lack a local committee, and generally to help ease tensions and suspicions, to help resolve interracial disputes and to work quietly to improve relations in any community threatened or torn with strife. Such an effort is in no way a substitute for effective legislative guarantees of human rights. But conciliation and cooperation can facilitate the achievement of those rights, enabling legislation to operate more smoothly and more effectively.

The Department of Justice and its Civil Rights Division have already performed yeoman service of this nature, in Birmingham, in Jackson, and throughout the country. But the problem has grown beyond the time and energies which a few otherwise burdened officials can make available—and, in some areas, the confidence of all will be greater in an intermediary whose duties are completely separated from departmental functions of investigation or litigation.

It is my intention, therefore, to establish by Executive order (until such time as it can be created by statute) an independent Community Relations Service to fulfill the functions described above, working through regional, State and local committees to the extent possible, and offering its services in tension-torn communities either upon its own motion or upon the request of a local official or other party. Authority for such a Service is included in the proposed omnibus bill. It will work without publicity and hold all information imparted to its officers in strict confidence. Its own resources can be preserved by its encouraging and assisting the creation of State and local committees, either on a continuing basis or in emergency situations.

Without powers of enforcement or subpena, such a Service is no substitute for other measures; and it cannot guarantee success. But dialog and discussion are always better than violence—and this agency, by enabling all concerned

to sit down and reason together, can play a major role in achieving peaceful progress in civil rights.

V. FEDERAL PROGRAMS

Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial discrimination. Direct discrimination by Federal, State or local governments is prohibited by the Constitution. But indirect discrimination, through the use of Federal funds, is just as invidious; and it should not be necessary to resort to the courts to prevent each individual violation. Congress and the executive have their responsibilities to uphold the Constitution also; and, in the 1960's, the executive branch has sought to fulfill its responsibilities by banning discrimination in federally financed housing, in National Defense Education Act and National Science Foundation institutes, in federally affected employment, in the Army and Air Force Reserve, in the training of civilian defense workers and in all federally owned and leased facilities.

Many statutes providing Federal financial assistance, however, define with such precision both the administrator's role and the conditions upon which specified amounts shall be given to designated recipients that the amount of administrative discretion remaining—which might be used to withhold funds if discrimination were not ended—is at best questionable. No administrator has the unlimited authority to invoke the Constitution in opposition to the mandate of the Congress. Nor would it always be helpful to require unconditionally—as is often proposed—the withdrawal of all Federal funds from programs urgently needed by Negroes as well as whites; for this may only penalize those who least deserve it without ending discrimination.

Instead of permitting this issue to become a political device often exploited by those opposed to social or economic progress, it would be better at this time to pass a single comprehensive provision making it clear that the Federal Government is not required, under any statute, to furnish any kind of financial assistance—by way of grant, loan, contract, guaranty, insurance or otherwise—to any program or activity in which racial discrimination occurs. This would not permit the Federal Government to cut off all Federal aid of all kinds as a means of punishing an area for the discrimination occurring therein, but it would clarify the authority of any administrator with respect to Federal funds or financial assistance and discriminatory practices.

CONCLUSION

Many problems remain that cannot be ignored. The enactment of the legislation I have recommended will not solve all our problems of race relations. This bill must be supplemented by action in every branch of government at the Federal, State, and local level. It must be supplemented as well by enlightened private citizens, private businesses, and private labor and civic organizations, by responsible educators and editors, and certainly by religious leaders who recognize the conflict between racial bigotry and the Holy Word.

This is not a sectional problem—it is nationwide. It is not a partisan problem. The proposals set forth above are based on a careful consideration of the views of leaders of both parties in both Houses of Congress. In 1957 and 1960, members of both parties rallied behind the civil rights measures of my predecessor; and I am certain that this tradition can be continued, as it has in the case of world crises. A national domestic crisis also calls for bipartisan unity and solutions.

We will not solve these problems by blaming any group or section for the legacy which has been handed down by past generations. But neither will these problems be solved by clinging to the patterns of the past. Nor, finally, can they be solved in the streets, by lawless acts on either side, or by the physical actions or presence of any private group or public official, however appealing such melodramatic devices may seem to some.

During the weeks past, street demonstrations, mass picketing and parades have brought these matters to the Nation's attention in dramatic fashion in many cities throughout the United States. This has happened because these racial injustices are real and no other remedy was in sight. But, as feelings have risen in recent days, these demonstrations have increasingly endangered lives and property, inflamed emotions and unnecessarily divided communities. They are not the way in which this country should rid itself of racial discrimination. Violence is never justified; and while peaceful communication, deliberation and

petitions of protest continue, I want to caution against demonstrations whic can lead to violence.

This problem is now before the Congress. Unruly tactics or pressures wil not help and may hinder the effective consideration of these measures. If the are enacted, there will be legal remedies available; and, therefore, while the Congress is completing its work, I urge all community leaders, Negro and white to do their utmost to lessen tensions and to exercise self-restraint. The Congress should have an opportunity to freely work its will. Meanwhile, I strongl support action by local public officials and merchants to remedy these grievances on their own.

The legal remedies I have proposed are the embodiment of this Nation's basic posture of commonsense and common justice. They involve every American' right to vote, to go to school, to get a job and to be served in a public place without arbitrary discrimination—rights which most Americans take for granted.

In short, enactment of the Civil Rights Act of 1963 at this session of the Congress—however long it may take and however troublesome it may be—is imperative. It will go far toward providing reasonable men with the reasonable means of meeting these problems; and it will thus help end the kind of racia strife which this Nation can hardly afford. Rancor, violence, disunity, and national shame can only hamper our national standing and security. To paraphrase the words of Lincoln, "In giving freedom to the Negro, we assure freedom to the free—honorable alike in what we give and what we preserve."

I therefore ask every Member of Congress to set aside sectional and politica ties, and to look at this issue from the viewpoint of the Nation. I ask you to look into your hearts—not in search of charity, for the Negro neither wants nor needs condescension—but for the one plain, proud, and priceless quality that unite us all as Americans: a sense of justice. In this year of the Emancipation Centennial, justice requires us to insure the blessings of liberty for all Americans and their posterity—not merely for reasons of economic efficiency, world diplomacy and domestic tranquillity—but, above all, because it is right.

JOHN F. KENNEDY.

THE WHITE HOUSE, *June 19, 1963.*

The CHAIRMAN. The committee will now adjourn, to meet tomorrow morning at 10 o'clock when we will hear from the Secretary of Labor, Mr. Willard Wirtz.

(Whereupon, at 5:05 p.m. the committee was recessed, to be reconvened at 10 a.m. Thursday, June 27, 1963.)

CIVIL RIGHTS

THURSDAY, JUNE 27, 1963

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

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

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

Also present: Representatives Corman, Lindsay, Mathias, Chelf, Shriver, and King.

Staff members present: William R. Foley, general counsel; William H. Copenhaver, associate counsel; and Benjamin L. Zelenko, counsel.

The CHAIRMAN. The committee will be in order. Our first witness this morning is the Secretary of Labor, Mr. Willard Wirtz. Mr. Secretary, will you identify the gentlemen who are at the table with you?

STATEMENT OF W. WILLARD WIRTZ, SECRETARY OF LABOR, ACCOMPANIED BY HOBART TAYLOR, JR., EXECUTIVE VICE CHAIRMAN OF THE PRESIDENT'S COMMITTEE ON EQUAL EMPLOYMENT OPPORTUNITY, STANLEY C. RUTTENBERG, SPECIAL ASSISTANT TO THE SECRETARY OF LABOR FOR ECONOMIC MATTERS; AND JAMES JONES, OF THE OFFICE OF THE SOLICITOR

Secretary WIRTZ. Than you very much, Mr. Chairman. There are at the table with me today Mr. Hobart Taylor, Jr., who is the Executive Vice Chairman of the President's Committee on Equal Employment Opportunities. On my left Mr. Stanley Ruttenberg, Special Assistant to the Secretary of Labor for Economic Matters, and on Mr. Taylor's right is Mr. James Jones, of the Solicitor's Office of the Department of Labor.

I have filed with the committee a statement which I should like to follow but which I think I can depart from in the committee's interest to shorten perhaps the presentation and permit fuller exploration of these matters you should like to question me about.

The CHAIRMAN. In which event we will place the entire statement in the record.

Secretary WIRTZ. Thank you, very much, Mr. Chairman.

It is with the deepest sense of responsibility, both personally and as Secretary of Labor, that I offer this testimony with the hope of

assisting you in your consideration of the grave issue presented in H.R. 7152, the Civil Rights Act of 1963. For there has been no more important issue before the country and the Congress—save only the issue of war and peace.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt the witness right there. I note that the Secretary refers only to H.R. 7152 which was introduced on or about June 20, 1963, and does not mention H.R. 3139 which was introduced in January of 1963, nor does he mention 6720 which was introduced on June 3, 1963, a combination of which bill have, with possibly one exception, if any, every provision which is contained in 7162. I think the record will show and the nuances indicated yesterday that there was some unhappiness that prior witnesses had failed to mention or even read that legislation. I hope that this testimony will be identified with a thorough reading of that legislation and that the approach to this matter will continue as it was throughout the past decade to be absolutely nonpartisan.

I might say that 3139 has 40 additional identical bills introduced on or about the latter part of January and H.R. 6720 had some 30 counterparts introduced. I feel strongly about that, and I hope that this approach is in accordance with the best traditions of appearances before this committee.

The CHAIRMAN. The Chair wishes to state before you answer that, I think the gentleman's statement is well taken. I have come to rely greatly upon the support that I have received on civil rights legislation from not only the Democrats but from the Republicans. Frankly, it would be extremely difficult to get a civil rights bill without the support of those on the other side of the aisle. So that it might be well if you could make reference to those bills that have been mentioned.

Secretary WIRTZ. Thank you very much, Mr. Chairman. May I say, Mr. McCulloch, first I should agree completely, without qualification, that a matter of these dimensions is a matter which must necessarily, both for the pragmatic reasons which the chairman has referred to, and because it goes directly to those things which are in our hearts rather than in our heads, has got to be above any partisan approach.

Mr. McCULLOCH. I am very pleased with that statement.

Secretary WIRTZ. I should like to say, second, that in the letter from the chairman to me asking me to appear here, his invitation and request was cast in terms of the various civil rights proposals now pending before that subcommittee. I should like to say, third, that I shall be very happy to consider in the course of the testimony and the questioning all of the other civil rights bills, because we have gone thoroughly into them and I would like very much to have an opportunity to be of whatever help I could in comparing them.

I think it is right that the statement has been cast in a particular focus. That may make it easier to develop a starting point; but I should want very much to go into the broader matter.

The issue is whether we mean what we say about democracy's central principle, which is equality of opportunity. It is whether freedom is to have the same meaning for all of us, or only for 9 of us out of every 10.

The issue is whether we are ready to accept the truth in human relations. We have put off the time for truth. Now it is here.

Mr. McCULLOCH. I would like to interrupt there, Mr. Chairman.

I thoroughly agree with that statement, and I hope the time has come when there will be a united front so that every segment of our society will be bound by the same rules against segregation as any other segment of our society. In the field of equality of opportunity, in my opinion, there is nothing as elemental as the right to equal job opportunity. That does not exist in this country today, and it is high time that we approach it with a more determined effort, both at the executive level and at the legislative level. There is such a proposal in some half a hundred bills before this committee in that field. I wanted the record to show that at this point.

Mr. Chairman, I will try not to interrupt the Secretary until he has finished.

Secretary WIRTZ. No inconvenience whatsoever, sir, and I will be glad to proceed on this basis. I have tried to suggest in my statement that I think there is more than a coincidence between the fact that we are facing up to the big truths right now in the fields of both physical science and the science of human relations. I believe with a very deep conviction that the law all people are created equal is just as basic and irrefutable as the laws of nuclear fission. The fact that one can be proved out on paper and the other cannot does not seem to me to be of distinction. I think we are at the moment of a very great truth, both with respect to the science of things and with respect to the science of people.

I should be glad to include in any of these broad statements the other bills, because I am sure they all have the same purpose. I think of them as applications of this truth that the meaning of life and of democracy lies in the complete respect of every person for all human being alike. It rejects the falsehood that any of us are entitled to seek an inner security in a fellowship restricted enough for us to dominate.

Each part of this legislation is designed to restore to every 10th man and woman and child in this country an element of freedom which has previously been taken away from him—but given the other nine as they entered life's arena. There are various provisions in this particular proposal and in the others. You have had the advantage of testimony from the administration through the Attorney General yesterday with respect to a number of those. You will note from what I have already said how strongly I endorse every single provision of this legislation and how completely I subscribe to the testimony of the Attorney General yesterday.

I think I can be most helpful to the committee in connection with the development of matters which are presented in titles VI and VII, and I have directed my testimony toward this matter of the right to work. The equal right to work is an essential element of meaningful freedom. President Kennedy pointed out in his June 19 message that:

> Employment opportunities * * * play a major role in determining whether (civil) rights * * * are meaningful. There is little value in a Negro's obtaining the right to be admitted to hotels and restaurants if he has no cash in his pocket and no job.

On the average in 1962, there were about 880,000 nonwhites, mostly Negroes, in this country who were unemployed. This means that 1 out of every 10 of the nonwhites in the work force were unemployed. Of this group of unemployed nonwhite, looking for work they cannot find, 160,000 are boys and girls between the ages of 14 and 19. This means one out of four in this age group was unemployed in 1962.

Mr. McCULLOCH. Mr. Chairman.

Forgetting that I would not interrupt the Secretary in his further presentation, I would like to ask if the Secretary knows how many of these 160,000 people were given free and unqualified opportunity to become apprentices as prospective full-fledged members of labor unions, and particularly in the trades section of labor unions. I know that is a difficult question.

Secretary WIRTZ. It is an impossible question, Mr. Chairman, because the harsh facts of the matter are that the 160,000 we are talking about here are Negro boys and girls who probably dropped out of high school the minute they became 16, who had never had the real advantages of the kind of education which would qualify them for anything except unskilled work. This is not their fault. It is society's fault. It is the root of what we are talking about.

Mr. McCULLOCH. Mr. Chairman.

A high school graduate or a student who has completed 2 years in high school is qualified, we find back in western Ohio, to become brick masons, stone masons, brick contractors, and the like. That is the field in which I am talking. How many people in the District of Columbia have been accepted for apprentice training in the trades movement of bricklaying or stonemasonry in the last year?

Secretary WIRTZ. I am in a position to give you those specific figures and will be glad to come to them. I want to make it quite clear that I conceive of the question you have asked as a basically important question which is part of a broader, more basic problem. Where there has been discrimination, and there has been discrimination, so often it has been accompanied by an inability to fill the requirements of the job because of lack of educational opportunity. But I do mean to come to more specific answers.

Mr. McCULLOCH. I wish you would, because the lack of education is not the complete answer to this discrimination by reason of color in many labor unions.

Secretary WIRTZ. No, is is not. At this point, let me say to you that in connection with the recent completely cooperative attempt by all segments of the economic structure in the District of Columbia, including the building trades, we have had 300 boys come into the office of my special assistant, Mr. Chapin, so that we could interview them preliminary to referring them to apprenticeship programs in which the building trades have agreed completely to admit them.

I can only say to you it has been a disheartening series of 300 interviews, because so many of them have not had the basic qualifications. I suggest this as an illustration of the fact that we have not been dealing with this as statistics. We have had 300 go through our Office in the last 4 weeks to find out the answers to the very question you are raising, and we have a very serious situation on our hands.

Mr. McCULLOCH. When did this program start, Mr. Secretary?

Secretary WIRTZ. All too recently. There is no question, and I do not want by my emphasis upon the basic elements to in any way suggest any question about the fact that there has been discrimination.

Mr. MCCULLOCH. Yes; you will recall that we pursued this type of discrimination at considerable length a year or more ago.

Secretary WIRTZ. That is right.

Mr. MCCULLOCH. Specifically in this room. This is not a new field in which many of us have been interested and have been trying to get some legislation on the books with sanctions which would make it effective.

Secretary WIRTZ. I agree. The whole country has been too late on this. For part of the explanation of these figures on minority group unemployment is that people in these groups have been, and are still being, denied equal employment opportunity.

Unemployment—

President Kennedy noted—

falls with special cruelty on minority groups. The unemployment rate of Negro workers is more than twice as high as that of the working force as a whole.

Among married men with family responsibilities the unemployment rate is 3 percent for whites; and 8 for nonwhites. This means that three times as many married men, heads of families, nonwhites are unemployed, in percentage terms, as compared to whites.

In the 14- to 19-year-old group, the unemployment rate is 12 percent for whites and 24 percent for nonwhites.

In 1962, more than a quarter of the "hard-core unemployed"—those who have been out of work 26 weeks or more—were nonwhite, although nonwhites made up a tenth of the work force. This means that of the 600,000 long-term unemployed, 165,000 were nonwhites who went without jobs or earnings for over 6 months.

Even among the nonwhites who are listed as employed, 10 percent have only part-time work. The comparable figure for white workers is 3 percent.

In part, the differentials in unemployment between white and nonwhite workers reflect the heavy concentration of Negroes in unskilled and semiskilled occupations which are particularly susceptible to unemployment. It is estimated that about half the difference in unemployment rates between whites and nonwhites is due to this factor alone.

However, as Matthew Kessler of the Bureau of Labor Statistics points out in a forthcoming article in the Monthly Labor Review, within each broad occupational group, unemloyment is significantly higher among nonwhite than among white workers. Thus, in 1962, the unemployment rate for nonwhite, semiskilled workers was 12 percent as compared to 6.9 percent for white persons in comparable occupations; among skilled workers the unemployment rate was 9.7 percent for nonwhites and 4.8 percent for whites; and among clerical workers, 7.1 percent for nonwhites, and 3.8 percent for whites.

Even when the Negro is employed, it is a significantly different kind of employment from what the white worker finds available. In 1962, 17 percent of the employed nonwhites had white-collar jobs; the corresponding proportion among whites was 47 percent. White workers in the white-collar occupational group thus outnumber nonwhites

29 million to 1 million. This is in marked contrast to their comparative representation in the civilian labor force in which there are nine whites for each nonwhite worker.

On the other hand, 14 percent of all employed nonwhites are unskilled laborers in nonagricultural industries; the corresponding proportion among whites is only 4 percent.

Negroes make up 90 percent of the nonwhite population and also receive the brunt of the burden of discrimination. Negroes account for only one-half of one percent of all professional engineers. Male Negroes comprise less than 3 percent of the total employment in 19 of the 26 standard professional occupations for which we have data (e.g., accountants, architects, chemists, pharmacists, and lawyers). The actual numbers involved are depressingly small. There were only about 230 male Negroe professional architects in 1960; there were about 2,300 employed male Negro accountants; 2,000 dentists, 1,500 pharmacists, and a similar number of chemists; and the largest number in any of the 19 professions was about 4,500, for doctors.

The CHAIRMAN. These figures that you have submitted here are very revealing and most impressive, and I think they should be given widespread publicity so that the Nation can be shaken out of its complacency. Ordinarily, when you speak to individuals on these matters in general—discrimination against the colored people—the individual shrugs his shoulders in indifference. His objection, apparently, is not gored. These figures which you have indicated should arouse the Nation out of its apathy and it certainly is going to have a very marked effect upon the Members of Congress, because they clearly indicate that which is almost criminal, this proscription to the degree that you have indicated.

I can assure you that this committee will do all in its power legislatively to help. But more is needed. We need the support of the entire Nation in order to get a real, genuine remedy to this real tragedy, I would say. It is a tragedy.

Secretary WIRTZ. Mr. Chairman, it is getting worse. This disparity that we are talking about here is shown in the following figures. The proportion of white workers employed as managers, officials, proprietors, and sales workers in 1962 was 19 percent; only 4 out of every 100 nonwhites were employed in these occupations.

There have, to be sure, been some gains. The average wage and salary income of nonwhite males has increased about seven times since 1940. The precent of nonwhite men working as skilled craftsmen more than doubled between 1940 and 1962, as did the percentage in professional and technical professions. In each of these groups, nonwhites gained faster than whites. The number of nonwhites working in Federal, State, and local government is five times higher than in 1940, totaling now about 12 percent of all such employees.

This kind of progress is important, for it confirms that there are no elements in this situation which cannot be overcome. It points up the fact that this cruel disparity is of our making and is ours to overcome.

Yet the disparity has been getting worse instead of better. The nonwhite unemployment rate was 60 percent higher than for whites in the period 1947–49. It has been consistently twice as high in each of the years 1954–62. This is explainable, in part, because the majority

of nonwhite workers are in unskilled and service occupations where machines are taking over the work which used to be performed by hand.

I should like to make it quite clear that one of the clearest effects of automation in this country today is that it is drying up the unskilled jobs in which a high percentage of the nonwhite employees have been working. This is a problem which is being aggravated as the result of automation. Having shown this picture to you, I want to be quite clear that there are three explanations for it and not one. There are three fronts on which this problem has got to be met. We are talking here today particularly about discrimination. We will not do ourselves justice unless we recognize that this is one and only one of the three problems.

In a sense, the most basic cause of the unemployment of minority groups today is a shortage of jobs in the economy as a whole for all workers. It will be a hollow victory if we get the "Whites Only" signs down, only to find "No Vacancies" signs behind them. It is essential that we solve this unemployment problem for all workers, both white and nonwhite.

Mr. McCULLOCH. Again, Mr. Chairman, I would like to interrupt, because I agree completely with the Secretary.

The mail has already started coming in to Members of Congress saying, "Is the proposal of the President, is the proposal of the Members of Congress, going to be only a share-the-jobs opportunity, or are you moving toward creating more jobs?" I agree with the Secretary.

Secretary WIRTZ. We are talking basically about 4 million unemployed people of whom 800,000 are nonwhites and 3 million are whites. And unless we make more jobs, the price of eliminating discrimination will be somebody else's loss of a job; and that is no victory, not at all.

Mr. ROGERS (of Colorado). Mr. Secretary, I take it you advocate that the Congress adopt the area redevelopment program that the House of Representatives turned down the other day.

Secretary WIRTZ. In those terms and precisely. The jobs which would come from the enactment of the Area Redevelopment Act approved by the Senate but turned down by the House cannot be calculated in precise terms without going into a lot of higher arithmetic about multipliers and accelerators. But that bill means jobs and a lot of jobs for everybody.

Mr. ROGERS. It means jobs in the area where there is unemployment, because you have to get to 6 percent before you start; isn't that right?

Secretary WIRTZ. Yes. I am so glad this point has been made. Everybody here, I am sure, agrees on the basic principles of meeting this discrimination problem. Our efforts are going to be defeated unless the point that is here being made by the chairman, Mr. McCulloch, and Mr. Rogers is met. Because if this gets into a posture where getting a colored man a job means a white man is losing it, we are not going to get this legislation. I want to make it just as clear as I can. It seems to me this has got to be in the context of fuller employment. I am for equal employment; but only as equal employment is part of full employment will it be successful. It is just that simple.

In this same connection, I do call your attention to the figure which President Kennedy used in his message which points this out graphically, in which he referred to recent studies made by the Council of Economic Advisers. The point we are making here is shown by this fact—that for every 1 percentage point decline in the general unemployment rate there tends to be a 2 percentage point reduction in Negro unemployment.

A second cause of minority group unemployment is unquestionably the fact of lesser qualifications for various kinds of work among such groups—the result of decades of denial of equal educational opportunity and of the lesser motivations for learning which are the inevitable result of discrimination.

There is neither reason nor justification for evading the facts of inferior education and training and lesser qualifications among minority groups. They are the facts of failure, not by these groups but by the society; and they show the true dimensions of the problem we face and must meet.

Disproportionate unemployment among nonwhites is unquestionably related to the fact that about one-third of the 3 million adults in this country who cannot read or write are nonwhites; also to the fact that 25 percent (or 2.3 million) of the nonwhites 25 years of age or older did not complete 5 years of schooling (compared with 7 percent of the adult white population); and to the fact that almost half of the adult nonwhites in the country today did not finish grade school (compared with about 20 percent of the whites).

Here again there have been gains which show what the future holds—if we will seize it. Seventy-three percent of the nonwhite children of school age are actively enrolled in school; up from 55 percent in1940. Among the most critical group (14 to 17 years of age), the percentage of active enrollees has increased from 68 percent (in 1940) to 87 percent. The proportion of young nonwhite adults finishing high school in recent years was a disheartening low 42 percent; but this is 3½ times as high as it was in 1940.

This fact of unequal education and training has simply got to be faced squarely and met fully if we are serious about increasing minority group employment. It is faced squarely in the President's message of June 19, and he has submitted to the Congress a program for assuring that it is fully met.

In that connection, the programs about which we will be testifying to other committees and subcommittees include the proposal for an expansion of the Manpower Development and Training Act, for an elimination of the matching provisions which are going to handicap the administration of that act, for the enlargement of the Youth Employment Opportunities Act, and for expansion of the Vocational Education Act. This is simply some among the list of programs for enlarged training and education.

The third reason for disproportionate minority group unemployment is the harsh, ugly fact of discrimination—the fact that men and women are denied work they are fully qualified to perform solely because of somebody's prejudice against their race or their color or their creed.

Titles VI and VII of the Civil Rights Act of 1963 are aimed directly at the elimination of such discrimination. And I would include the

other provisions we are talking about, I want to make it clear, are all aimed directly at the elimination of such discrimination.

Title VI constitutes a legislative declaration that no federally assisted program shall be construed to require assistance under any circumstances in which there is discrimination in either participation in, or recipt of benefits from the program.

I should like to make it clear, Mr. Chairman and members of the committee, that as far as the programs for which I have administrative responsibility are concerned, I have taken the position, and so testified before other committees this year, that the basic provisions of those laws make it quite clear that here is to be no discrimination in connection with the administration of them, and there is no discrimination in the administration of them as far as we are concerned today.

At the same time, it will be of very great help to establish a broader pattern which makes clear the legislative intent in this connection and removes any question whatsoever about this.

Mr. MATHIAS. Mr. Secretary, If I may interrupt at this time, in connection with discrimination in federally assisted programs, there has been from time to time an effort here to include some nondiscriminatory language in the legislation that sets up such programs, some of it not necessarily directed at your Department, but generally the programs that are administered by the executive branch.

I am wondering what your feeling would be about specifically including such language in these programs in the future. We have had very little success in the past.

Secretary WIRTZ. My position, and you will probably identify it as the position which the Attorney General took yesterday and the President took in his message, is that it is an infinitely superior approach to this problem to cover it by legislation, such as that proposed in the Civil Rights Act, which would confer, or make plain, at least, the discretionary authority of administrators as against a proposal which would have the effect in advance of eliminating any discretionary element and requiring administrative action, which in some cases would very probably be ill advised.

Mr. MATHIAS. The President rejected, in my view very properly, the recommendation of the Civil Rights Commission sometime ago that he could simply by administrative action withhold the benefits of certain funds from certain States. What, in your judgment, is the difference between the advice that the President has rejected and what is proposed in this bill and the absence of some sort of legislative standard on the subject?

Secretary WIRTZ. Congressman, I do not have clearly enough in mind the details of the recommendation of the Civil Rights Commission to respond reliably to your question, which is in detail. I guess that is pretty important to your question. I do not remember the details, so I could not be very helpful on the point. The fact is unquestionably clear that there was a recommendation.

Mr. MATHIAS. As the head of one of the great executive departments, do you feel it would be helpful to you to have some guidelines from the Congress under which this power to restrict the use of Federal funds in the programs would be administered?

Secretary WIRTZ. It will in this respect. I testified before the Labor Committee or one of the subcommittees of the Labor Committee

about 2 weeks ago on this precise point and brought to their attention—and I should be glad to file a copy of that testimony here to complete the record—the fact that I have within the last several months issued, and some of them just within the last week or so, regulations—revised regulations—which do not change the Department's policy but which make it dead clear that as far as the training and employment programs are concerned there is to be no discrimination whatsoever in the administration of these programs. This seems to suggest that I would find no additional value here. But I should be less than frank if I were not to call the committee's attention to the fact that we administer the program—the employment services program—through State offices. It is only part of the facts of life or the history of administrative life that there has been a variety of practices among some of those States. It is not wholly easy to do.

In that connection, it can be of great value if there is a legislative announcement that the broad policy of this country, as expressed in the Congress and made clear throughout the Nation, is that there is to be no discrimination whatsoever in the administration of these programs. That is another long answer, but it is required because I have felt and have acted on the belief that I have this authority as Secretary of Labor and have pursued it.

I recognize I still have an administrative problem on my hands in getting complete compliance with that, and would find the enactment of such a provision as is proposed here invaluable.

Mr. MATHIAS. You would not object to some guidelines to assist you in the administration of it?

Secretary WIRTZ. Within the pattern of the proposal here, I would not. In answering that question, I understand the question to be different from what I understand to be the earlier question, whether there should be a complete prohibition. With respect to guidelines, I would have certainly no objection whatsoever.

Mr. KASTENMEIER. Mr. Chairman.

To go back a moment, you mentioned that many of the 800,000 nonwhites were unskilled and untrained. This is a great problem in the country. In this connection, are there jobs unfilled requiring skilled or highly skilled labor in our country?

Secretary WIRTZ. Yes, sir; there are. We have carried the administration of the Manpower and Training Act now to the point where we have approved training programs as of last Friday for about 54,560, or about that, individuals. Under the law, we may not approve those training programs unless we have in advance identified reasonable prospects of job opportunities. Our placement of our alumni so far is running over 70 percent. So I can answer your question in these terms; that we have been able in the first year of the administration of this program to identify specifically many skilled jobs if we can get the people with the adequate skills for them.

It is a much larger number than that. The whole of the professional area is demanding help—the scientific, the engineering, the nurses, the teachers. There are still vast unfilled jobs. That is too broad a word. There are still unfilled jobs in this country.

Mr. KASTENMEIER. While I endorse completely your comments about full employment and measures you would undertake to achieve it, still to the extent that that portion of the 800,000 who could be at least hypothetically overnight trained or become skilled, they would not in fact replace whites for these jobs?

Secretary WIRTZ. Yes; I agree completely with that. Let me state it affirmatively. I am sure that we are moving ahead fast enough on the broad economic front and on the general training front that we will be able to take care of the elimination of discrimination without displacing another person. I am inclined to stop there, because that is the important point.

Mr. MCCULLOCH. Mr. Chairman.

I would like to again get the figures which I could not hear the Secretary give. How many alumni of this job retraining are there? as of, for instance, June 1?

Secretary WIRTZ. How many have completed their training program?

Mr. MCCULLOCH. Yes.

Secretary WIRTZ. A comparatively small number. I do not have it at my fingertips, and we will supply it for the record. For the purposes of the discussion, it is approximately 7,000 to 8,000.

Mr. MCCULLOCH. That program has been authorized by law about a year or 2 years?

Secretary WIRTZ. No, we got our appropriations in either August or September of 1962. But the point I think that is being left out, Congressman, is that these training programs run, a good many of them, from 25 to 40 weeks. So that the programs are just beginning to be completed.

Mr. MCCULLOCH. Yes. So my question leaves no false impression because I limited the type of your answer, how many did you say were undergoing day-to-day or night-to-night training now?

Secretary WIRTZ. The figure I used was that we have now approved projects submitted by the States covering about 54,650 individuals. You have asked for still another figure, and that I will have to supply for the record because I do not have it immediately at hand, as to how many are in training right today. Some of them have already completed their courses. Others have not yet started. You would like to know how many are in training today?

Mr. MCCULLOCH. That is right.

Secretary WIRTZ. I will supply that for the record.

(The information to be supplied follows:)

INFORMATION FOR SUBCOMMITTEE NO. 5, HOUSE JUDICIARY COMMITTEE, TRANSCRIPT OF TESTIMONY OF SECRETARY OF LABOR ON H.R. 7152

1. Representative McCulloch asked how many persons are now in training under the Manpower Development and Training Act (p. 204).

Our current reporting system does not yield the precise number of persons who are "in training" at any given moment. Any such estimate would have to be derived from a variety of sources and would have as its major component the number of persons who are drawing training allowances. The last period in

time for which persons drawing allowances was available was May. We estimate that about 16,500 persons were in training under the DMTA that month.

2. Representative McCulloch also asked for Ohio experience under the MDTA (p. 207).

The number of projects and trainees approved for the State of Ohio follow:

As of June 30, 1963

	Project	Trainees
Total	93	[1] 2,918
Institutional	81	2,265
On the job	11	153
Research, experimental, and demonstration	1	[1] 500

[1] A significant number of persons involved in research, experimental, and demonstration projects receive services other than training.

With regard to Mr. McCulloch's question on experience of nonwhites in Ohio under the Manpower Development and Training Act: They represented 8 percent of the work force and 17.5 percent of the unemployed in 1960. Eighteen percent of the Manpower Development and Training Act trainees in Ohio to date have been nonwhite.

3. In reply to questioning by Mr. Meader (pp. 235–243), the Secretary agreed to check the accuracy of the figures of Mr. Herbert Hill, which appeared on page 7 of the Washington Post of June 27 in a column by Mr. Stanley Meisler, and to give the best figures we had. Those figures and any information we have in response to them are as follows:

(*a*) There are only 300 union-licensed Negro plumbers and electricians in the United States.

The statement quoted is that there are only 300 union-licensed Negro plumbers and electricians in the United States. Such figures are not available from any source known to the Bureau of Labor Statistics, to the Bureau of Apprenticeship and Training, or to the President's Committee on Equal Employment Opportunity. The figures from the Bureau of the Census for 1960 cover all persons reported as plumbers and electricians, whether or not they are union licensed. These figures show 10,120 Negro plumbers and pipefitters and 4,978 Negro electricians. The census figures tend to overstate the rates of Negro employment in these skilled trades, as they include helpers and other workers at below journeyman levels. Both figures relate to the number of males reported as employed as of the census date. Although the figures are a good deal higher than that quoted, it is noteworthy that the Negroes reported to the Census number only 15 out of each 1,000 electricians, and only 33 out of each 1,000 plumbers and pipefitters. Since Negroes numbered 84 out of each 1,000 of the employed population (males,

14 years of age and over) in 1960, their representation in these particular trades is much too low by any standard.

(*b*) The 3,300-member Plumbers local in New York has only 2 Negro apprentices.

(*c*) The New York Sheet Metal Workers 3,200-member local has no Negro members.

(*d*) The Detroit Sheet Metal Workers trained 159 apprentices, 7 of which were Negroes.

(*e*) The Detroit Iron Workers local trained 66 apprentices. None were Negroes.

On items (*b*) through (*e*), regarding the specific situations in New York and Detroit, we have been unable to find the source of Mr. Hill's figures. As the Secretary indicated in his June 27 testimony, there was a special survey of 47 Federal Government projects made at the project sites in 47 cities, but this survey does not appear to be the source of Mr. Hill's figures.

The President's Committee has advised us that data is still coming in on a new compliance form for the construction industry, and will not be available on a comprehensive basis until the reports are all tabulated. However, this data will not be on the basis of particular labor organizations but will relate to all employees of Government contracts by trades.

4. In response to a question by Representative Corman (pp. 238–239), the Secretary agreed to supply available data on the rate of discrimination in nonunion employment, such as white-collar workers.

With respect to the question on nonunion employment, such as white-collar occupations, the only comprehensive source of data on specific occupations is the 1960 Census of Population. A table of pertinent information from the 1960 census is attached.

It will be seen by reference to the attached table that most of the white-collar occupations included show very low rates of Negro utilization in comparison with the overall percentage of Negroes in the working population. The occupation of "bank tellers," which was specifically referred to in the memorandum is not yet available for 1960, because the relevant tabulations are not yet completed, but in 1950 there were only 120 Negroes in this occupation out of 61,710 such jobs (males and females) across the Nation. There is reason to believe that the number in 1960 will not be in excess of 500. (See cols. 7 and 8.)

Selected occupations of the experienced civilian labor force and of the employed, and unemployment rate, by color and sex, for the United States: 1960

MALE, 14 YEARS AND OVER

Occupation	Experienced civilian labor force				Employed					Unemployment rate		
	Total	White	Nonwhite		Total	White	Negro		Other	Total	White	Nonwhite
			Number	Percent			Number	Percent				
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
Clerical and kindred workers	3,120,137	2,907,366	212,771	6.8	3,015,476	2,814,591	178,920	5.9	21,965	3.4	3.2	5.6
Bookkeepers	152,961	149,957	3,004	2.0	149,177	146,310	1,508	1.0	1,359	2.5	2.4	4.6
Mail carriers	197,402	175,634	21,768	11.0	192,501	171,581	20,050	10.4	870	2.5	2.3	3.9
Other clerical and kindred workers	2,769,774	2,581,775	187,999	6.8	2,673,798	2,496,700	157,362	5.9	19,736	3.5	3.3	5.8
Sales workers	3,054,979	2,991,100	63,879	2.1	2,977,872	2,917,552	46,685	1.6	13,635	2.5	2.5	5.6
Insurance agents, brokers, and underwriters	333,126	326,821	6,305	1.9	329,270	323,126	4,901	1.5	1,243	1.2	1.1	2.6
Real estate agents and brokers	148,957	145,862	3,095	2.1	146,996	143,998	2,426	1.7	572	1.3	1.3	3.1
Other specified sales workers	275,926	265,163	10,763	3.9	266,620	256,590	8,563	3.2	1,467	3.4	3.2	6.8
Salesmen and sales clerks, n.e.c	2,296,970	2,253,254	43,716	1.9	2,234,986	2,193,838	30,795	1.4	10,353	2.7	2.6	5.9
Manufacturing	423,623	420,913	2,710	.6	416,404	413,876	1,995	.5	533	1.7	1.7	6.7
Wholesale trade	483,001	478,473	4,528	.9	475,103	470,765	2,326	.5	2,012	1.6	1.6	4.2
Retail trade	1,252,619	1,217,990	34,629	2.8	1,210,046	1,177,494	25,184	2.1	7,368	3.4	3.3	6.0
Other industries (including not reported)	137,727	135,878	1,849	1.3	133,433	131,703	1,290	1.0	440	3.1	3.1	6.4

FEMALE, 14 YEARS AND OVER

Clerical and kindred workers	6,497,350	6,260,910	236,440	3.6	6,291,420	6,068,735	181,678	2.9	41,007	3.2	3.1	5.8
Bookkeepers	783,309	772,024	11,285	1.4	764,054	753,202	6,887	.9	3,965	2.5	2.4	3.8
Cashiers	386,834	372,380	14,454	3.7	367,954	354,808	10.265	2.8	2,881	4.9	4.7	9.0
Office machine operators	236,413	224,614	11,799	5.0	227,849	216,699	9,201	4.0	1,949	3.6	3.5	5.5
Secretaries	1,451,639	1,423,255	28,384	2.0	1,423,352	1,395,837	20,650	1.5	6,865	1.9	1.9	3.1
Stenographers	264,157	256,688	7,469	2.8	258,554	251,219	4.630	1.8	2,705	2.1	2.1	1.8
Telephone operators	356,186	346,788	9,398	2.6	341,797	332,887	8.052	2.4	858	4.0	4.0	5.2
Typists	516,844	482,177	34,667	6.7	496,735	463,748	27,142	5.5	5,845	3.9	3.8	4.8
Other clerical and kindred workers	2,501,968	2,382,984	118,984	4.8	2,411.125	2,300,335	94,851	3.9	15.939	3.6	3.5	6.9
Sales workers	1,746,362	1,696,676	49,686	2.8	1,661,113	1,615,420	36.083	2.2	9,610	4.9	4.8	8.0
Insurance and real estate agents and brokers	82,889	79.226	3,663	4.4	81,395	77,882	3,164	3.9	349	1.8	1.7	4.1
Other specified sales workers	71,808	69,490	2,318	3.2	69,167	66,996	1,807	2.6	364	3.7	3.6	6.3
Salesmen and sales clerks, n.e.c., retail trade	1,471,694	1,431,822	39,872	2.7	1,397,364	1,360,759	28.691	2.1	7,914	5.1	5.0	8.2
Salesmen and sales clerks, n.e.c., except retail trade	119,971	116,138	3,833	3.2	113,187	109,783	2,421	2.1	983	5.7	5.5	11.2

Source: U.S. Census of Population, 1960: "U.S. Summary—Detailed Characteristics," table 205, pp. 1-544, 1-545, and 1-546.

Mr. McCULLOCH. There have been representations made by mail and in the press that leaders in this field in various communities are having considerable difficulty in enrolling nonskilled workers to fill the necessary number for proper classes. That is one of the things we wanted to learn about.

Secretary WIRTZ. If we are talking about the minority groups, Congressman, I would like to take just a minute to tell you my experience of Monday night of this week, when I went down to Norfolk, Va., to visit our training program there, in which we took a hundred people. Almost all of them had exhausted their unemployment insurance. All of them turned out to be Negroes, although it was not a segregated application. These are people who have exhausted their unemployment insurance. Over 40 percent did not finish the seventh grade. They represent the worst employment risks we could find in that area. The relevance of this to your question is this. We had a very hard time rounding up—and that is the right word for it—the hundred applicants for that program because, Congressman, they did not think they were going to get 1 year's training free, which is what they are getting. They are getting allowances of $27 a week. Our problem right now is that they could get more on the State aid program. We are having trouble in that respect. Those fellows are now staying in school for the whole year to learn not only brick masonry, sheet-metal work, electronic techniques and skills, but also reading.

In 6 months, some of them who did not finish the seventh grade, have picked up 2 years' reading skills. They are sticking there for the whole year, and they will be there, I am sure, by November.

My point is, in answer to your question, we had a hard time filling that program. Now, we are getting all kinds of calls from people who did not take it when it started, asking when the next one starts. Frankly, the Negro group in this country had become so discouraged about job opportunities that they passed up a good many of the training opportunities which were offered them. In direct answer to your question, in the administration of the Manpower and Development Training Act we have so far had no problems whatsoever about finding enough jobs to give us reasonable assurance required to set up the program, or about getting people to take the training courses.

Mr. McCULLOCH. What has been your experience by comparison in the North. Are the Negroes advised of the benefits available to them, and are they contacted so that they may have the advantage of this legislation so that they may become skilled workmen and how they may in turn give their children the education that will help to raise this income?

Secretary WIRTZ. Are they being contacted?

Mr. McCULLOCH. What is your experience in the North? For instance in Ohio?

Secretary WIRTZ. I guess I will have to supply for the record any specific Ohio experience on that because I cannot think of one at the moment. I am sure I can give it to you.

Mr. McCULLOCH. That would be very helpful.

The CHAIRMAN. You might proceed.

Mr. McCULLOCH. Mr. Chairman, may I interrupt the Secretary again? As I have hurriedly read title 6 of the administration's legislation introduced by our able chairman, I have at least tentatively

concluded that the language is not mandatory. It expresses the desire that certain things might be done. Do you, Mr. Secretary, think that the Chief Executive of the United States of America at any time should have the final descretionary authority to withhold funds upon his decision alone that have been appropriated by the Congress?

Secretary WIRTZ. If the money is being spent in violation of a law enacted by Congress, in that case my answer would be "yes."

Mr. MCCULLOCH. Is the President to be the only person than can determine that there has been a violation of the law?

Secretary WIRTZ. If we are talking, as I am sure we must, in terms of the actualities of administration, I should answer your question in terms of the assumption that any President would necessarily advise his chief administrators that the money for the expenditure of which they were responsible had to be spent in accordance with the laws of the land, and that would include the provision that it could not be spent on a basis which involved discrimination on the basis of race, creed, or color, which means in those terms my answer to your question is an unqualified "Yes."

Mr. MCCULLOCH. In view of that answer, do you think that the Congress should write some definite guidelines which would necessarily be followed by the Chief Executive?

Secretary WIRTZ. Guidelines?

Mr. MCCULLOCH. Yes.

Secretary WIRTZ. Yes; I would think to what ever extent there was a feeling that guidelines would implement that policy there would be no difficulty.

The CHAIRMAN. Mr. Secretary, I would say there are quite a number of guidelines in title VI.

Mr. ROGERS of Colorado. Title VI itself provides that all contracts made in connection with any program or activity shall contain such conditions as the President may prescribe.

Mr. MCCULLOCH. Of course, that is the very point that I make, and without trying to rewrite legislation and only for the purpose of getting general expression, I think that sentence probably needs some further study. At the risk of repeating what I have said once before in this committee room, but by reason of the fact that Ohio in the days when it was very difficult to get a dollar felt the sting of an Executive order withholding some $2 million from the State of Ohio for old-age assistance which was never paid to the State of Ohio, even though legislation was passed by the Congress through the invaluable aid of our able chairman here, by an overwhelming vote, I look with suspicion upon any President having the right to say, out of hand even while holding some guidelines, you either proceed in this way or the money is withheld. The guidelines at that time—and I happen to know them accurately since I was the minority leader of the Ohio House of Representatives—were very circuitous and very indefinite and it resulted in hardships at that time to needy aged. That is why I regard with suspicion the Executive authority to withhold funds.

The CHAIRMAN. You may proceed.

Secretary WIRTZ. The remainder of my testimony would be directed to title VII of the proposed legislation which provides the firm legis-

lative base for the program, initiated administratively a number of years ago, to establish complete equality of opportunity in employment within the Federal Government and by Government contractors. In 1962 the Federal Government employed some 2.3 million persons; Government contractors more than 20 million, indicating the dimensions of this program.

On March 6, 1961, Executive Order No. 10925 was issued by President Kennedy. New and significant concepts were embodied in this order which distinguish it from previous Federal efforts to eliminate discrimination in these important areas.

In the 2 years of its operation, the Committee, under the vigorous chairmanship of Vice President Johnson, has produced significant results in Federal employment.

I am the Vice Chairman of that Committee and Mr. Taylor is the Executive Vice Chairman of the Committee and I think you may very well want to inquire into some of what has been done in connection with the work of that Committee because it presents the basis from which we would expect to proceed under title VII.

Mr. McCulloch. Mr. Chairman, that Committee was a Presidential Committee and it had authority only in the field of Government contracts and Government employees; did it not? It had no authority or no effectiveness whatsoever in other types of job opportunity; is that right?

Secretary Wirtz. I am sure that is right.

Mr. McCulloch. I am sure the Secretary has learned the titles of the bills which were introduced in late January which create a legislation Commission, which has the dignity of legislative approval, which has authority in fields of Government contracts or Government employees. Then is the Secretary in favor of such legislation?

Secretary Wirtz. I want to be sure which legislation you are referring to. I think the answer is going to be yes, in general, but I am not sure from your question that the reference is to H.R. 3139.

Mr. McCulloch. It is title II of 3139.

Secretary Wirtz. I would be subject to correction, Congressman, but I think in terms of coverage, H.R. 3139 has comparatively parallel coverage to the provisions which are suggested in title VII along with the provisions in the other title IV, the Civil Rights Commission.

Mr. McCulloch. But it does not cover discrimination by labor unions, the Celler bill, does it?

Secretary Wirtz. Yes; it does.

Mr. McCulloch. Would you point it out because I have searched for that on two or three occasions. Would you point out the specific provisions of that bill which would show that there is mandatory legislative authority to prohibit labor unions from discrimination by reason of color, and sanctions against them if they do not.

Secretary Wirtz. You changed the question on me, I believe, and you asked if there is anything mandatory in the provisions of title VII—specific and mandatory—and the answer is "No." It is set up on a different basis and theory.

Mr. McCulloch. Do you think there should be mandatory provisions to assure the observance of lawful and equal rights, as for instance title II does in the 40 bills which were introduced in late January as I said?

Secretary WIRTZ. Your question is whether I think it should be made mandatory.

Mr. MCCULLOCH. Yes. Do you think there should be sanctions for instance against contractors?

Secretary WIRTZ. The broad question is, or I think the broad question is, as to whether there should be—let me suggest two elements in my answer to your question. One has to do with respect to the question of how much specificity it seems to me it is a good idea to write into the legislation. How much specific detail should go into it?

This is an old question with respect to all kinds of legislation. It is my judgment, based on the experience in the administration of the present program, that this authorization provided for in title VII does constitute a sufficient basis and the best basis for proceeding from it to the carrying out of the administrative or executive responsibility. So my answer would be that I see no need for further specification. But I want to complete the answer to your question. I don't want by this answer or by any other answer to cast any doubt upon the proposition that whatever program is developed should include, as part of the combination of legislative and administrative programs, prohibitions upon discrimination by labor unions, because I think it should.

Mr. MCCULLOCH. Do you further agree that it should contain a prohibition against discrimination by labor unions and sanctions against labor unions if there is discrimination?

Secretary WIRTZ. Yes, I do. I think in general we may assume that the aggressive administration of the kind of program envisaged either by the civil rights proposal or by H.R. 3139—may I say that again—regardless of whether you proceed along one line or another, I think there will be a large degree of cooperation in the carrying out of this program. I would agree with you that it is the essence of democracy that there would be about 95 percent voluntary compliance with every law and program. We don't depend upon the policeman's club in this country except on the edges of the problem. I also agree that there has got to be sanctions to cover those cases in which somebody does not like what the rest of us have accepted. It should apply to contractors and it should apply to unions.

Mr. MCCULLOCH. I am sure with that statement that we are in substantial agreement and it is only the selection of words and phrases that is now our problem.

Mr. MEADER. Would the gentleman yield?

Mr. MCCULLOCH. I yield.

Mr. MEADER. Mr. Secretary, calling your attention to title II, equal employment opportunity, of H.R. 3139, Mr. McCulloch's bill, and then to the comparable title in 7152, the chairman's bill, I note that the procedure under the McCulloch bill is described commencing on page 5 and ends on page 30 of the bill, whereas title VII of the chairman's bill starts on page 35, line 15, and ends on page 37, line 19. I would like to ask whether or not you agree that the difference in the approach to this problem is one where the McCulloch bill exercising the legislative authority of the Congress spells out procedures and grants powers directly to the Commission and sets out certain criteria and standards that they should observe and enforce—also, it provides for review by those considering themselves aggrieved—whereas the very brief provisions of title VII of the Celler bill, in effect, simply authorize the

President to grant such powers to this Commission as he sees fit. Is that a comparison of the two approaches?

Secretary WIRTZ. I think the words are fair, Congressman, but I think the implication in the form of the question would be unfair. It would leave out the fact that I think the approximate length of title VII to which you refer is probably about the approximate length of the Ten Commandments.

Mr. MCCULLOCH. I would say to my knowledeg they have not been repealed.

Secretary WIRTZ. I would respond in terms of the implication of your question, I think the phrase is unfair. Really the basic point is this. It is again the question of whether the purpose of this legislation is to spell out the basic provisions and to provide for administrative discussions of them or to spell out all of the details. You asked me my judgment on it and my judgment would be that the former is the better approach. Neither do I want to say that I think everything in the longer provisions has only the difference of length, because I think there are some differences of detail which you may want to go into and on which we might be in agreement on some and not on others.

Mr. MEADER. Specifically, they are in a section relating to discrimination by labor.

Secretary WIRTZ. Yes.

Mr. MEADER. I believe the Commission is given subpena power?

Secretary WIRTZ. Under 3139, yes. On both of those, either in the legislation or in the administration backing up the legislation I would say there should be sanctions against the unions. If the proposal were by legislation to give the committee envisaged by title VII subpena power, I would agree with that. I would not agree with the provisions in 3139, the specific provisions, for enforcement, which have a fairly unusual difference between the details of the enforcement provisions for contractors and for unions. I assume we will be coming to that.

Mr. MCCULLOCH. Will the gentleman yield for just a moment on that statement?

Mr. MEADER. Yes.

Mr. MCCULLOCH. I am glad the Secretary has made that statement. So far as I am individually concerned I have no desire to set up two standards of enforcement or two standards of duties by people similarly situated. That is contrary to the best traditions of this country and I am glad to have your comments. Thank you.

Mr. ROGERS of Colorado. If the gentleman will yield for clarification?

Mr. MEADER. I yield to the gentleman from Colorado.

Mr. ROGERS of Colorado. The question is whether his bill, H.R. 3139, and the second section thereof, is limited only to Government contracts?

Mr. MCCULLOCH. Yes.

Mr. ROGERS of Colorado. It is Government contracts you are talking about?

Mr. MCCULLOCH. That is right.

Mr. ROGERS of Colorado. I want to thank you, sir.

Mr. MEADER. Mr. Secretary, on page 35 of the Celler bill, Commission on Equal Employment Opportunity, I assume this is a statement

of purpose of the section. It shall be the function of the Commission to prevent discrimination against employees or applicants for employment because of race, color, or religion or national origin by Government contractors and subcontractors. Then on the following page, the first sentence, on line 2, page 36, the Commission shall have such powers to effectuate the purposes of this title as may be conferred upon it by the President. Isn't that an extremely broad grant by the Congress to the President of its legislative authority? Here we say the purposes are to prevent discrimination against employees and then we apparently express it in terms of the President's power to grant to this Commission any powers that he thinks are relevant to the accomplishment of that purpose.

The CHAIRMAN. Will the gentleman yield?

Mr. MEADER. Yes.

The CHAIRMAN. That latter phrase must be construed within the four squares of the previous words and the intent of the previous words, namely, to prevent discrimination.

Secretary WIRTZ. If the question is to me, I don't think it is broad. If somebody feels it is—if somebody tells me as an administrator not to discriminate on the basis of race, creed, and color, I know what he means and I don't need any more spelling out. I believe that is what you are saying here to the Executive.

Mr. MEADER. That is the purpose of this title to prevent discrimination by Government contractors. But then this next sentence which I have just read to you would seem to me to mean that the Congress is vesting in the President authority to grant to that Commission any power that he thinks would be necessary or appropriate for the Commission to accomplish the objective of nondiscrimination by Government contractors.

Secretary WIRTZ. I had answered your question with the thought in mind which the chairman expressed. I think that is the necessary part of the answer. I believe all that Congress is saying to the President here is, be sure that your administrators in carrying out the programs we have given them don't discriminate against a man or don't permit discrimination on the basis of the color of his skin and what he believes.

Mr. MEADER. I am not quarreling with the objective. What I am trying to find out is whether or not this is not an extremely broad grant of legislative power. Let us just take for example some of the provisions of the McCulloch bill on this title. We specifically vest the subpena power in the Commission in title II of the McCulloch bill. Do you think under this sentence which I have just read that the President could grant subpena power to the Commission under title VII of the Celler bill?

Secretary WIRTZ. No; I think he could not. I requested momentary advice from our Solicitor and he would confirm my judgment that we would not have subpena power in the absence of legislative provisions.

Mr. MEADER. So at least that part of the legislative authority of the Congress would not be vested in the President by the language which I have just read. The Commission shall have such powers to effectuate the purposes of this title as may be conferred upon it by the President.

Secretary WIRTZ. That is right.

Mr. MEADER. In other words, the only powers the President could confer upon the Commission would be powers he possesses either by the Constitution or by some law we passed. He would not by this language be able to vest powers in the Commission which reside only in Congress and have never been vested in the Executive in any way?

Secretary WIRTZ. Not all.

Personnel files of employees have been reviewed to locate any underutilized personnel.

Training programs to permit promotion and transfer from jobs which restrict opportunities for promotion have been instituted.

A complaint procedure now in operation provides not only for investigation but also for the correction of any instances of discrimination. As of April 30, 1963, the committee had received 2,156 complaints relating to Government employment. To date, two-thirds of these cases have been closed; corrective action was found necessary and was taken in 38.3 percent of the cases.

Recruiting programs have been enlarged and broadened to embrace colleges and universities with predominantly Negro student bodies to insure that no person or group is overlooked or excluded from the Government's efforts to hire the most qualified applicants regardless of race or creed.

This program has proved its worth. The committee's annual census of employment in the Federal Government shows that in the period June 1961 to June 1962 the number of Negroes employed by the Federal Government increased by more than 10,000.

Over half of this increase took place in the middle grades (jobs paying from $4,500 to $10,000 annually), an increase of almost 20 percent and a rate of increase over three times the rate of overall increase in employment in those grades. The number of Negroes at or above GS–12 increased from 1,037 to 1,406. While this is still a low figure, the rate of increase—over 35 percent in 1 year—is at least promising.

In the field of Government contract employment, Executive Order 10925 requires contracting agencies to include in their contracts provisions designed to insure not only that Government contractors will not discriminate but that they—

> will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.

The processing and disposition of individual complaints against Government contractors is a primary responsibility of the committee. Thus far, 914 complaints have been fully investigated, and corrective action has been taken in 641 cases.

The committee has undertaken two programs to secure the voluntary cooperation of employers and unions in promoting equal employment opportunity—"plans for progress" and "programs for fair practices."

"Plans for progress" have been signed with 105 companies employing more than 5 million persons. These firms have agreed to take the initiative in removing unjust discrimination in employment. Data thus far available indicate that almost 25 percent of the new hires of these companies have been of minority group members, including significant numbers in classifications from which they were previously

almost entirely excluded. Signatories to these plans remain subject to review under the contract compliance program and secure no exemption from such compliance by making the voluntary commitments contained in the "plans for progress."

"Programs for fair practices" have been signed with 118 international union affiliates of the AFL–CIO, which have a combined membership of almost 13 million workers. These programs enlist the active support of the international union officials in the committee's efforts to end employment discrimination. A questionnaire is being sent to each of these unions asking for a progress report on their efforts.

Yet much remains to be done in carrying out the committee's programs, particularly as it relates to the assurance of equal employment opportunities by Government contractors.

Effective administration of an equal employment opportunity program requires more than the investigation and resolution of individual complaints. It requires that primary emphasis be placed on seeking out those situations were discrimination exists and where its correction will be most significant in terms not only of individual jobs, but of area and industry practices.

The committee staff is working now with the contracting agencies on a spot check of selected major contractors to insure that they are fully implementing the equal employment opportunity program in all of their facilities.

The reports which contractors are requested to file also provide helpful information in conducting the committee's compliance activities. The 1962 reports by firms not covered by "plans for progress" commitments have now been tabulated and are being analyzed. The data they contain on employment in these firms in five cities, New York, Atlanta, Chicago, Houston, and Los Angeles suggests the dimensions of the problem.

The New York City reports show that the percentage of Negroes in the employment of government contractors who filed separate reports on their New York operations was less than 7 percent, as compared with an 11.5 percent figure for the city's Negro population. The percentage of Negro white collar workers in those establishments was only 2.5 percent.

The CHAIRMAN. Mr. Secretary, on this matter of title VII of the bill I offered, the omnibus bill and the other bills that were mentioned, title 7 of my bill is a mere authorization to the President. As I understand it, you prefer that to a rigid inflexible code which is more or less the purpose of the other bills that have been mentioned. I take it that you would rather have that flexible authorization because we are in a very sensitive area and you have ever-changing conditions in industry and commerce and labor. You practically have 98-percent compliance in any event.

Finally, you have the need for flexibility to meet the changing conditions. Under that authorization, or even anticipating the passage of title VII, the President has already issued an Executive order which has been mentioned, which in a certain sense is a code which contains many exacting provisions. Among those provisions are sanctions. If there were any question as to whether or not sanctions could be leveled against labor unions, I think the language in the authorization on page 35 of section 701 contains sanctions against

labor unions and the Executive order that would be issued under title 7 or has already been issued in anticipation does contain sanctions, namely, that the contract in question would be canceled.

If the contract in question is canceled that is a sanction against the employer and employees lose their jobs. In a certain sense that is a sanction against a union because the employees are part and parcel of the union and the union is hurt. What more sanctions could you envisage or would you want or would anybody want? Would they want fines against the union, or imprisonment of union officials?

That is rather strong medicine. What is your view on that?

Secretary WIRTZ. It is, Mr. Chairman, this: The question which you referred to is obviously a very difficult one, inquiring as to what kind of sanctions are appropriate in various cases. The situation is about this, taking account both of your proposal and of 3139, Congressman McCulloch's proposal. Under the proposal which you have made here in title VII, relying upon our present experience, our clearest sanction would be in each case the cancelation of a contract if there was discriminatory practice on the part of anybody having anything to do with it. That is the general answer. That is the answer, Congressman McCulloch, which you provided in 3139 as far as employers are concerned and that is all you provide.

The CHAIRMAN. If refers to employees. If you read on line 20, it shall be the function of the Commission to prevent discrimination against employees or applicants for employment because of race, color, religion, or national origin.

That refers to workers and applicants for work, and so forth.

Secretary WIRTZ. My answer is an affirmative response to your suggestion, that with respect to both the contractors and the employees, the price that will be paid in general and in the most usual circumstances is one of loss of the contract or loss of the employment. It is a very real sanction. Whether in itself it is enough or not is not a simple question.

We have been exploring it under Executive Order 10925. We are exploring the possibility of additional sanctions beyond that, and we have developed some. We are requiring affirmative acts of one kind or another. We have, in at least one case, provided almost, although we did not go the whole way, toward referral of the matter to the Attorney General, because there are under Executive Order 10925 sanctions, injunctive relief, possible damage action, which should be considered. I want to make this clear. We are finding that there are enough sanctions in this possibility of somebody losing his job or losing his contract that we are probably going to be able to work out most of these cases without more. The facts of the matter are that both employers and unions want to accept the principle that we are here talking about. As far as Government contracts are concerned, the fact that they are going to lose their contracts or lose their jobs is an added force to lead all of them to do what almost all of them want to. But we are not rejecting the possibility that there ought to be some additional sanctions and we are relying on them.

Mr. MCCULLOCH. Again I am very happy to have the Secretary say that, because the sanctions that have been discussed particularly by the chairman are sanctions against the employer which might be sanctions over which he had no control. If the local labor union so dis-

criminates that there are no Negroes available for that kind of employment the sanction is against the employer.

Those who bring about the condition which is so deplorable and which we seek to desperately reach, go free, unless the labor union is specifically subject to sanctions. That is my feeling.

Secretary WIRTZ. My point is I don't believe we have a problem here. I am pretty sure we don't have any basic disagreement. As far as I understand the proper interpretation of the chairman's bill, as far as I understand the position to which you have referred, we are agreed that there ought to be whatever sanctions are necessary to assure compliance with this principle on the part of both contractors and unions and that they ought to be fairly applied sanctions.

Mr. MCCULLOCH. And they ought to be effective.

Secretary WIRTZ. They ought to be effective.

Mr. MCCULLOCH. And they ought to be mandatory because we have proceeded to this point without doing much, if anything, against labor unions which have been practicing discrimination.

Secretary WIRTZ. I am sorry that we carried so far on the same line but I would have to disagree with that point.

Mr. MCCULLOCH. That is my statement and whether it is agreed with or not, it is on the record.

The CHAIRMAN. I think we have very strong unions in the building trades in New York and they have clearly indicated that there will be no discrimination so far as their members are concerned and they are doing all and sundry to develop apprenticeships and training programs.

Mr. MCCULLOCH. Mr. Chairman, that is only after picketing by CORE and similar organizations.

Mr. ROGERS of Colorado. Mr. Chairman, the statement of the gentleman from Ohio did not apply to Federal contracts which are in this bill.

Mr. MCCULLOCH. It was in construction unions where discrimination had been practiced and where the order has not reached, and what we are trying to reach by this title, if not in my legislation, in other legislation.

Mr. ROGERS of Colorado. If the gentleman would yield, I asked the question a moment ago whether your title II and title VII of the chairman's bill related to Government contracts. I got an answer that it did relate to Government contracts alone. I make the observation because the gentleman from Ohio made some reference to picketing against certain construction jobs. I asked the question did it relate to construction jobs as they concern the Federal Government. You said "No."

The CHAIRMAN. They did not relate to construction jobs of the Federal Government.

Mr. MCCULLOCH. My answer was to show the climate in the geographical location to which the amiable chairman referred. I now yield to Mr. Mathias.

Mr. MATHIAS. I thank the gentleman for yielding, and I would like to pursue this rather interesting analogy that the chairman has drawn between the delegation of powers under title VII of his bill with the existing Executive order under which the President is operating with a considerable degree of flexibility. I think it might be helpful if we

would look at a specific case and just understand it, because the Secretary very kindly suggested that we might review some of the present activities of the Commission's activities.

I would call to mind the case of certain contracts between the United States of America and the Washington Public Power Supply System and the Portland General Electric Co., which are contracts in which the Government has participated and which are Government contracts. We have discussed these at these civil rights hearings earlier. I believe on May 16 we raised some questions about these. The record is still not complete on that subject. The point is that there is a rather unusual provision I think in paragraph 6 which provides in substance that in the event of noncompliance with the nondiscrimination clauses the contracts will not be voided.

There is some other langauge there, too, which I think the Secretary in his capacity as Vice Chairman of the Commission is familiar with. I would just wonder how this situation was handled by the existing Commission. Did you get a request for an exemption in this Hanford job?

Secretary WIRTZ. Yes. I should first make it clear, Congressman, that we are talking about the one case in which a question has been raised about the relationship of the rules developed under Executive Order 10925 to the technical requirements involving the issuance of public bonds in a particular State.

The *Hanford* case is the one case in which an exception has been made under 10925 because the counsel involved in that corporate structure found at one point that there was a possibility under 10925 which would make it difficult for him in the technicalities of that very esoteric practice to approve that local bond issue. That is the issue at Hanford. It is the only case of that kind which has arisen. If the question is, as I understand it to be in the context of the discussion, whether there would be any difference in the handling of that case under the Executive order approach and under a statutory approach, I would answer squarely, but subject to thinking it through later, no, there would not.

Mr. MATHIAS. I think that cases of this sort make it more or less advisable to have some definition of the powers that the President can delegate to this Commission under title VII. Just how much flexibility do you really need?

Secretary WIRTZ. I would think that the *Hanford* case was an illustration, extreme, unusual, unique as it is, of the impossibility of anticipating all conceivable combinations of circumstances in advance. I would therefore think it prompted the kind of approach taken in the authorization of the Executive authority rather than the detailed approach.

Mr. MATHIAS. Did the Commission get a request for an exemption in this case?

Secretary WIRTZ. Yes, it did.

Mr. MATHIAS. Was that request granted?

Secretary WIRTZ. There was a formal granting of the request. Then there was a working out of a very special procedure which permitted the requirement of specific performance in place of the cancellation clause. We are in the most technical area of law, what a bond counsel will approve in connection with a public bond. He said that he could

not aprove that bond if it was subject to a cancellation clause, which is consistent with bond practice.

But he found it all right if we provided for specific performance. So what we did was to work out the technicality of an exemption as far as the cancellation power was concerned, but there was an agreement for specific performance which, assuming the good faith of the public authorities involved, which is not difficult, gave us exactly the same answer.

Mr. MATHIAS. When you grant an exemption in this or any other case, what standards would you use? Let me understand this.

You granted the exemption in this case purely on the advice of bond counsel?

Secretary WIRTZ. That is right, because of his advice.

Mr. MATHIAS. What other cases do you grant exemptions to?

Secretary WIRTZ. This authority to grant the exemption was conferred on the committee by the President in March 1961. We have granted no other individual exemptions at all for administrative reasons because we are up against it to handle the caseload we have. We put in a lower limit exemption. We do not apply the regulations or we do not follow them up in cases of firms whose contract is in the amount of less than $10,000. As far as standard commercial supplies are concerned, we don't go below a hundred thousand dollars. Those are the only other exemptions. Except for cases like the *Hanford* case, in answer to the spirit of your question, I can't imagine that a situation in which such an exemption would be required. It is kind of a respect for the unknown that is the reason for this.

Mr. MATHIAS. Was there any unusual delay in handling the request for exemption in the *Hanford* case?

Secretary WIRTZ. May I ask Mr. Taylor, the Executive Vice Chairman, to reply to that? I don't know.

Mr. TAYLOR. The request for the exemption was originally received in December. We took almost 2 months before we granted the request. We went very thoroughly into the allegations that were made by the Interior Department and by the Atomic Energy Commission with respect to the opinions of bond counsel and we made independent consultations of other people who were skilled in the field. It was only after reaching a situation in which there was unanimity that either the bonds would be completely unsalable or that the interest rate would become so high as to make the project unfeasible that we then agreed to the substitution of language which we felt would achieve the practical results which we had in mind but which did amount to a deviation from the precise language of the contract clause. There was authority for the granting of such partial exemption. Attorney General Rodgers had ruled that partial exemption could be granted. So we followed authority that had been there before.

We had expressed statements from the Secretary of Interior and from the Atomic Energy Commission Chairman that the national interests required that this step be taken. I might add that it was an unusual situation in which the Government was both the seller of steam but also through the public power projects out there the consumer at the end of the line as well.

Secretary WIRTZ. I join with the Executive Vice Chairman in answering your question, "Yes," there was delay because it was the first case of this kind we had run into.

Mr. MATHIAS. What was the date of final action?

Secretary WIRTZ. We will supply this for the record.

Mr. TAYLOR. The date of final action was January 14, 1963. The original request came in December.

Mr. MATHIAS. Do you keep any sort of minutes of the meetings when you have this sort of thing?

Mr. TAYLOR. There was not a meeting. The power to make or to take this action had been previously delegated to the Executive Vice Chairman by the committee.

Mr. MATHIAS. Then this was taken on your responsibility?

Mr. TAYLOR. I consulted with the Chairman and the Vice Chairman of the Commission before I exercised the authority which I have.

Mr. MATHIAS. Now, Mr. Secretary, as you say this is a unique case but I think perhaps it raises a point which underscores the desirability of bipartisan participation of this Commission as provided in the McCulloch bill and I wonder if you would say one word on that?

Secretary WIRTZ. The Committee which has been established by the President as the Committee on Equal Employment Opportunity includes, I believe, 15 public members and some 14 representatives of government. With complete candor, Congressman, I must say I do not know the political affiliations of the members of that Committee. I think they have been selected in every case as far as I know because of their interest in this field. I would feel there should be bipartisanship in a committee of that kind. I suspect there is. I just don't know.

Mr. MATHIAS. At least you have no objection?

Secretary WIRTZ. No, sir.

Mr. MATHIAS. Thank you, sir.

Mr. MEADER. Mr. Chairman.

The CHAIRMAN. Yes, sir.

Mr. MEADER. Mr. Secretary, I heard some reference to the extent of discrimination against Negroes in trade unions somewhere back in your testimony. It has brought to mind an article I read this morning by Stanley Meisler of the Associated Press which appears on page 7 of the Washington Post. It deals with this subject and if these figures are incorrect, and your Department has correct figures on the extent of Negro employment in some of these construction trades, I think our records should have the accurate figures.

Secretary WIRTZ. It is in the testimony I am coming to.

Mr. MEADER. Let me just read these figures and see whether or not you can confirm them or if they are not correct later supply corrections. This seems to me to come from a Mr. Herbert Hill, labor secretary, of the NAACP. These are the paragraphs that struck me. I quote:

> The record remains to anger the American Negro. In all America there are only 300 union licensed Negro plumbers and electricians, far less than the number of Negroes with doctorate degrees. Hill says that the sheet metal workers local in New York has no Negroes among its 3,200 members. The plumbers local has 2 Negro apprentices among its 3,300 members. In Detroit last year, the iron workers local trained 66 apprentices, none Negro. The sheet metal workers trained 159 apprentices, 7 Negro.

Are you able to confirm the accuracy of those statements?

Secretary WIRTZ. No, I am not. I should dislike very much to get into a discussion of those particular numbers. I do propose to give you the best available information we have on this situation, let

us avoid the numbers. Let us be clear. There has unquestionably been an extreme disposition of nonwhite and white workers in the building trades. In my judgment that has been partly the result of discrimination. There is no question in my mind about it. The third point on which I am equally clear, is that there is today a complete commitment both in principle and in practice to the recification of that situation. I don't mean in the future, I mean now. So that we are today talking with the building trades people here in the District of Columbia about how many additional Negroes they are going to be taking into their apprenticeship groups this month. We are at the grassroots on this problem. We are getting the most complete cooperation from that group. As of last Friday, the building trades adopted a new statement of their position in which they affirmed categorically their rejection of any discriminatory practices in connection with either the apprenticeship or the journeymen hiring program. As of last Friday the building trades in New York sat down with the mayor of New York, Mayor Wagner, and worked out specific procedures for meeting the problem that has arisen there.

I can only say to you, Mr. Meader, I don't know whether the precise figures are right but the point is unquestionable. There is a most extreme disparity.

Mr. MEADER. Let me ask, do you have any statistics of this character in your Department?

Secretary WIRTZ. Yes.

Mr. MEADER. It just seems to me fantastic that there are only a total of 300 Negroes—Negro plumbers and electricians in the entire United States. That is hard for me to believe.

Secretary WIRTZ. I will be glad to go into that now. It is in the testimony that I am coming to here.

Mr. MEADER. You referred to percentages in various types of employment?

Secretary WIRTZ. And I can give you specific absolute figures to the extent they are presently available. I don't mean to suggest, Congressman, that we have a reliable report on the total number.

Mr. MEADER. I would appreciate someone checking these statistics that I have just read to you, because if they are inaccurate I think the accurate figures or more accurate figures should be in our record.

Secretary WIRTZ. We will give you the best figures we have.

Mr. CORMAN. Mr. Chairman.

The CHAIRMAN. Yes, Mr. Corman.

Mr. CORMAN. When the Secretary supplies these figures I wonder if he would give us some comparison as to the rate of discrimination in the nonunion employment such as the nonunion white collar workers so we might draw a comparison whether it is the labor organizations that are creating the discrimination or whether it is a practice that cuts across both union and nonunion employment. I don't know how many colored bank tellers there are, but I would suspect however many there are is not affected by labor organizations. I think whether it is organized or nonorganized is a matter of great concern. I suspect the pattern may be about the same on both sides.

Secretary WIRTZ. All the information we have, Congressman, would confirm what you have just said. The attempt to suggest that there is disproportionate discrimination on a racial basis in the labor unions

in this country has no basis. We have a problem and we have had it every place. We have had it in government, in our schools, in our cities, in our States, in our labor unions. We have it among our employers and we are going all out against them on all fronts. Congressman Meader's question on the building trades does prompt the recognition that there has been a larger degree of disparity in the building trades than there has in others. We recognize that, just as there has been a larger disparity in other areas. I think we will get along much further and much faster if we realize that there are not many of us who do not live in glass houses as far as this particular issue is concerned.

The CHAIRMAN. You might proceed, Mr. Secretary.

Secretary WIRTZ. I will shorten the rest of my testimony to the extent it is a summary of what we have been doing under the President's Committee under Executive Order 10925. We are quite proud, quite frankly, of the accomplishments which it is possible to show both in connection with the administration of the program as far as Government employees are concerned and as far as Government contractors are concerned.

I will rely on the record there, except that I want to take up, because the matter has been raised here in such a specific form, what evidence we have of the extent of discrimination which has taken place with respect to some Government contracts. I will do it in two units. About 10 days ago the President of the United States instructed me to make a complete survey of the building projects, the Government building projects, which are going on around the country. With respect to that we sent out a number of investigators to make on-site inspections and we have now completed investigations of 47 major projects in 47 cities in this country. The total as far as discriminatory employment is concerned is set out on page 15 of my statement and it confirms what we are talking about here.

Recently, and pursuant to a directive of the President, I have had a survey made of Federal construction projects to determine whether there is discrimination on those Federal construction projects in connection with either the hiring of journeymen or the selection of apprentices.

Site surveys of 47 major projects in as many different cities have now been made. These surveys show that at the time of our inspection 7,795 construction workers were employed. Of these, 1,389 were Negroes. All but 316 of those Negroes were laborers. Among the skilled journeymen there were only 300 Negroes, compared to 5,658 whites; and of 319 apprentices, only 16 were Negroes.

That is the trouble with statistics. Those two don't line up one beside the other. If you add the number of laborers then you get this different picture. If you take the skilled journeymen there with 300 Negroes compared to 5,658 whites.

Mr. MEADER. That figure on 300 on page 15 is the same figure I read from this article.

Secretary WIRTZ. But yours was for plumbers.

Mr. MEADER. It said 300 plumbers and electricians in the whole United States. Your survey did not cover the entire United States.

Secretary WIRTZ. Only 47 projects in the whole United States.

Mr. MEADER. You don't suppose that they got this figure of 300 from your survey?

Secretary WIRTZ. No, I don't think so.

Mr. MEADER. The fact you found 300 skilled journeymen other than electricians and plumbers on 47 projects would seem to shed some doubt on the reliability of the figure of 300 plumbers and electricians.

Secretary WIRTZ. I think of the cardinal's statement, give me six sentences from the pen of the most innocent of men and I will hang him with them. Our situation has become such that we have so many figures in the situation that you can prove yes or no on almost any question. As far as we are concerned these figures are ample notice to us to get out and to get into every one of these particular situations and find out what elements are responsible for it. The figures leave no doubt about it. This is disproportionate. This is out of line. We are immediately following up in each of the cities with the labor unions, the building trades, in each of those cities, as we have here.

The figures are good warning and they are mighty poor proof.

Mr. MEADER. Let me make my point clear. I read this article and I was shocked.

Secretary WIRTZ. I know.

Mr. MEADER. I assume that the associated article was widely disseminated in the United States. If there are only 300 Negro electricians and plumbers in the entire United States that is 1 situation that is somewhat different in degree certainly and perhaps in kind, than the type of disparity that you discovered in your survey, isn't it?

Secretary WIRTZ. Yes. But we are agreed on the point.

Mr. MEADER. We should have accurate figures. There should not be figures disseminated broadly that are wholly unreliable. I believe you should have some means of checking the accuracy of those figures in your statistics.

Secretary WIRTZ. We will do the best we can. On the basic thing we are agreed, there are too few Negroes in the building trades. I gather that is your feeling. It is certainly mine. It is the feeling of the AFL–CIO and we are doing everything we can about it. The other report is of a different nature. The one I have just given you is on the construction projects. I repeat that the figures are enough warning to indicate that we have to do something about it. They are not sufficiently specific to constitute an indictment of any specific case. The same is true of other Government contracts. There has been some tendency to suggest that this is a problem only in the construction industry and with the building trades. That is not right. Our reports, which are unfortunately based on the 1962 reports, some of the firms which have Government contracts, are set out on the bottom of page 13 and on page 14 of my testimony and the picture is again one that indicates how much we have left to do on this problem. Taking New York City, for example, our report shows that the percentage of Negroes in the employment of Government contractors—and this is the group that filed separate reports on their New York operations—was less than 7 percent. That compares with an 11½-percent figure for the city's Negro population. We are very much concerned when you go to the white-collar worker the percentage

is so small. In New York City on Government projects only 2.5 percent of the white collar workers are Negroes as compared with 11.5 percent of the Negro population. It is not a sectional problem but it is a national problem. In Atlanta, Negroes comprise 22.8 percent of the population, but only 14.9 percent of the work force of Government contractors reporting and only 2.5 percent of the white-collar employees of those contractors.

Negroes in Chicago are 14.3 percent of the population, but their percentage of employment by reporting contractors was 9.2, and only 1.1 percent of the white collar employment.

Houston's population is 19.8 percent Negro, but among Government contractors who reported separately on their activities there in 1962, Negroes made up less than 9 percent of the work force and only one-half of 1 percent of the white collar workers.

In Los Angeles 6.9 percent of the population are Negroes, but Negroes constituted less than 4 percent of the workers for Government contractors covered in this survey, and only 0.9 percent of their white collar staffs.

Again I can only conclude that it is quite clear that there is a good deal more that has to be done as far as the administration of this program goes. I have left out the record of our accomplishments so far. It has been quite consiedrable in the handling of Federal employment and Federal employees and Government contractors but we still have a good deal more to do.

We are moving against this apprenticeship problem with the complete cooperation of the AFL–CIO, and very actively. Against these, the President has instructed me that in the administration of my responsibilities under the Federal Apprenticeship Act of 1937, we are going to review every one of the apprenticeship programs which we approve. If there is discrimination contrary to the rule, it won't be approved. We are doing the same thing in connection with the administration of the Government employment and the Government contract program. We are setting standards and saying to these contractors and unions in advance these are the standards with respect to apprenticeship programs. Are these your standards? If they are, you are the successful bidder on this contract and you get the contract. If these are not your standards we are not going to do business with you.

We are going to say it in advance and not wait until the contract has been let. We mean business about it. We hope very much that we can get the additional help which the legislative approval of title VII of this act, or any comparable provision will give us. I have taken too long.

I know you have a number of other questions about this area. I would like to say in conclusion, Mr. Chairman, I have talked about this statistically, I have talked about it administratively. It is a human problem. It is one that is closer to what is inside all of us here than almost any other problem we face.

I would just like to say that as far as I am concerned it is a situation in which we have been preaching equality of opportunity for all Americans and practicing for only 90 percent of us. I think with your proposal, Mr. Chairman, and with respect to the comparable provisions in the other bills, that what we have here is an indication that we are now going to do what we have been talking about. It is the time to get on

with it. I think the enactment of this bill will move us a long way toward eliminating the only real poverty there is in this country, and that is the proverty for some, the poverty of opportunity. So I support this legislation with all my heart and soul.

(The document referred to follows:)

STATEMENT OF W. WILLARD WIRTZ, SECRETARY OF LABOR

Mr. Chairman and members of the subcommittee, it is with the deepest sense of responsibility, both personally and as Secretary of Labor, that I offer this testimony with the hope of assisting you in your consideration of the grave issue presented in H.R. 7152, the Civil Rights Act of 1963. For there has been no more important issue before the country and the Congress—save only the issue of war and peace.

The issue is whether we mean what we say about democracy's central principle, which is equality of opportunity. It is whether freedom is to have the same meaning for all of us, or only for 9 of us out of every 10.

The issue is whether we are ready to accept the truth in human relations. We have put off the time for truth. Now it is here. I suspect it is more than coincidence in history's drama that there is this conjunction in time between unprecedented breakthroughs in man's discovery of new elements of truth in the physical sciences and this new pressing for the truth in human affairs. For the truth of the law that people are equal is as basic and irrefutable as the truth of the laws of nuclear physics.

The Civil Rights Act of 1963 applies the truth that the meaning of life and of democracy lies in the complete respect of every person for all human beings alike. It rejects the falsehood that any of us are entitled to seek an inner security in a fellowship restricted enough for us to dominate.

Each part of this legislation is designed to restore to every 10th man and woman and child in this country an element of freedom which has previously been taken away from him—but given the other 9 as they entered life's arena. I subscribe completely to the Attorney General's testimony before you yesterday in support of the provisions guaranteeing speedier Federal processes for assuring the right to vote, nondiscriminatory use of public accommodations, speedier desegregation of public schools, establishment of a community relations service to settle racial disputes peacefully, and extension of the Civil Rights Commission program.

As Secretary of Labor, and as Vice Chairman of the President's Committee on Equal Employment Opportunity, I testify in somewhat further detail regarding titles VI and VII of the proposed legislation. I will be testifying before other committees on those important aspects of the President's June 19 message on civil rights and job opportunities which detail his proposals for stimulating economic growth and providing expanded training, educational, and employment opportunities.

The equal right to work is an essential element of meaningful freedom. President Kennedy pointed out in his June 19 message that: "Employment opportunities * * * play a major role in determining whether [civil] rights * * * are meaningful. There is little value in a Negro's obtaining the right to be admitted to hotels and restaurants if he has no cash in his pocket and no job."

On the average in 1962, there were about 880,000 nonwhites, mostly Negroes, in this country who were unemployed. This means that 1 out of every 10 of the nonwhites in the work force were unemployed. Of this group of unemployed nonwhites, looking for work they cannot find, 160,000 are boys and girls between the ages of 14 and 19. This means one out of four in this age group was unemployed in 1962.

These are the harsh facts of minority group unemployment in America today. These statistics leave out the human element but they do describe the scope of the problem at which titles VI and VII of the Civil Rights Act, along with the other job opportunity proposals of the President to which I have referred, are aimed.

For part of the explanation of these figures on minority group unemployment is that people in these groups have been, and are still being denied equal employment opportunity.

"Unemployment," President Kennedy noted, "falls with special cruelty on minority groups. The unemployment rate of Negro workers is more than twice as high as that of the working force as a whole."

Among married men with family responsibilities the unemployment rate is 3 percent for whites; and 8 for nonwhites.

In the 14- to 19-year-old group, the unemployment rate is 12 percent for whites; and 24 percent for nonwhites.

In 1962 more than a quarter of the "hard-core unemployed" (those who have been out of work 26 weeks or more) were nonwhite, although nonwhites made up a 10th of the work force. This means that of the 600,000 long-term unemployed, 165,000 were nonwhites who went without jobs or earnings for over 6 months.

Even among the nonwhites who are listed as employed, 10 percent have only part-time work. The comparable figure for white workers is 3 percent.

In part, the differentials in unemployment between white and nonwhite workers reflect the heavy concentration of Negroes is unskilled and semiskilled occupations which are particularly susceptible to unemployment. It is estimated that about half the difference in unemployment rates between whites and nonwhites is due to this factor alone.

However, as Matthew Kessler of the Bureau of Labor Statistics points out in a forthcoming article in the Monthly Labor Review, within each broad occupational group, unemployment is significantly higher among nonwhite than among white workers. Thus, in 1962, the unemployment rate for nonwhite, semiskilled workers was 12 percent as compared to 6.9 percent for white persons in comparable occupations; among skilled workers the unemployment rate was 9.7 percent for nonwhites and 4.8 percent for whites; and among clerical workers 7.1 percent for nonwhites, and 3.8 percent for whites.

Even when the Negro is employed, it is a significantly different kind of employment from what the white worker finds available. In 1962, 17 percent of the employed nonwhites had white collar jobs; the corresponding proportion among whites was 47 percent. White workers in the white collar occupational group thus outnumber nonwhites 28 million to 1 million. This is in marked contrast to their comparative representation in the civilian labor force in which there are nine whites for each nonwhite worker.

On the other hand, 14 percent of all employed nonwhites are unskilled laborers in nonagricultural industries; the corresponding proportion among whites is only 4 percent.

Negroes make up 90 percent of the nonwhite population and also receive the brunt of the burden of discrimination. Negroes account for only one-half of 1 percent of all professional engineers. Male Negroes comprise less than 3 percent of the total employment in 19 of the 26 standard professional occupations for which we have data (e.g., accountants, architects, chemists, pharmacists, lawyers). The actual numbers involved are depressingly small. There were only about 230 male Negro professional architects in 1960; there were about 2,300 employed male Negro accountants; 2,000 dentists, 1,500 pharmacists, and a similar number of chemists; and the largest number in any of the 19 professions was about 4,500, for doctors.

The proportion of white workers employed as managers, officials, proprietors, and sales workers in 1962 was 19 percent; only 4 of every 100 nonwhites were employed in these occupations.

There have, to be sure, been some gains. The average wage and salary income of nonwhite males has increased about 7 times since 1940. The percent of nonwhite men working as skilled craftsmen more than doubled between 1940 and 1962, as did the percentage in professional and technical professions. In each of these groups, nonwhites gained faster than whites. The number of nonwhites working in Federal, State, and local government is five times higher than in 1940, totaling now about 12 percent of all such employees.

This kind of progress is important, for it confirms that there are no elements in this situation which cannot be overcome. It points up the fact that this cruel disparity is of our making and is ours to overcome.

Yet the disparity has been getting worse instead of better. The nonwhite unemployment rate was 60 percent higher than for whites in the period 1947–49. It has been consistently twice as high in each of the years 1954–62. This is explainable, in part, because the majority of nonwhite workers are in unskilled and service occupations where machines are taking over the work which used to be performed by hand.

There are three causes of minority group unemployment today, and three fronts on which this problem must be met.

One, and in a sense the most basic, cause is the present shortage of jobs in the economy as a whole for all workers. It will be a hollow victory if we get the

"whites only" signs down, only to find "no vacancies" signs behind them. It is essential that we solve this unemployment problem for all workers, both white and nonwhite.

The administration has recognized this vital necessity in the President's program for expanded economic growth and manpower development—the accelerated public works, investment incentives, and other economic and manpower measures which have already been enacted, and the vastly important tax and other proposals which are presently before the Congress. The problem of minority group unemployment will not be met until the whole unemployment problem is solved. A dynamic and expanding economy is essential to assure jobs for all workers. President Kennedy has pointed out in his civil rights message that, "Recent studies have shown that for every 1 percentage point decline in the general unemployment rates there tends to be a 2 percentage point reduction in Negro unemployment."

A second cause of minority group unemployment is unquestionably the fact of lesser qualifications for various kinds of work among such groups—the result of decades of denial of equal educational opportunity and of the lesser motivations for learning which are the inevitable result of discrimination.

There is neither reason nor justification for evading the facts of inferior education and training and lesser qualifications among minority groups. They are the facts of failure not by these groups but by the society; and they show the true dimensions of the problem we face and must meet.

Disproportionate unemployment among nonwhites is unquestionably related to the fact that about one-third of the 3 million adults in this country who cannot read or write are nonwhites; also to the fact that 25 percent (or 2.3 million) of the nonwhites 25 years of age or older did not complete 5 years of schooling (compared with 7 percent of the adult white population); and to the fact that almost half of the adult nonwhites in the country today did not finish grade school (compared with about 20 percent of the whites).

Here again there have been gains which show what the future holds—if we will seize it. Seventy-three percent of the nonwhite children of school age are actively enrolled in school; up from 55 percent in 1940. Among the most critical group (14 to 17 years of age), the percentage of active enrollees has increased from 68 percent (in 1940) to 87 percent. The proportion of young nonwhite adults finishing high school in recent years was a disheartenlingly low 42 percent; but this is 3½ times as high as it was in 1940.

This fact of unequal education and training has simply got to be faced squarely and met fully if we are serious about increasing minority group employment. It is faced squarely in the President's message of June 19, and he has submitted to the Congress a program for assuring that it is fully met.

The third reason for disproportionate minority group unemployment is the harsh, ugly fact of discrimination—the fact that men and women are denied work they are fully qualified to perform solely because of somebody's prejudice against their race or their color or their creed.

Titles VI and VII of the Civil Rights Act of 1963 are aimed directly at the elimination of such discrimination.

Title VI constitutes a legislative declaration that no federally assisted program shall be construed to require assistance under any circumstances in which there is discrimination in either participation in, or receipt of benefits from, the program.

Various aspects of the equal employment opportunities issue arise in connection with the administration of the training and employment service programs. To the extent that the legislation underlying these programs bears directly on this issue, its direction is clear: these programs are to be administered without regard to race, creed, color, or national origin. This policy has been repeatedly expressed by the Department of Labor in its rules and regulations and procedures covering these programs.

Though we have, therefore, the administrative authority under existing legislation to prohibit discriminatory practices in these programs, the enactment by Congress of title VI, will remove any questions there may have been about this.

In the past several years, significant progress has been made by State employment security agencies in improving employment services for minority group jobseekers. There remain, nevertheless, some differences in the administration of these programs in some of the State offices through which these programs are carried out. We have taken decisive administrative action to eliminate these differences and to insure adherence to the equal employment

opportunity principle. The adoption of title VI will establish a clearer pattern along these lines.

Title VII of the proposed legislation provides the firmer legislative base for the program, initiated administratively a number of years ago, to establish complete equality of opportunity in employment within the Federal Government and by Government contractors. In 1962 the Federal Government employed some 2.3 million persons; Government contractors more than 20 million, indicating the dimensions of this program.

On March 6, 1961, Executive Order 10925 was issued by President Kennedy. New and significant concepts were embodied in this order which distinguish it from previous Federal efforts to eliminate discrimination in these important areas.

In the 2 years of its operation, the Committee under the vigorous chairmanship of Vice President Johnson, has produced significant results in Federal employment.

Personnel files of employees have been reviewed to locate any underutilized personnel.

Training programs to permit promotions and transfer from jobs which restrict opportunities for promotion have been instituted.

A complaint procedure now in operation provides not only for investigation but also for the correction of any instances of discrimination. As of April 30, 1963, the committee had received 2,156 complaints relating to Government employment. To date, two-thirds of these cases have been closed; corrective action was found necessary and was taken in 38.3 percent of the cases.

Recruiting programs have been enlarged and broadened to embrace colleges and universities with predominantly Negro student bodies to insure that no person or group is overlooked or excluded from the Government's efforts to hire the most qualified applicants regardless of race or creed.

This program has proved its worth. The Committee's annual census of employment in the Federal Government shows that in the period June 1961 to June 1962 the number of Negroes employed by the Federal Government increased by more than 10,000.

Over half of this increase took place in the middle grades (jobs paying from $4,500 to $10,000 annually), an increase of almost 20 percent and a rate of increase over 3 times the rate of overall increase in employment in those grades. The number of Negroes at or above GS–12 increased from 1,037 to 1,406. While this is still a low figure, the rate of increase—over 35 percent in 1 year—is at least promising.

In the field of Government contract employment, Executive Order 10925 requires contracting agencies to include in their contracts provisions designed to insure not only that Government contractors will not discriminate but that they "will take affirmative action to insure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."

The processing and disposition of individual complaints against Government contractors is a primary responsibility of the Committee. Thus far, 914 complaints have been fully investigated, and corrective action has been taken in 641 cases.

The Committee has undertaken two programs to secure the voluntary cooperation of employers and unions in promoting equal employment opportunity—"plans for progress" and "programs for fair practices."

"Plans for progress" have been signed with 105 companies employing more than 5 million persons. These firms have agreed to take the initiative in removing unjust discrimination in employment. Data thus far available indicate that almost 25 percent of the new hires of these companies have been of minority group members—including significant numbers in classifications from which they were previously almost entirely excluded. Signatories to these plans remain subject to review under the contract compliance program and secure no exemption from such compliance by making the voluntary commitments contained in the plans for progress.

Programs for fair practices have been signed with 118 international union affiliates of the AFL–CIO, which have a combined membership of almost 13 million workers. These programs enlist the active support of the international union officials in the Committee's efforts to end employment discrimination. A questionnaire is being sent to each of these unions asking for a progress report on their efforts.

Yet much remains to be done in carrying out the Committee's program, particularly as it relates to the assurance of equal employment opportunities by Government contractors.

Effective administration of an equal employment opportunity program requires more than the investigation and resolution of individual complaints. It requires that primary emphasis be placed on seeking out those situations where discrimination exists and where its correction will be most significant in terms not only of individual jobs, but of area and industry practices.

The Committee staff is working now with the contracting agencies on a spot check of selected major contractors to insure that they are fully implementing the equal employment opportunity program in all of their facilities.

The reports which contractors are requested to file also provide helpful information in conducting the Committee's compliance activities. The 1962 reports by firms not covered by "plans for progress" commitments have now been tabulated and are being analyzed. The data they contain on employment in these firms in five cities—New York, Atlanta, Chicago, Houston, and Los Angeles—suggests the dimensions of the problem:

The New York City reports show that the percentage of Negroes in the employment of Government contractors who filed separate reports on their New York operations was less than 7 percent, as compared with an 11.5-percent figure for the city's Negro population. The percentage of Negro white-collar workers in those establishments was only 2.5 percent.

In Atlanta, Negroes comprise 22.8 percent of the population, but only 14.9 percent of the work force of Government contractors reporting and only 2.5 percent of the white-collar employees of those contractors.

Negroes in Chicago are 14.3 percent of the population, but their percentage of employment by reporting contractors was 9.2, and only 1.1 percent of the white-collar employment.

Houston's population is 19.8 percent Negro, but among Government contractors who reported separately on their activities there in 1962, Negroes made up less than 9 percent of the work force and only one-half of 1 percent of the white-collar workers.

Of the Los Angeles population, 6.9 percent are Negroes, but Negroes constituted less than 4 percent of the workers for Government contractors covered in this survey, and only 0.9 percent of their white-collar staffs.

These reports are not conclusive as far as individual firms are concerned. They do indicate clearly an overall situation that must be followed up, and is being followed up, on a firm-by-firm basis. If this followup discloses discrimination or lack of affirmative action by contractors to insure nondiscrimination, appropriate action will be taken.

The March 1963 compliance reports are now in, and these will be reviewed to determine whether progress has been made. Where it does not appear adequate, special investigation will be undertaken.

Recently, and pursuant to a directive of the President, I have had a survey made of Federal construction projects to determine whether there is discrimination on those projects in connection with either the hiring of journeymen or the selection of apprentices.

Site surveys of 47 major projects in as many different cities have now been made. These surveys show that at the time of our inspection 7,795 construction workers were employed. Of these, 1,389 were Negroes. All but 316 of those Negroes were laborers. Among the skilled journeymen there were only 300 Negroes, compared to 5,658 whites; and of 319 apprentices only 16 were Negroes.

Here again, these preliminary survey reports confirm the fact that there is a situation here which has to be followed up aggressively on a case-by-case basis. They show a wide variety of practice, varying from project to project and among the different building trades. It is clear that the problem is not a sectional one, but is national in scope.

We are already proceeding with this followup. The contracting agencies are being advised of these survey reports, and will undertake much of the compliance activity which is indicated.

It will be determined in each case whether the private contractor's "affirmative action" obligation is being satisfied. Where there has been discrimination in the hiring practices on these projects, responsibility for this will be assessed. Where it is found that the problem is one of the unavailability of Negro journeymen, the reason for this will be thoroughly explored. We are not accepting soft or easy or traditional answers.

I note at the same time, that the extensive work already carried on by the Committee and by the Department in this area makes it clear (i) that the straightening out of this situation is not going to be easy, (ii) that it is going to require the cooperation of all the groups involved, but (iii) that there is reassuring evidence that this cooperation is going to be forthcoming.

There has been a tendency on the part of some building contractors to shift responsibility for the preponderance of white employment in this industry to the building trade unions. This has been exaggerated. It is evident, however, that most contractors are both willing and able to cooperate in improving this situation.

The international unions involved here have reasserted, as recently as last week, their virtually uniform position of adherence to a nondiscrimination policy. They are backing this policy up in practice. In some building trade locals in some cities a different attitude is being encountered. In general, however, as is illustrated by recent experiences in the District of Columbia, New York City, Chicago, and elsewhere, local as well as international union officials are cooperating in action programs which will improve significantly what has unquestionably been an unsatisfactory situation.

As a result of previous custom and practice there is today a problem in some, perhaps most, areas of finding qualified Negro journeymen and applicants for apprenticeship programs. The past discriminatory practices unquestionably have a continuing fallout effect. The resultant difficulty of finding immediately available qualified Negro workers has to be taken into account. But so does the necessity of "affirmative action" to remedy this situation—both by making it clear that the practices have been changed, and by undertaking training programs which will rectify previous injustice. The policy being insisted upon is one of strict nonpreference, of straight merit selection; and it is a necessary part of this policy to neutralize the effects of past discrimination.

Our recent investigation of employment on Federal projects in the District of Columbia has also made us fully aware that effective enforcement of the nondiscrimination policy in the construction industry requires that compliance efforts not be limited to attempts to enforce obligations once contract performance begins.

What is needed is that standards be developed for determining the ability of contractors to comply in advance of contract award—standards which will apply to subcontract relationships, referral arrangements and apprentice programs to insure that the sources from which the building tradesmen will be drawn afford equal opportunity to all.

Such standards will be issued shortly. They will spell out in detail the more important aspects of the contractor's obligations to take "affirmative action." Once adopted, these standards will provide the basis for intensive compliance activities—contract by contract—program by program if necessary. We will seek out information on the operation of apprentice programs and are prepared to work out the specific terms for promoting greater opportunity for those who have been excluded in the past.

The President's recent action in extending the scope of Executive Order 10925 to construction grant programs will substantially increase the construction activity which is subject to the equal employment program.

At the same time, President Kennedy also clarified the jurisdiction of the Committee by making clear that the Executive order applies—unless an exemption is granted—to all facilities and tiers of subcontractors of a contractor.

I have gone into this detail regarding the activities of the President's Committee on Equal Employment Opportunity as a basis for your consideration of the proposal in title VII of the Civil Rights Act. It is my conviction that these activities, carried on thus far as an exercise of executive responsibility, represent a vital element in the program for assuring the right to work to all Americans, and that this purpose will be substantially fulfilled by giving this program a legislative base.

While we have preached equality of opportunity for all Americans, we have practiced it for only 90 percent. H.R. 7152 represents the decision to do what we have been saying we believe in. Its enactment will move us a long way toward eliminating the only real poverty there is in this country: the poverty, for some, of opportunity.

The CHAIRMAN. Mr. Secretary, you mentioned talking to the AFL–CIO and receiving cooperation from those organizations. Would you care to briefly summarize the nature of that cooperation and spe-

cifically tell us whether or not that cooperation is uniform throughout the country? I particularly refer to the South. Are the unions in the South cooperating?

Secretary WIRTZ. The answer to the question is that it does cover the whole country. As part of the introduction to the answer to my question the situation is undoubtedly different from one area of the country to the other. It is interesting, Mr. Chairman, that in the surveys of these 47 projects which we have undertaken and completed within the last 10 days, we can detect almost no sectional pattern.

On the basis of these surveys, the situation is likely to be bad or good in one section or in another without respect to the geography. In order to answer your question, the AFL–CIO has laid out its position in clear and unmistakable terms and they mean it. They are also responsible for the participation of 118 of the 134 international unions in commitments to the President's Committee on Equal Employment Opportunity that there will be no discrimination in their programs. Those are signed commitments. We call them programs for fair practices—like the programs for progress of the companies. Then we have moved on to the building trades and have in the action of last week a forthright statement by the building trades, this is the international, that as far as the international policy is concerned there is to be no discrimination in employment, in referral or in the apprenticeship program. Then we have moved on to the specific local level. We have found different situations in different areas. We found a serious situation in the District of Columbia.

So we sat down with the leaders and officers of each international union and talked with them about meeting this problem. We have found not just word cooperation but from almost all of them complete practicing cooperation so that they are now at this time taking in so many Negroes, not on a quota basis, but on a merit basis, into their current apprenticeship program. We talked in St. Louis on Tuesday of this week with the building trades representative there. It has got to be taken up. It has got to be followed up on a local basis in a good many cases. So in answer to your question, I am not talking about paper commitments, I am talking about moving the paper commitments into practice. The AFL–CIO has done it. The building trades representatives have done it. Most of the local unions are doing it.

There are still, of course, some pockets of obstinacy. I don't mean to suggest that the problem is over. But the back of the problem is broken.

Mr. MEADER. I want to refer to the figures on pages 11 and 12, Mr. Secretary. The first one I guess relates to Government employment.

Secretary WIRTZ. That is right.

Mr. MEADER. The committee received 2,156 complaints. I suppose that is since March 6, 1961.

Secretary WIRTZ. That would be correct.

Mr. MEADER. Up until the most recent date?

Secretary WIRTZ. It would be April of 1961. These figures are brought down to June 1, 1963.

Mr. MEADER. The next statement is that to date two-thirds of these cases have been closed. Corrective action was found necessary and was taken in 38.3 percent of the cases. This is Government employment.

Secretary WIRTZ. That is right.

Mr. MEADER. Could you give us an example of the corrective action to which you referred to?

Secretary WIRTZ. Yes. It would be a situation in which a complaint is filed by a Negro in grading—that he was entitled on the basis of his civil service status to promotion to grade 9 and he was denied that opportunity because of his race. He files a complaint on that basis. In this number of cases, 38.3 percent of the cases that have been acted upon, his claim has been upheld. I have given the type case. I don't mean to suggest that all of them would be that specific.

Mr. MEADER. If I am correct, then, you have disposed of 1,400 cases or two-thirds of them, and of those something under 40 percent were found to be meritorious and required corrective action?

Secretary WIRTZ. That is correct.

Mr. MEADER. So that something over 60 percent were found to be frivolous or not valid?

Secretary WIRTZ. That is right.

Mr. MEADER. With respect to the contractors on page 12——

Secretary WIRTZ. Before you leave this, I want to be sure that I set my answers in perspective of the fact that we are talking about 2¼ million employees over a 2-year period. I am quite proud of the fact that there have been only 2,156 complaints filed. I am glad we caught these. I don't want to leave the impression that there is a lot of this going on because there is not.

Mr. MEADER. On page 12, thus far 914 complaints have been fully investigated and corrective action has been taken in 641 cases. You don't give the comparable figure on how many complaints are still pending and not disposed of.

Secretary WIRTZ. About 500 to 600 presently pending cases in all of the procurement agencies.

Mr. MEADER. I am speaking now about contractors.

Secretary WIRTZ. Yes; I am, too. These are contracts; we administer this program to a considerable extent through the procurement agencies.

Mr. MEADER. You have 914 complaints?

Secretary WIRTZ. That is right.

Mr. MEADER. And you have taken corrective action in 641 cases, which would mean there are less than 300 cases that are not covered by those 2 figures?

Secretary WIRTZ. That is right.

Mr. MEADER. Of those roughly 300 cases in which no corrective action has been taken, have they been disposed of or were the complaints found to be unfounded?

Secretary WIRTZ. They were found to be unfounded.

Mr. MEADER. You say corrective action was taken in 614 cases. I recall, I believe correctly, when Mr. Taylor was here in May we asked whether or not any contract had ever been canceled and we understood none has been canceled.

Secretary WIRTZ. None has been canceled.

Mr. MEADER. So your corrective action would be of a different character?

Secretary WIRTZ. It would be corrective action eliminating the discriminatory practice on the part of the contractor. I should make this

clear, Congressman. Some of these cases involve actual discrimination. Some of them involve failure to comply with some of the procedures in the regulations, for example, failure to post notice that there is no discrimination in this plant. It is a whole group but it would include both things. Your statement is correct. When we say that corrective action has been taken in 641 cases, what that means is that private contractors have taken action of one kind or another to neutralize or remedy the previous action which has been taken in contravention of the order.

Mr. MEADER. Thank you, Mr. Chairman.

Secretary WIRTZ. A good illustration would be if we find there are segregated facilities in the plant. This would be a fairly typical one. We have called that to their attention. This is a violation of this, and there has been an integration of those facilities. Separate seniority lines.

Mr. CRAMER. Mr. Chairman, may I ask one or two questions? I am sorry I was a little bit late. Under section 601 relating to programs providing direct or indirect financial assistance, in reading your testimony, Mr. Secretary, I didn't find a description or a list of the programs that would be included. Have you that list available for the record?

Secretary WIRTZ. I can give you a list of the programs which are the responsibility of the Department of Labor. I don't have the broader list.

Mr. CRAMER. How do you suggest that the committee acquire a list of all programs that would be subject to this revision?

Secretary WIRTZ. If the request is made I will certainly cooperate to the fullest extent of my ability on it.

Mr. CRAMER. I would like to ask, then, Mr. Chairman, that the Secretary be requested to submit a list of all agencies and programs that would be covered under title VI so that we will know what the thrust of the section would be.

Secretary WIRTZ. Mr. Chairman, in that connection may I simply point out that my responsibilities are limited to a particular department and I would interpret such a request as permitting the taking up of the matter through your offices, Mr. Chairman, to find out where that can best be obtained.

The CHAIRMAN. If you will cooperate we will be glad to cooperate so as to get the request complied with.

Mr. CRAMER. I would like to make a similar request with respect to title 7 which appears to be somewhat broader as it relates to the programs which would be affected by the section. That was the intention, was it not?

Secretary WIRTZ. I am not sure what you refer to.

The CHAIRMAN. Let me get this clear on the list that you want on the federally assisted programs. You want specific contracts or just subject matters?

Mr. CRAMER. The types of programs where there is provided and authorized direct or indirect financial assistance by the Federal Government.

The CHAIRMAN. You don't want each particular contract. You just want the type of contract.

Mr. CRAMER. I want the programs that would be included under the jurisdiction of this section. Grants-in-aid programs, indirect aid and so on, housing, and home finance, education.

Secretary WIRTZ. With us it would be principally the Employment Service and the training programs in the Department of Labor. I didn't understand the question about title VII.

Mr. CRAMER. In title VII it is much broader, is it not, and intended to be so. Activities in which direct or indirect financial assistance by the U.S. Government is provided by way of grant, contract, loan, insurance guarantee, or otherwise.

Secretary WIRTZ. We have applied this only to the Federal Government employees and then it extends to all Government contracts. We have not gone into the application of this to the other areas to which you refer.

Mr. CRAMER. Then I presume that information should properly come from the records of the Commission; is that right?

Secretary WIRTZ. I am sorry, I was checking my answer.

Mr. CRAMER. What would be the source of the information, the Commission?

Secretary WIRTZ. On this I think I have the full information and if I have not given you the answer that you are looking for I am the one who ought to.

Mr. CRAMER. Could you provide that information for the record?

Secretary WIRTZ. I must have misunderstood the question because my answer was that it covered that part which I understood, which is that the application of title VII would be to Federal employees. It would also be to Government contractors with the Government, just as it is now.

Mr. CRAMER. As I read it, by contractors and subcontractors participating in programs or activities in which direct or indirect financial assistance by the U.S. Government is provided by way of grant, contract, loan, insurance guarantee, or otherwise.

Secretary WIRTZ. Your reference, and properly is to new Executive Order 11114, which was issued last week which expanded Executive Order 10925 to be effective 30 days from now and I will supply the answer to the question as it bears on that. Frankly, I do not know yet the full application of that provision. I will be in a position to supply that very shortly.

Mr. CRAMER. That is the point. I don't think we should expect to legislate in a vacuum so far as knowing what programs would be effected by the words, particularly loan, insurance guarantee, and otherwise, there.

Secretary WIRTZ. There is no difficulty with the question and we will be in a position to give you a specific answer.

Mr. CRAMER. In other words, you have Federal deposit insurance relating to savings and loan institutions and banks. If a bank makes a loan or a savings and loan institution makes a loan to a contractor for a building of a home, is that contractor subject to these provisions simply because the money comes from an institution with FDIC insurance?

Secretary WIRTZ. We can supply it shortly. We are talking about an Executive order which is just several days old.

Mr. CRAMER. Will it be included or excluded?

Secretary WIRTZ. Which?

Mr. CRAMER. FDIC loans made.

Secretary WIRTZ. I think it would be in the committee's advantage if I give you a more carefully considered listing of those than I am in a position to do as of the moment. There are a number of cases which would be quite clear. There are others which would be less clear. I think I ought to think through fully the answer to that question.

The CHAIRMAN. You will give some thought and study to that and let us have it at your convenience.

Secretary WIRTZ. It will not take a great deal of time. It is just that this order is just out and we have not had a chance to work out the details.

Mr. CRAMER. We get into the further question, Mr. Chairman, of the definition in the bill. How does anyone know who does have FDIC insurance on deposits, either in banks or savings and loan institutions? How do those institutions know by reading the language of the bill, if it should become law, whether they are included or excluded? It is a simpler matter by Executive order. But we are supposed to be legislating so that people know whether they are covered or not covered. Don't you think that some type of definition of a program, perhaps setting out the specific programs, could be covered from a legislative standpoint which gives direction and definition?

Secretary WIRTZ. No; I think it is quite clear that the proposal here is that where there is an expenditure of Federal funds, that expenditure is not to be made where this contributes to discrimination on the basis of race, creed, and color. No, I think the instruction is quite specific.

Mr. CRAMER. Let us take another example. The Housing and Home Finance Administration, the community facilities planning loan, that is the only relationship of Federal expenditure to the project. Would it be covered or not covered?

The CHAIRMAN. May I say if the gentleman would yield. Prior to the gentleman coming to the meeting we had discussed the provisions on page 36, namely:

> The President may also confer upon the Commission such power as he deems appropriate to prevent discrimination on the grounds of color, race, religion, national origin, in Government employment—

and it was very carefully and succinctly brought out that title 7 is merely an authorization and that it would depend a great deal upon Executive orders issued under this authorization and that the President is given rather sweeping powers here. So I take it that the particular types of programs that would be involved would be within the power of the President, and in that way it raises the question whether we want to be specific in the legislation or leave it as an authorization and in that sense leave it flexible. That was the question that was propounded and it was said that that is a matter for us to go into. The Secretary preferred, however, to leave it along the authorization route. Am I correct?

Secretary WIRTZ. That is correct, Mr. Chairman.

Mr. CRAMER. I understand that was raised and I have some reservations about the authorization route. My questions were directed toward, if we decide that Congress should determine what programs it should apply to, then what is their concept of the programs that

should be included under this language. I don't know how we can legislate on that phase of it until we know what would be included in this specific definition and this specific language. What loan programs, what insurance programs, what guarantee programs, and what "or otherwise" programs would be included?

Mr. MEADER. I would——

Mr. CRAMER. Or should be included if Congress decides to define them more specifically. I will yield to Mr. Meader.

Mr. MEADER. My colleague from Florida has raised a point which had not occurred to me and I would like to direct this question, Mr. Secretary. Does the present Executive order include all of these words? "Grant, contract, loan, insurance, guarantee, or otherwise"?

Secretary WIRTZ. The Executive Order 10925 does not. Executive Order 11114 which was issued last week does.

Mr. MEADER. It uses these same words.

Secretary WIRTZ. Approximately the same words.

Mr. MEADER. I mean the Government is in so many things today. You might conceivably say this applied to crop insurance, subsidies of shipbuilding and ship operations. If this language is as broad as the interpretation of the question from the gentleman from Florida indicated, you might say this is an FEPC that is not limited to Government contracts.

Secretary WIRTZ. As far as the Executive order is concerned, it is limited to construction projects. That still leaves a number of the questions which have been raised here which I am not only willing but want to answer. I do point out that we are right now in about the fifth day of the Executive order. We are trying to workout regulations. We are looking very carefully at the various laws to which there has been reference made here in order that we can answer precisely this question not only for the committee, but for everybody who is affected by this also. In answer to your point, Congressman, it does cover only construction projects. I am talking now about Executive Order 11114 and there would be another question as far as title VII is concerned.

Mr. CRAMER. The language in the bill would give the President discretion beyond that. Not only construction, but participating programs or activities of any kind in which direct or indirect financial assistance in the nature of grants, contract, loan, insurance, direct or indirect, guarantee, direct or indirect, or otherwise, direct or indirect.

The CHAIRMAN. May I ask the gentleman from Florida how could you spell that out specifically and do justice to the situation?

Mr. CRAMER. That is the decision we will have to make but I don't know how we can make it until we know what the programs are.

The CHAIRMAN. Therefore, you have to leave some discretionary authority to the President. Because if you are too specific you might leave something important out. You might include something that would make it difficult.

Mr. CRAMER. If I was a businessman or contractor, I would like to know whether I was in or out of the legislation that the Congress passed.

The CHAIRMAN. Would this be satisfactory? Could you, Mr. Secretary, give us, as best you may, after study, an answer to the query of the gentleman from Florida?

Secretary WIRTZ. I certainly shall, Mr. Chairman.

Mr. CRAMER. May I ask one question? Then in executive session with that information we can make a sound decision. I understand that the Education and Labor Committee is considering and expecting to vote out this week or shortly an FEPC bill. What effect in your opinion would that have on the necessity of title VII in this bill, if the Education and Labor Subcommittee, the matter being properly in their jurisdiction, should vote out an FEPC bill?

Secretary WIRTZ. It would be that there would be very real need for both of these programs.

Mr. CRAMER. I would like for you briefly to indicate why?

Secretary WIRTZ. It would be for this reason. Let me preface it by saying that if an FEPC bill were to include specific coverage of matters of this kind the answer would necessarily be different. I am assuming that your question assumes no specific reference to Government employment or Government contracts.

Mr. CRAMER. It is broader; it includes everything.

Secretary WIRTZ. I say if you assume an FEPC bill which does include these things there would be no necessity for it. If your question assumes, as I thought it did, a broad FEPC program, we know from experience in a great many States now, and in general, that that leaves some questions which can better be attended to by specific provisions. We would feel quite strongly as far as this particular program is concerned that it should receive specific emphasis.

Mr. CRAMER. My concluding question in relation to that and to your testimony is, which does the administration want? Is it insisting on FEPC as the President stated in his message and as apparently your testimony was to that effect before the Labor Committee, or is it willing to accept title VII as a compromise? What is the position of the administration? I don't know which they want. They come to this committee and say title VII and they go to education and labor and say FEPC.

Secretary WIRTZ. No, your references to my statement and to the President are not in the form in which they were made. There has been no such assertion at all.

Mr. CRAMER. The reason I asked the question is to give you an opportunity to clarify it.

The CHAIRMAN. The answer is very simple, Mr. Secretary. The President's message indicated that he wants both.

Secretary WIRTZ. That is right.

Mr. CRAMER. His answer indicated to me that the FEPC bill voted out of the Education and Labor could be inclusive of this title VII.

Secretary WIRTZ. I did not find that to be the case. I don't think it was there. The chairman's statement is completely right. The administration's position is that there should be these specific provisions made and it has indicated its strong endorsement of a fair employment program, too.

Mr. CRAMER. Of course, the same question relates to title VI. If another legislative committee that has jurisdiction over these general provisions accepted the Powell amendment relating to all Federal financed programs, would then title VI be necessary?

The CHAIRMAN. I would say to the gentleman, there are, undoubtedly, questions of jurisdiction involved in this omnibus bill. For

example, one committee in particular has claimed jurisdiction over certain aspects of the bill. I imagine that the Committee on Education and Labor may also claim jurisdiction over other aspects of the bill. This omnibus bill has been referred to this committee by the Parliamentarian. It contains a number of provisions which also are undoubtedly within the jurisdiction of another committee. Ordinarily a bill must be considered in its entirety. If most of them refer to jurisdiction over which we have control it goes to this committee. That is the rule of the Speaker as advised by the Parliamentarian. As to the bill reported out by by the Committee on Education and Labor, called the fair employment practices committee bill, there has been no rule granted on that bill.

I don't know what is going to happen to that bill. The President has indicated in his message he wants all of that bill as well as the provisions of this bill. I don't think we are going to have any difficulty with the Committee on Education and Labor as far as jurisdiction is concerned.

Mr. CRAMER. Mr. Chairman, I didn't raise the question intentionally or otherwise relating to jurisdiction. It was not my purpose to do so. It was my objective to try to see how much duplication there was, and exactly what the administration wants in relationship to this bill as compared to other bills under consideration by other committees that have the legislative jurisdiction and the action that is known to have been taken or is contemplated will be taken by those legislative committees and how that would affect either one of these two sections. That was the purpose of my questions and I think they are perfectly logical questions because I think the public is confused. Certainly the Congress is confused when you have a broad FEPC bill being considered by Education and Labor and you have a discrimination commission being considered by this committee and you have the broad Powell amendment being considered by another committee and a lesser one by this committee.

Secretary WIRTZ. There is no confusion about the administration's position, Congressman. It is that with respect to the administration of the programs which the Congress has given us under title VI we should administer those and should be so directed without any discrimination. That is an administrative matter. As far as our own employment and contracting policies are concerned there should be no discrimination with respect to those. We recognize that this leaves the broader question which does not involve Government programs, Grovernment employees or Government contracts, and we have indicated quite clearly that we think a fair employment program there along the lines which have been suggested would be a good thing. It is simply a matter of endorsing the general principle and also suggesting specifically that with respect to these things which we are administering as part of our governmental function, there ought to be a specific provision.

The CHAIRMAN. Gentleman, the bells have rung.

Mr. KASTENMEIER. Mr. Chairman, I have just one question I want to ask.

The CHAIRMAN. I want to state there will be bells ringing all afternoon indicating the absence of a quorum as an attempt to filibuster against this committee. I will allow one question and then we will adjourn.

Mr. KASTENMEIER. Mr. Secretary, in the public debate on equal employment opportunities or discrimination in employment, some leaders seriously suggest that what is needed is not a program of equality starting now but a catch up or compensatory program, wherein I gather, if I understand the proposition, that Negroes ought to be, in fact, preferred because of discrimination which has existed over a number of years. What is your reaction to such a proposal?

Secretary WIRTZ. Do you inquire as to the basis on which we are administering our program? If I were a private employer, I might very well answer that question on the side of a preference because of past faults. But I am not. I answer your question then only with respect to the administration of the program. As far as we are concerned, it should be on a straight—as far as this part is concerned—on a straight merit basis. We will not administer the program or any part of this program so as to give preference as between two people, the one because he is a Negro. We will at the same time respect the fact under our training and education programs that there is a lot of catching up that ought to be done and we ought to take an affirmative action with respect to it. On the employment in the administration of these programs it is a straight nonpreference merit position which we insist on.

Mr. KASTENMEIER. Administratively that is the only way you could actually fairly administer the program?

Secretary WIRTZ. Yes. As an employer I would be inclined to take some other things into account.

The CHAIRMAN. Mr. Secretary, the gentleman from Ohio, Mr McCulloch, has asked me to state, and I give his exact words, "That you may have been a lucid witness." I want to say for myself you have been most helpful in your testimony. Your views are the result of real wisdom and hard work. I like your calm and you are apparently not easily ruffled. I think the office of the Secretary of Labor is in good hands.

Secretary WIRTZ. You make it seem worth doing, Mr. Chairman.

Thank you.

The CHAIRMAN. The committee will now adjourn subject to call.

(Whereupon, at 12:10 p.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.)

CIVIL RIGHTS

WEDNESDAY, JULY 10, 1963

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

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

Present: Chairman Celler, and Congressmen Rodino, Rogers, Donohue, Brooks, Toll, Kastenmeier, Corman, Miller, Cramer, Meader, and McCulloch.

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

The CHAIRMAN. The committee will come to order.

We have with us today the distinguished Secretary of Health, Education, and Welfare, the Honorable Anthony J. Celebrezze, and, before we hear the Secretary I would like to make a brief statement.

Mr. MCCULLOCH. Mr. Chairman, might I make a brief statement about our witness?

The CHAIRMAN. Yes, certainly.

Mr. MCCULLOCH. We are very happy to have the Secretary of Health, Education, and Welfare before us this morning, Mr. Chairman. He comes from the State of Ohio. He had an enviable record as a State senator, and was mayor of the great city of Cleveland, where he also had an excellent record. I am pleased to welcome him this morning.

The CHAIRMAN. I want to make it clear that these hearings will move forward with all possible dispatch. I made announcements on the floor of the House and radio and television, in the press and during the course of these hearings, beginning early in May, that I would afford all interested persons the opportunity to testify, but that I would brook no delay.

I am therefore repeating, these hearings must move forward toward conclusion and, if necessary, I shall have hearings conducted during the evening hours. If anybody wishes to be heard, the request must be placed before this committee within the next 72 hours. After that time no further requests will be considered unless they arise out of unforeseeable conditions.

We have been at these hearings since May 8, and no reason exists for prolonging them unduly. It is my hope, and I will do all that is possible to close these hearings before the end of July.

It must be remembered that following these hearings, the bill will be marked up in subcommittee, and then thoroughly considered in full committee, and a report filed.

I find that it is necessary to say this today because the people in this country must know that this committee is sitting in earnest and working steadily to bring before the House an effective and workable, and a just, civil rights bill.

We all recognize the restive mood of this country on a very vital and disturbing problem. This committee would fail to discharge its responsibilities if it did not take into account the present temper throughout the country.

The distinguished Secretary of Health, Education, and Welfare is accompanied by our old colleague, who is always welcome here, Mr. James M. Quigley, the Assistant Secretary.

Mr. Francis Keppel, the Commissioner of Education is also here.

Mr. Secretary, I hope you will identify the third gentleman, for the record.

Secretary CELEBREZZE. The third gentleman is Mr. Dean Coston, one of our special assistants to the Assistant Secretary.

The CHAIRMAN. You may proceed, Mr. Secretary.

STATEMENT OF HON. ANTHONY J. CELEBREZZE, SECRETARY OF HEALTH, EDUCATION, AND WELFARE; ACCOMPANIED BY JAMES M. QUIGLEY, ASSISTANT SECRETARY; FRANCIS KEPPEL, COMMISSIONER OF EDUCATION; AND DEAN COSTON, SPECIAL ASSISTANT TO THE ASSISTANT SECRETARY

Secretary CELEBREZZE. Mr. Chairman and distinguished members of the committee, I am pleased, of course, to have the opportunity of appearing before you. I deeply regret that some 37 years before the end of the 20th century that we must take up legislation which deals with basic human rights.

Life, liberty, and the pursuit of happiness are rights of every American, not because he is a citizen or because he belongs to any particular group, but because he is a human being. These rights derive not from the state but from the Creator. This truth was recognized to be "self-evident" by those who founded this Nation.

The unity and spirit of America clearly demand that, in the light of this truth, we take whatever steps are necessary to assure the enjoyment of these rights by all citizens.

This is the 20th century. This is the space age and the atomic age. If we have any sense of history, we can only view the need for the legislation now before this committee with a sense of the great irony of our having failed, in the midst of magnificent human achievement in the physical sciences, to have yet fully recognized the basic worth and universal dignity of the human being—every human being. This failure can no longer stand unchallenged in the face of the swift currents of human events.

Mr. MCCULLOCH. Mr. Chairman, I would like to interrupt the Secretary at that point, and refer again to the part that our State has played in this most important field.

Almost three-quarters of a century ago the State of Ohio had, if not the very first legislation, among the very first legislation in this

field, which sought to provide for every citizen equal accommodations in public places. That legislation has been amended from time to time, and is in my opinion particularly effective in the State of Ohio.

It has been effective in that great metropolitan city of Cleveland, of which the Secretary is former mayor. It has been effective in other parts of Ohio for many years.

I hope that other States of the Union can move forward as our State moved forward three-quarters of a century ago.

Secretary CELEBREZZE. Children born today will lead this Nation into the 21st century. They will have at their command scientific wonders heretofore undreamed of. But they will need something more.

We must assure that these children grow up in a world in which their knowledge of discrimination is confined to their history books and is not a part of their daily experience. We must assure that each of these children who shall be the leaders of a new century is enabled to develop his capacities to the fullest and to apply his full capabilities not only in fulfilling his own aspirations as an individual but in making his individual contribution to moving our Nation forward in economic, social, and cultural progress.

When we deny to some the rights of democracy, while imposing on all the responsibilities of democracy, justice is compromised. The President proposes that steps be taken to redress this wrong. I welcome the opportunity to address myself specifically to the merits of the President's proposal.

Mr. MCCULLOCH. Mr. Chairman, I would again like to interrupt the witness, particularly in view of the last sentence just read.

I wonder if the Secretary or his advisers had the opportunity to thoroughly study H.R. 3139 which I introduced late in January of this year, and H.R. 6720, which was introduced by Mr. Lindsay on June 3, 1963, and in each instance we were joined from upward of 30 Members of the House in that legislation.

Has the Secretary or his advisers had an opportunity to thoroughly study those proposals?

Secretary CELEBREZZE. Yes, I have had an opportunity to study them.

Mr. MCCULLOCH. Will the witness have comments on those proposals during his testimony?

Secretary CELEBREZZE. The proposals in your bill, and the Lindsay bill, and the Gill bill are all directed, I think, to the same goals that we are directing your attention to. The bill that we are discussing this morning perhaps has included most of them in an omnibus form.

I believe that the only difference of opinion is the methods that we will use in achieving the goal that we both desire to achieve.

I am fully aware that this Congress has shown great initiative in the introduction of these bills, and I congratulate the distinguished Congressmen and distinguished Senators who have joined in their introduction.

When I made my statement to Congress concerning the President's proposal that steps be taken to redress this wrong, I did not mean in any manner to downgrade what the Congress has done, or what the Members of the Congress have done in the introduction of the bills.

Mr. McCULLOCH. Mr. Chairman, I am very happy with that statement, and with the very great experience that the Secretary had in Ohio I am sure that he knows that important and controversial legislation must receive bipartisan support and I just want the record to show that the Secretary was not committed to only those recommendations made by the President.

The CHAIRMAN. Mr. Secretary, supplementing what the distinguished gentleman from Ohio said, I wanted to indicate that there has been solid bipartisan support in this committee, you know, for a good, strong, effective, civil rights bill. I could not guarantee that there would be any such bill without the support of the side that Mr. McCulloch represents. The gentlemen on the Republican side, as well as the gentlemen on the Democratic side, genuinely desire a good bill. Incidentally, there have been 165 bills up to this morning introduced on this very important subject which betokens a genuine bipartisan support—about half were offered by Republican Members, and half by Democrats.

Secretary CELEBREZZE. Mr. Chairman, I certainly want to congratulate both sides for their interest in this, because it is my basic belief, and I am sure it is the basic belief of the majority——

The CHAIRMAN. Excuse me.

We requested from various departments reports on the bills you referred to, Mr. McCulloch, back on April 10, Mr. Foley informs me.

Secretary CELEBREZZE. I am sure, whether Republican or a Democrat, we cannot be engaged in politics when it comes to basic human rights, when it comes to affecting individuals, whoever that individual may be; there is no room for politics.

We may discuss, and perhaps disagree as to the best methods, but where human rights are involved, I certainly, in all of the years I have been in public life, would never engage in a political consideration as to what rights people are entitled to.

The CHAIRMAN. In other words, we must be politically colorblind on this very important subject?

Secretary CELEBREZZE. We must judge the merits as Americans, rather than as Democrats or as Republicans.

Mr. McCULLOCH. At the risk of self-praise in mentioning it, I am of the opinion that was the approach when we were studying the civil rights legislation, particularly in 1957, and again in 1960. and last year, as far as we could go in this committee.

The CHAIRMAN. Correct.

Secretary CELEBREZZE. First, may I say that I fully support the provisions of this proposed legislation for the assurance of the right to vote, the availability of public accommodations on an discriminatory basis, the establishment of a community relations service to provide assistance to communities in resolving racial disputes peacefully, the extension of the Civil Rights Commission program, and the permanent statutory establishment of the Commission to further the cause of equal employment opportunity. The Attorney General and the Secretary of Labor have already testified in detail on these provisions of the legislation designed to correct the broad problems of discrimination in our Nation.

As Secretary of the Department of Health, Education, and Welfare, I wish to discuss more fully title III, which deals with that

particular aspect of discrimination related to the segregation of public schools, and title VI, which deals with the use of Federal funds in segregated programs or activities.

Title III: Segregation in schooling is only part of a pattern of discrimination that affects the entire life of Negro citizens. The results are apparent in housing, in employment, in the availability of services of all types. All these factors, and others as well, affect the child in school. Without hope of equality of opportunity, without the encouragement of parents who have a hope of equality of opportunity, the pupil loses the motive to study and to advance himself in the world. In the scale of human values it is difficult to measure the extent of the hurt, the injustice, and the deprivation that comes from consigning children to school by the color of their skin. But we do know the national results of deprivation and discrimination:

Nearly 70 percent of the young white adult population has finished high school, as compared with only about 40 percent of the nonwhites in the same age group;

Twelve percent of our young white adults has completed college, while only 5.4 percent of our nonwhites in the same age group has done so;

Negroes comprise only 3.5 percent of all professional workers but represent 11 percent of our population;

In our adult population, 25 years and older, 6.2 percent of whites and 22.1 percent of nonwhites have completed less than 5 years of school.

Mr. McCULLOCH. Mr. Chairman, I should like to inquire of the Secretary whether or not these statistics are broken down by States in the Union, and, if they are, could we have that breakdown by States for the record?

Secretary CELEBREZZE. Yes, we have them broken down by States, and later on in my testimony I will give you some figures on 11 States to give you a comparison, but we can give it to you State by State.

We will furnish that for the record.

(The data reqeusted appears at the end of the witnesses' testimony.)

Secretary CELEBREZZE. Nine years after the U.S. Supreme Court decision in *Brown* v. *Board of Education*, there are still more than 2,000 school districts which require white and Negro pupils to attend separate schools. In 11 of our States with a Negro enrollment of 2.8 million, only 12,800 Negroes, or less than one-half of 1 percent, are attending desegregated schools. In many more States throughout the Nation, residential segregation of Negroes, combined with the neighborhood school attendance policy, has resulted in de facto school segregation.

Title III, sections 303 and 304, are designed to speed up desegregation by assisting school systems throughout the Nation which are attempting to act in compliance with the letter and the spirit of the Constitution but which are encountering problems in doing so. In addition, as the Attorney General testified before your committee, section 307 of title III provides a program of effective court action for the same purpose.

The CHAIRMAN. Can you give us those States, also?

Secretary CELEBREZZE. Yes, sir. Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

Those are the figures for 1962–63 Negro enrollment in those particular States.

Mr. ROGERS. Mr. Secretary, have you any information as to whether or not on the high school level they are properly accredited so that they may determine whether they are good schools or not?

Secretary CELEBREZZE. In the 11 States some high schools are accredited. I don't have the details with me, but we can furnish it for the record.

Mr. ROGERS. The reason I asked the question is we have had testimony from some witnesses to the effect that the State of Mississippi had less than 10 accredited high schools that met the standard. I assume they meant the standard of NEA, so that their credits could be taken and used for entrance into educational institutions of higher learning?

Secretary CELEBREZZE. We can check that for you.

Mr. ROGERS. If you have that information I would appreciate it, if you could provide it.

Mr. MCCULLOCH. Would the gentleman from Colorado yield to a question at that point?

Mr. ROGERS. Yes, sir.

Mr. MCCULLOCH. I believe that at the same time we had testimony heretofore in the committee regarding the accredited high schools, there was a statement about accredited elementary schools, and it was an unbelievably low figure, probably less, or approximately 6 percent of the schools in one of the States being accredited elementary schools, and no more.

Is that a fact, or is that an erroneous impression that I have?

Secretary CELEBREZZE. I imagine there would be a strong distinction between the public school system, which is run by the State, or the local communities, and the private school system.

You may find that some of the private schools are not accredited.

Mr. MCCULLOCH. Could your Department furnish for us, if that information be available, the percentage of accredited elementary schools in, for instance, these 11 States to which you refer here at the top of page 4 of your statement?

Secretary CELEBREZZE. Yes, that is what I addressed myself to, Congressman Rogers, that we would furnish that for the record.

(The data requested appears at the end of the witnesses' testimony.)

Mr. MCCULLOCH. I think perhaps we were talking about two things. I think Congressman Rogers was talking about high schools, and I have inquired about elementary schools because one group of bills use the phrase "six years at an accredited school," or words to that effect, and if there are only 6 or 10 percent of the elementary schools accredited, why, we will of necessity strike that descriptive language immediately.

Secretary CELEBREZZE. We will furnish it both as to elementary and as to high schools.

Mr. DONOHUE. Is the gentleman from Ohio referring now to segregated schools?

Do you understand that, Mr. Secretary?

Secretary CELEBREZZE. I understood all schools. If he wants it limited to segregated schools, we can do that.

Mr. MCCULLOCH. All schools.

Mr. DONOHUE. It was my understanding that the testimony offered by a previous witness was to the effect that these segregated schools were not accredited.

Secretary CELEBREZZE. Well, we can also determine it on that basis, if that is the wish of the committee.

Mr. DONOHUE. That is, Mr. Secretary, if the segregated elementary schools and the segregated high schools are accredited.

Is that your thinking?

Mr. MCCULLOCH. Yes, and I thank my colleague. We will want to know in executive session what percentage of schools of all types are accredited.

Mr. DONOHUE. It is my understanding that the schools that the white boys and girls go to down there are all accredited. The segregated schools that the Negro children go to are not accredited.

Mr. MCCULLOCH. I see some difference of opinion about our statements, and, as I understand it, Mr. Chairman, the records will be furnished to us so that we can understand them when we see them in writing.

Mr. CORMAN. Would the gentleman yield?

Mr. MCCULLOCH. Yes.

Mr. CORMAN. I discussed this with the school authorities in Jackson last week, and it is my understanding there are two accreditations, one by the State, itself, and one on a regional basis. We might want both, but we certainly would want it on a regional basis, because I was informed by the school authorities in Jackson that eight high schools for Negroes are accredited by the regional accrediting body, but a great number are accredited by the State, itself, and we might want both criteria.

Mr. MCCULLOCH. Thank you. That information would be helpful, indeed.

Mr. CRAMER. May I ask a question at this point on this paragraph?

Mr. Secretary, I note that you indicate in the next-to-the-last sentence that in 11 States with Negro enrollment of 2.8 million, only 12,800 Negroes or less than 1 percent attend schools with white students.

Secretary CELEBREZZE. The chairman asked me to list it.

Mr. CRAMER. The second sentence is in many more States throughout the Nation residential segregation of Negroes, combined with neighborhood school attendance policy, has resulted in de facto school segregation.

Now, I would like to know if you have a list of those States or areas which you are referring to?

Secretary CELEBREZZE. No, we don't have those, because you get into a much broader area, and you cannot use an accurate formula on it, Congressman. You get into the area of school districts which have their districts outlined because of residences, or you run into areas where there is transportation of pupils from one end of town to the other.

We don't have that study, and we don't have those figures.

Mr. CRAMER. I presume in that sentence you are referring, in part at least, to the phrase that appears in the bill on page 20, and in numer-

ous other places in title III; namely, "racial imbalance" in public school systems. Is that what you are talking about when you refer to this?

Secretary CELEBREZZE. To what we call de facto segregation. Of course, there are no effective State laws requiring segregation because of the Supreme Court decision, but there are States or communities which have a policy of segregation. As against these there are other communities which claim that they have no segregation, but because of the boundary lines of their school districts they have in practice segregation. That is de facto segregation.

Mr. CRAMER. You are talking about the situation in New York City, for instance, where they are attempting to transport pupils an extended distance in order to create racial balance, where the neighborhood makeup is such that only white or only colored go there because of the proximity to the school; is that correct?

Secretary CELEBREZZE. Yes.

I am not singling out New York City alone. There are many other communities.

Mr. CRAMER. That is why I asked for a list of those areas that might be involved. In other words, the program that you are envisioning would cover not only segregation, but racial imbalance, and envisages the providing of grants and loans to communities for the transporting of pupils who may live outside the neighborhood of the school in order to integrate a school which may otherwise, because of neighborhood, be either all white or all Negro?

Secretary CELEBREZZE. That I think, Congressman, is pretty well covered in the bill.

Mr. CRAMER. I don't think it is covered at all. There is no definition of racial imbalance.

Secretary CELEBREZZE. Let me finish my statement. I think it is covered under section 3, which requires the Commissioner of Education to make a study and report to the Congress and the President. This is one of the studies that we will get into on an active basis.

The CHAIRMAN. Would the gentleman yield a minute?

For example, we in New York are considerably at fault. We have allowed the ghettoes, these Negro ghettoes that have developed like in Holland and in Harlem in New York. The result is we have schools in this area which will be predominantly colored, and our board of education is now wrestling with that problem. It is a difficult problem. They are endeavoring to work out arrangements where they could have better integration, but they are meeting with almost insurmountable difficulties; resistance on the part of the colored people, resistance on the part of the white people.

We have that same situation in New Rochelle, N.Y. New Jersey has the same situation in Englewood, and there are many areas, I am sure, in the North that suffer from such racial imbalance. I take it that your Department of Education is also wrestling with that problem and trying to help solve it.

Secretary CELEBREZZE. Yes; that would be part of our study.

May I give you our basic experience in the city of Cleveland, while I was mayor. As a result of racial imbalance, we had congested schools in the Negro areas, but in the white areas we had empty classrooms. We solved part of that by transporting Negro children from

the Negro areas, by bus into the white areas, to take advantage of the classroom situation.

In one instance we had overcrowding and in another instance we had empty classrooms. There are many facets to this particular problem. There are many questions that have to be resolved; for example, do you integrate your schools completely for the sake of integration without residential requirements? That is why, in my statement, I said there were many other factors involved. The factor of housing, for example, has a bearing on the factor of segregation. You have to study this problem from a total point of view, rather than just a point of view of education alone, because if you solve the residential question, the housing problem, and have integrated housing, then you are going to solve, partially, the problem of de facto segregation.

Mr. CRAMER. Then this definition of racial imbalance and the solution which your agency would seek would also deal with the question of segregated private housing, is that correct, in order to accomplish racial balance, to try to encourage private homes areas to integrated?

Secretary CELEBREZZE. The President has already signed an Executive order to make housing open.

Mr. CRAMER. I am not talking about public housing, I am talking about private housing.

Secretary CELEBREZZE. Well, you have private housing under grants or under the urban renewal program. You have private housing which is attached to public funds because the public gives 90 percent of the funds. You have funds under FHA which goes to private housing.

Mr. CRAMER. FHA, you say?

Secretary CELEBREZZE. Yes, FHA loans and under urban renewal, which is tied into FHA loans.

Mr. CRAMER. How about FHA loans which attempt to require nonsegregation in the use of FHA funds in financing private housing?

Secretary CELEBREZZE. That was covered by the Presidential order.

Mr. CRAMER. I was under the impression it was covered, and the title dealing with that subject matter—that is title VI.

Secretary CELEBREZZE. I am talking about the Executive order the President signed on housing.

Mr. CRAMER. Is it your impression it applies to Federal deposit insurance loans from the savings and loan institutions?

Secretary CELEBREZZE. You are getting a little ahead of me. I am coming to title VI in my statement.

Mr. CRAMER. Now, you mentioned your home city and what it did. Your example was that there were schools in white areas where there were empty classrooms, and so Negroes were moved into those empty classrooms, but that is not directly or it wasn't implemented for the specific purpose of creating racial balance. That was to take up a slack in schoolroom needs, wasn't it? The racial balance was not the impetus behind that move. It was an economic question?

Secretary CELEBREZZE. That is true, Congressman, but in order to define racial imbalance we have to go further than that.

Mr. CRAMER. I would like a definition of "racial imbalance." Let us take it section by section. Section 303(a) on page 19, the Commission is authorized upon application of school boards, State municipal school districts, Government units, to render technical assistance in

the preparation and adoption of plans for the segregation of public schools or other plans designed to deal with problems arising from racial imbalance.

Then in the next sentence there is reference to racial imbalance, in the making available of personnel of the Office of Education or other persons especially equipped to advise and assist them in coping with such problems as racial imbalance.

The next section—section 304—on grants and contracts relates to racial imbalance where the school board has failed to achieve desegregation in all public schools within its jurisdiction or a school board which is confronted with problems arising from racial imbalance.

Again, subparagraph (b) refers to grants for giving teachers in-service training in dealing with problems of racial imbalance and employing specialists in dealing with problems of racial imbalance. I want to know what that means.

Secretary CELEBREZZE. Racial imbalance that we are referring to is one which may arise out of conditions in a community which permits ghettos to exist. Racial imbalance may come about by drawing district lines which only cover a Negro area. You can move that line, cut it in half, and have half of it going into a desegregated school. Those are matters which need study, those are matters which need investigation to determine whether the particular officials in the particular locality are using that as a scheme to promote segregated schools.

Now, basically, racial imbalance in any community comes because of school district lines.

Mr. CRAMER. Is there anything wrong with the school districts being formed on the basis of what is most convenient to the students who live in the neighborhood area?

Secretary CELEBREZZE. Not at all, but you must have boundaries on four sides, and the question is: Where do you put the boundaries?

Mr. MEADER. Would the gentleman yield to me?

Secretary CELEBREZZE. Let me give you another example. This is the same method that sometimes we used when I was in the State legislature in setting congressional districts. You can move lines around so that you get a district which is all Democrat or heavily Democrat or another district which is heavily Republican.

That is the type of thing we are trying to avoid insofar as defining school districts.

Mr. CRAMER. The Congress has never injected itself into that field, however, feeling that is was a local determination to be made by the States. There are some bills pending, but Congress hasn't acted on them.

I was merely citing it as an example of a fact.

Why should Health, Education, and Welfare involve itself in a local school board decision as to what area should make up a community as it relates to who should go to what school?

Secretary CELEBREZZE. We are not injecting ourselves. We are offering our services to the communities upon request to give them assistance and aid in solving this problem.

Mr. CRAMER. If they don't accept your assistance you will cut off school aid under title VI?

Secretary CELEBREZZE. If title VI passes, or one of the other bills passes, which has this directive to the Secretary that he cannot give funds to any school which practices segregation.

If we come to the conclusion after due investigation, after due hearings, that they are using district boundaries as a device to promote segregation, and we have the law or the authority, which we probably don't have now, then we would have a right to cut off funds.

Mr. CRAMER. I will be glad to yield to the gentleman from Ohio.

Mr. MCCULLOCH. In view of that question, this legislation that you are discussing now would give the Department of Health, Education, and Welfare the right to determine this question, would it not?

Secretary CELEBREZZE. Under title VI of the bill, which I have not come to yet, we ask for discretionary powers on the part of the administration for the withholding of funds.

Mr. MCCULLOCH. That answers my question up to this point.

Who is to furnish the evidence, and what will the aggrieved parties, if any, do about your decision?

Secretary CELEBREZZE. As to whether we withhold funds?

Mr. MCCULLOCH. Yes.

Secretary CELEBREZZE. Only as we do now in some areas after investigation to determine whether or not there is discrimination because of race or because of religion.

I, as Secretary, could not just arbitrarily say we will withhold funds. I want the facts.

Mr. MCCULLOCH. I would like to comment at this point. Any question that I asked has no bearing upon who presently is Secretary of Health, Education, and Welfare, or who is the President of the United States. I am talking about a Secretary or a President.

Many years ago there was a Federal administrator who gave an order to withhold some $2 million from the State of Ohio thereby preventing that money from going to needy aged by reason of alleged violation of an order by the Federal Social Security Administration. Notwithstanding the fact that thereafter the Congress of the United States passed legislation by an overwhelming vote requiring the withheld funds to be paid to the State of Ohio, that administrator persuaded the then President of the United States to veto the bill.

Within the last year or year and a half, Mr. Secretary, there was some question about the law of the State of Ohio in setting up the rules of procedure in determining whether or not an unemployed person was entitled to unemployment compensation. The directives that went out from the regional office of the Secretary of Labor finally were implemented by a communication that if the State of Ohio did not comply with the directives that went out from the Department of Labor, that the administration funds for the Bureau of Unemployment Compensation would be withheld from the State of Ohio.

The amount of funds that were due was approximately $17 million per year at that time. And so that there is no implication of partisan comment in this matter, the President of the United States was of the same party as the Governor of Ohio, as was the President and the Governor of Ohio back when the needy aged needed the money so much.

I am sorry to take this much time on this matter, but it should be in the record.

A court of general jurisdiction in the State of Ohio was asked for a declaratory judgment on the orders promulgated by the Department of Labor, and an Ohio court of general jurisdiction, presided over by a judge who was nominated by the party of the President

and of the Secretary of Labor, said that one of the provisions in the order was contrary to Ohio law.

Fortunately enough, pressure was brought to bear so that the order was not implemented, and I am very happy to say that at least one of the Senators from Ohio last year, if not both, joined with us in assisting to prevent the issuance of a departmental order withholding those funds. So if I am concerned about the authority of a Cabinet member or a President to withhold funds without the right of review, it comes from a citizen from a great State which has been hurt on one occasion, and was threatened again.

Mr. CRAMER. Mr. Chairman, may I continue my line of interrogation because I think this is one of the essential concepts to consider in this legislation.

Now, you suggest that you intend to make a study pursuant to title III, and then you will decide how to implement the "racial imbalance" concept. But you are asking the Congress to approve whatever your definition may be of "racial imbalance" before you have made such a study to determine what racial imbalance really is, what problems exist, and what solutions may be necessary. You want us to give you a blank check providing for all sorts of assistance to solve problems and measures to adjust racial imbalance and we don't know what racial imbalance is, and you apparently don't know, yourself.

Now, do you expect Congress to give you such authority?

Secretary CELEBREZZE. I am not asking or the administration is not asking for a blank check. The section calls for a study to be made, and 2 years later to report back to Congress and the President. We will make our report at that time and based upon that report the Congress can review it and take whatever steps they want to take.

Mr. CRAMER. You are asking us to enact legislation now giving you authority to provide grants, teacher training, specialized services, now.

Secretary CELEBREZZE. The racial imbalance is only one of the many items. Our authority will derive under section 601 of title VI, and that authority deals basically with discrimination.

Now, I suggest that perhaps some of the questions would be answered if I may be permitted to continue with my statement so that I can cover this subject matter.

Mr. CRAMER. I would like to finish the question relating to this paragraph you just read on page 4, in which you state that—

> In many more States throughout the Nation, residential segregation of Negroes, combined with the neighborhood school attendance policy, has resulted in de facto school segregation.

Now, you are asking us, the Congress, at this time, before your study is made, to enact legislation giving you authority to make grants and loans and provide teacher training to areas in which you decide there exists racial imbalance, and your answer is to the effect that you, yourself, don't know what racial imbalance is until the study is completed.

Secretary CELEBREZZE. I explained to you earlier, Congressman, that under this section there would be requests from the local district for us to go in and help them.

I am making a statement that there is racial imbalance in certain school districts in this country. I think in certain States there is. It may be Michigan or New York or Ohio. We set up machinery in this bill so that the local district may say: We have a problem here which

may be a problem of racial imbalance, and we are asking you to come in to furnish us the technical knowledge and furnish us the manpower to study this problem so we can find a solution to it.

Mr. CRAMER. Is it going to be your objective to try to accomplish 50–50 attendance of Negroes and whites in the different school areas?

Secretary CELEBREZZE. It is not going to be my objective to do anything excepting where the Department is asked to study a problem, to a solution. I don't think anybody can say you have to have 50–50 or 30–70. If you start drawing the line of demarcation that you should have 80 percent white, and 20 percent Negroes, or 20 percent white, and 80 percent Negroes, then you are promoting as much segregation as we are trying to get rid of.

What I am saying is that these students ought to be able to go to classes without taking into consideration whether they are white or black. The only consideration to be taken up is that they are citizens of the community, and they are human beings.

Mr. CRAMER. That has been decided by the Court, and nobody has taken issue with that, but I would like to understand what court decision has been made that deals with the subject matter of racial imbalance.

The CHAIRMAN. I think the question has been answered. I don't know what further answer you want from the Secretary.

Mr. CRAMER. I want to know what court decision.

The CHAIRMAN. He has indicated what he means by imbalance. I don't see what more can be gathered by persisting in that question.

Mr. CRAMER. Mr. Chairman, I would like an answer to the proper question as to what court case exists——

The CHAIRMAN. Mr. Secretary, answer that, please, and I think that is the last time you need answer that question.

Secretary CELEBREZZE. Your question, as I understand it is, what court cases exist as to racial imbalance?

Mr. CRAMER. That justify asking the Federal Government to withholding all funds to schools which do not provide "racial balance."

Secretary CELEBREZZE. There is no court decision that I know of, but there is the *Brown* decision in which the court went into the question of racial desegregation.

Now, you are a lawyer, and I am a lawyer, too, and you know that you cannot do an act which is prohibited by the court by going in through the back door. You cannot say, well, now, we have desegregated schools, and then draw your boundary lines so that there is complete segregation.

Mr. CRAMER. Where in that decision did the court refer to racial imbalance?

Secretary CELEBREZZE. It didn't refer to racial imbalance. The point I am trying to make to you is that the Court outlawed segregation. The Court outlawed segregation and you cannot go in through the back door.

Mr. CRAMER. Well, the Court in outlawing segregation didn't require racial balance. That is the point I am making, and I would like an answer.

Secretary CELEBREZZE. They did not require racial balance.

The CHAIRMAN. I think the Secretary has answered to my satisfaction, at least; perhaps not to yours, Mr. Cramer, and I think you are asking the same question.

Mr. CRAMER. Mr. Chairman, is it going to be the intent of the chairman to cut off a member when he is asking questions of the witness?

The CHAIRMAN. That is right, I don't want the hearing prolonged unduly with redundant questions. You have asked the question a dozen times, and the Secretary answered as best he can a dozen times. There is no use in asking the question again.

Mr. CRAMER. Every question I asked has been different in nature to try to get to the bottom of the problem to find out exactly what they are expecting us to provide in the way of legislation, and, to me, one of the keys in the whole bill is the question of racial imbalance, because it is a brandnew concept that has never been considered before that I know of. It could cost the local communities very substantial sums of money, and, if it is going to result in attempting to provide balance in the schools by requiring white students to go to Negro schools, and resulting in their having to travel greater distances, or otherwise discommoded, then I think that is something we should consider.

I don't think we should discriminate against either side.

The CHAIRMAN. I will recognize Mr. Rodino.

Mr. RODINO. I would like to point out, that while I think the gentleman from Florida is very learned in the law, nonetheless, I think it is quite clear that racial imbalance only appears in the title III, and that only upon the request of local school boards, will this question arise. I don't see why we make all this fuss, and I think the Secretary answered the question very clearly.

I don't think that the Secretary or the Commission will ever be in a position to come in and decide the question of racial imbalance or offer any assistance unless the request is made on that.

Mr. CRAMER. In answer to that, I will say the Secretary, himself, implied that if racial imbalance existed in his opinion then he would have authority to cut off all Federal funds. Now, that is the point. That is what I said, and that is the way I interpret the bill.

Mr. MEADER. Mr. Chairman, may I ask a question?

The CHAIRMAN. Yes.

Secretary CELEBREZZE. I want to clarify the one statement.

Mr. MEADER. Mr. Secretary, I think you will have an opportunity in reply to the question I want to address to you.

I suppose it is clear that racial imbalance is the antithesis of racial balance. Racial balance would be defined, I think, by any reasonable man, as with respect to school attendance, that the proportion of Negro to white students in a school should be the same as the proportion of the population of Negroes to whites in a given area, but it would make no sense at all to determine racial balance unless you describe the area and it seems to me that this would imply that the Department of Health, Education, and Welfare would have to describe the area in order to determine whether there was racial balance or racial imbalance.

Take, for example, the city of Cleveland. You might take the city as a whole as presently outlined. On the other hand, there might be suburbs not annexed formally and legally to the city of Cleveland, and you might have to describe a different area than the legal limits of the city in order to determine the relative population of the Negroes

and whites in that area, and you might have to realine the school districts, or you might want to take a whole State, the proportion of Negroes to whites in the State of Ohio, for example, and say that unless schools have that proportion of Negro students to white students, then there was racial imbalance.

Now, what is involved in making that determination? It means the assumption of authority derived from the States to determine the local units of government, and the effect of making that determination, it seems to me, would be vested in one Federal administrator, the power to reshape local areas of government in order to determine whether there was racial imbalance in the schools, and this is a very sweeping power, and if it is accompanied by the discretionary authority to withhold Federal grants and loans for various grants-in-aid programs, it would be a very powerful instrument to place in the hands of a Federal administrator.

The CHAIRMAN. Will the gentleman yield a minute at that point?

Now, there is no provision in this bill that provides that funds can be cut off because of any racial imbalance. I ask you to read title VI. It provides for nondiscrimination in federally assisted programs. The words "racial imbalance" don't even appear—either on page 34 or page 35.

Mr. MEADER. Let me ask this.

The CHAIRMAN. It is not to be cut off because of racial imbalance.

Mr. MEADER. There is a very simple way to decide that. Does racial imbalance in school systems constitute discrimination, in your opinion?

Secretary CELEBREZZE. That is what we have to determine by investigation after the school board calls us in. If it has been determined after investigation, that racial imbalance amounts to segregation which is prohibited by law, then I presume that necessary steps will have to be taken under title VI if it is determined that segregation exists, and that Federal funds are involved.

May I just say one thing at this point? If we ever come to the conclusion in this country that all people are human beings, then we wouldn't be arguing this point because whether black or white they are people, and if we address ourselves to the rights of people we wouldn't be arguing about Negro or black or red or white.

Mr. MCCULLOCH. Mr. Chairman, I want to say that a decent respect for all human beings is evident in this committee, but I want to reiterate it for myself, and for anybody else that wants it reiterated for them. Again, I am looking to a legislative principle which can have its effect on every economic activity in this country, and I would like the frankness and final explanation of the witness in answer to this question, and I am going to try to repeat it, as I understand it.

If racial imbalance results in segregation or discrimination by reason of color, then a sole Federal administrator when he determines that to be a fact has authority, in my opinion, under title VI to withhold funds, and I firmly believe that such a proposal deserves the time and attention that it is getting. Now, I want to read into the record that part of title VI that I believe is controlling the important questions brought up not only by Mr. Cramer and Mr. Meader, but by the chairman and by some others on the committee.

I will read section 601, on page 34 of H.R. 7152, and I now quote:

Notwithstanding any provision to the contrary in any law of the United States providing or authorizing direct or indirect financial assistance for or in connection with any program or activity by way of grant, contract, loan, insurance, guaranty, or otherwise, no such law shall be interpreted as requiring that such financial assistance shall be furnished in circumstances under which individuals participating in or benefiting from the program or activity are discriminated against on the ground of race, color, religion, or national origin or are denied participation or benefits therein on the ground of race, color, religion, or national origin. All contracts made in connection with any such program or activity shall contain such conditions as the President may prescribe for the purpose of assuring that there shall be no discrimination in employment by any contractor or subcontractor on the ground of race, color, religion, or national origin.

I repeat the statement that I made: If it be determined by the administrator that there is intentional imbalance in attendance at schools which results in discrimination and segregation by reason of that fact, there is authority in this section, in my opinion, to withhold the funds on the decision of a single administrator.

Mr. MEADER. Mr. Chairman, I haven't quite concluded what I was asking.

The CHAIRMAN. I am sorry. Go ahead.

Mr. MEADER. Mr. Secretary, I made a statement intending to have your concurrence or disagreement with it, and in case you disagreed, the reason for your disagreement. I tried to make a point that to establish racial balance you had to determine the area in which the balance of one race to another——

Secretary CELEBREZZE. You are starting off on a wrong assumption. We are not trying to establish racial balance; we are trying to prevent segregation based on racial discrimination, so you have to start with that assumption. Our purpose is not to achieve racial balance.

Mr. MEADER. Let us start out on the beginning of my syllogistic process, then.

Do you agree that racial imbalance is the antithesis of racial balance? Isn't that logical—racial imbalance is the opposite of racial balance?

Secretry CELEBREZZE. Yes, but what we are discussing here is discrimination in education or in other areas because of race, and it has nothing to do with the question of racial balance or imbalance.

You are taking the formative position of saying what we are trying to do by this act is establish racial balance.

Mr. MEADER. Let me ask this question because I think I heard your testimony before, that you testified that some school districts were consciously outlined for the purpose of creating racial imbalance.

Secretary CELEBREZZE. Which resulted in segregation. You have to carry that statement through. Which results in segregation which is prohibited by law.

Mr. MEADER. Then it seems to me it follows necessarily that if you are given the duty to prevent racial imbalance that you will have to have this authority to redraw those school district lines.

Secretary CELEBREZZE. No, we are not given the authority under title VI to enforce racial balance; we are given authority under title VI on the sole question of discrimination because of color or because of race or because of religion. That is the controlling factor.

The CHAIRMAN. Mr. Secretary, I can see what is bothering some of the members, and it bothers me somewhat, too. Great powers are given

to you and there is fear expressed directly or indirectly that you might abuse your power—I don't mean you, I mean one of your successors. Therefore, since that power is given, this committee in its wisdom might feel that there should be some standards to govern your action. Some criteria might be added to this bill that would not only help you in your determination as to whether or not there was discrimination, or whether or not racial imbalance is the discrimination referred to in title VI. It would also be a governing force, a restraint upon a Secretary of Education and Welfare to prevent him from acting capriciously, and arbitrarily.

Now, we have often put these standards in bills of this character. You would not object to that, would you?

Secretary CELEBREZZE. I would not object, but I would object in making it mandatory because we would run into all sorts of difficulties with a mandatory provision. What we are trying to do is permit the Secretary or the administrator, as the case may be, to use some discretion. For example, I have now about 130 separate programs which involve thousands of projects, grants and research, and if you said tomorrow we will have to cut off funds if we find that there is segregation or you are granting funds to segregated institutions—well, we just can't cut it off that fast. We have to use some discretion.

There are many areas in our health program where we just cannot cut off that fast. There are assistance programs where we cannot cut off funds immediately. That was the theory, I think, of the drafters of section VI. I think that the administrator must have some degree of flexibility so his program just don't go down the drain.

The CHAIRMAN. I would say consistent with that desire of essential flexibility, this committee in its wisdom might want to put some standards in its bill, not to handicap you because the committee recognizes the tremendous diversity of applications and conditions under which you operate. Certainly we would not want to put such a bridle on you as to make it impossible for you to act.

Secretary CELEBREZZE. As to making it mandatory, I would have to object to that, even though you would probably make the job a little easier for the administrator, because we know in the administrative field that whenever there is discretionary power you are hit from both sides. As far as an administrator is concerned guidelines would be acceptable provided they weren't mandatory.

Mr. MEADER. One of the reasons I am particularly sensitive about vesting vast authority in a Federal administrator is that recently the State of Michigan, similar to the experience in Ohio of my colleague, Mr. McCulloch, has had some difficulty not with the Labor Department but with the Department of Health, Education, and Welfare. I am sure you are aware that funds were withheld from the State of Michigan for aid for dependent children of unemployed.

Secretary CELEBREZZE. To me they were never entitled to the funds. In order to withhold funds you must be granted funds.

Mr. MEADER. Let's say they didn't get the money. And since that episode in my own district, Hill-Burton funds were withheld from hospitals in Monroe, Mich., and they have had to build their hospital without any Federal contributions even though their taxes went into the funds from which Hill-Burton money is derived.

So I am simply citing those two examples as the exercise of authority, and broad discretion, vested in a Federal administrator. It seems to me it behooves us in examining this legislation not to have language so sweeping and so broad that it can be interpreted in ways which will impair the vitality of local units of government.

The CHAIRMAN. Do you think my suggestion would be a good one?

Mr. MEADER. If we could find some standards, I would like the experts in HEW to suggest some.

The CHAIRMAN. It might be a good idea, Mr. Secretary, to mull that over and have your people give us some suggestions.

Secretary CELEBREZZE. We would be happy to assist the committee in any way we can.

Mr. Chairman, I would like to answer——

The CHAIRMAN. Let us get this clear. Would you submit to us something along those lines?

Secretary CELEBREZZE. You mean in draft form?

The CHAIRMAN. In other words, some sort of guidelines under which you would have to operate with reference to title VI.

Secretary CELEBREZZE. We will be happy to study it and see what we can come up with.

Mr. CRAMER. Would the chairman yield?

Secretary CELEBREZZE. If I may, I would like to answer those two questions because it involves what happened, which happened in the last 11 months I have been in office, and I think the record ought to be clear on that.

On the aid to dependent children, your own attorney general in the State of Michigan ruled that the law was unconstitutional.

Mr. MEADER. It should be noted he is a Democrat.

Secretary CELEBREZZE. That makes him an excellent attorney general.

Mr. MEADER. He never agrees with our Republican Governor.

Secretary CELEBREZZE. On the Monroe hospital situation, I am sure you are familiar that it has been under consideration for about 9 years, and that your own hospital council in the State of Michigan, and various other institutions suggested that one hospital be built in Monroe and not two hospitals. There was a policy decision that two hospitals would be an overburden in that community, but you had a difference of opinion between two religious groups.

Mr. MEADER. Even the Federal Government couldn't make the Catholics and Lutherans combine in one hospital.

Secretary CELEBREZZE. What I am saying to you is your own hospital council made that decision.

Recently we had a memorandum from the head of your State health department saying that the Governor of the State of Michigan had directed him to change his mind. That went to the Surgeon General. This was a situation which we had never permitted before. The Surgeon General replied to the State of Michigan, explaining to them the reasons why, and indicating a right of appeal. He requested the State to let us know if it wished to appeal to the Federal Hospital Council. We received word by phone call that Michigan had no intention of appealing. So the Secretary did not use arbitrary power. There were reasons for the decision.

Mr. CRAMER. In connection with this request for criteria, could I ask you also to provide what your definition would be of racial imbalance for consideration of the committee? The committee might want to consider defining racial imbalance in the legislation. I would like to know, myself.

Secretary CELEBREZZE. We can give you what our thinking is.

One of the provisions of this bill is for us to study the problem under title III.

Mr. CRAMER. Will you submit what you would consider a definition, and, further, would you advise us as to whether you would object to providing for judicial review in title VI so that a court could determine whether, in fact, the State practiced racial discrimination as justification for cutting off Federal funds for all programs?

The CHAIRMAN. Before you answer that—excuse me. Before you answer as to judicial review of your action. I think that would hamper the entire program in my estimation because before you get a final decision with all the possibilities of delay an appeal involves, you might have to wait until doom's day.

I have in mind, for example, the desegregation school case which has been pending for 7 years. One of the Federal judges still has the case and hasn't yet decided it—after 7 years. I have in my office a number of cases where some of the Federal judges have dilly-dallied with these cases for over 2 years, and made no decision yet.

If we have to leave that to the judges, with all of the motions and cross-motions and appeals, and cross-appeals that might be made, we would have to wait until doom's day before you can implement your decision.

Mr. CRAMER. Mr. Chairman, without some form of proper fact-finding forum and some authority to review the decision of the Secretary, and to determine the facts relating to the State's position, a Secretary could decide in his discretion to cut off funds without the State having the right to a review of that factual conclusion.

The CHAIRMAN. I would say, or I suggested that the Secretary offer some modicum by which he, himself, can be checkmated on this matter. How it should be done, I don't know.

I would like to give some thought and study to that matter. But to put it into a court on a matter of this sort where there is urgency and need for fairly expeditious action, I think would be very, very wrong.

Mr. CRAMER. It is a very grave and very substantial penalty for a State, particularly under this broad definition of direct or indirect financial assistance, by way of grant, contract, loan, insurance, guarantee, or otherwise, to have its funds cut off without review.

The CHAIRMAN. I will ask the gentleman from Florida again would he vote for the bill if we have such a provision in it?

Mr. CRAMER. I will answer the chairman as the Attorney General answered the gentleman from New York the other day, that no one in this body or the Secretary has any right to question my motives any more than they have the right to question the Attorney General or the President's motives. I think it is my duty to try to bring out as good a bill as possible.

The CHAIRMAN. I am sure that is true, but we must strain your views with the idea that you are ultimately going to vote against this bill. Let us not fool ourselves.

Mr. CRAMER. If you get a good enough bill you might be surprised. I wouldn't vote for it in its present form. I don't want any misunderstanding about that.

Secretary CELEBREZZE. May I say that while 90 percent of our funds go to local communities, there is no law which compels any State to engage in any program for which the Federal Government provides funds. We can't force it, but I think you must agree that when we are sending back to the States about $3½ billion a year, that somewhere along the line you have to have some guidelines and measurements, so that you just don't give this money out, and let it be used for any purpose they intend to use it.

Now, there is nothing in most statutes that gives the right of appeal now to the courts on a grant program because it is a giving of money, it is a grant, and we say that we will give you this money to perform these things, with rules and regulations and plans which you on the State level have adopted, and once we adopt those plans we give you the money.

We don't draw up the plan; the State draws up the plan.

Mr. MCCULLOCH. Mr. Chairman, again admitting everything that the Secretary has said, a secretary may be capricious and he may be prejudiced, and he may withhold the grant by reason of those facts, and I cited one of the cases.

I am not again going into the details as to why aid to needy aged was withheld from the State of Ohio, but in my opinion it was by a capricious act of the Federal administrator who overrode a Governor of his own party, and there was no right to appeal. We did appeal to the Congress of the United States, which apparently recognized the rights and equities of Ohio, but the administrator, of course, had the path to the central authority, and he used it.

Mr. ROGERS. Mr. Chairman, I think we all agree that whenever we have so much money to pass out that there has to be someone to make some final decisions. That is orderly process. And it is all in title III here. It authorizes the Secretary to make some determination of what constitutes imbalance upon requests made by the school districts.

As it is outlined here, under title III he is required to make certain studies and reports, and perhaps from that he can arrive at some conclusions as to how best to carry out title VI of the act, where he is given authority to withhold.

Now, you cannot, and I do not believe we have the capacity to outline every incident of how this is going to be administered. If we do have that authority, then we shouldn't be fussing whether we will give it to anybody. Let us sit down and do it here.

Now, to my way of thinking, it is just that simple. Somebody has to have the authority, and so if the Secretary is going to go ahead and make studies of what constitutes "imbalance" he will do so under title III, and if he is so far out of line, then we have the authorization at least to change these programs which have been complained about in which funds have been withheld.

It took me 8 months to convince the HEW to approve the old-age pension plan in the State of Colorado in 1937, but eventually we got it done.

The CHAIRMAN. Mr. Secretary, I think we have consumed a lot of time with questions, and you might proceed with your statement.

Secretary CELEBREZZE. Thank you.

Section 303 would authorize the Commissioner of Education to give technical assistance upon application. We would be able to supply counsel and assistance by specialists skilled in education, human relations, and community relations. There is a need at a very early stage for careful advance planning and for thorough training of key personnel—teachers, supervisors, counselors, and others—in dealing with the educational and related human problems which arise from desegregation and the correction of racial imbalance.

Section 304 authorizes the Commissioner to give direct financial assistance to schools for the training of personnel and the employment of specialists for the implementation of desegregation plans. For example, a district could apply for funds for special training in the techniques of intergroup relations or training opportunities for guidance and counseling personnel. The availability and use of this kind of assistance will accelerate the long-overdue desegregation of our schools throughout the Nation and will do much to assure that it is achieved in an orderly manner without community disruption.

Section 304(d) also authorizes the making of a loan to a school board if State funds are withheld from the board because it is desegregating its schools. The availability of such a loan may avert a breakdown in the entire local school system and in its desegregation efforts. As was indicated by Assistant Attorney General Marshall in hearings last year in the House Committee on Education and Labor, the withholding of State funds under such circumstances would be unlawful and could be corrected by legal action. Loans under section 304 would therefore very likely be needed in any particular case for only a short period of time.

The CHAIRMAN. Are there such States that withhold funds under those circumstances?

Secretary CELEBREZZE. There was a parish in Louisiana where the State withheld funds from a local school district which wanted to desegregate.

Mr. FOLEY. Wasn't there one over in Prince Georges County?

Secretary CELEBREZZE. No, there was no withholding. In Prince Edward County, they just closed their public school systems down completely. There was no withholding of State funds. The county went completely to a private school system.

Mr. FOLEY. And funds are given directly to the parents even if the child attends a school outside of the State?

Secretary CELEBREZZE. You are referring to Prince Edward County now?

Mr. FOLEY. No, any child in Virginia.

Mr. MCCULLOCH. Did I understand you to say that a parish or district in Louisiana had made proper application for State funds and the application was denied, and that decision remained the decision of the State?

Secretary CELEBREZZE. I will defer to the Commissioner of Education.

Mr. MCCULLOCH. Is that a fact, and could you give us the name of the parish, and when the application was made?

Mr. KEPPEL. I should say, sir, I am not a lawyer and therefore I am not fully competent to answer the question. It was my understanding, sir, that in Louisiana, in connection with the problems of

the schools in the parish which includes part of New Orleans, that the State withdrew or did not provide funds which were ordinarily to be provided under State law.

Mr. McCULLOCH. Did the local parish or part thereof make application for the State funds, and was the application denied formally and in a provable fashion?

Mr. KEPPEL. That was my understanding, sir, but I would be grateful if I could check.

Mr. McCULLOCH. I would be pleased if that would be checked and if counsel for the Department would get the complete and unequivocal answer.

Mr. KEPPEL. Of course, sir.

(The information requested appears at the end of the witness' testimony.)

Secretary CELEBREZZE. Section 302 of title III requires the Commissioner of Education to report to the President and Congress within 2 years upon the extent to which equal educational opportunities are still denied to minority groups. We cannot expect to establish equality in education unless we continuously study the extent and manner in which equality is denied.

As the Attorney General indicated in his June 26 testimony before this committee, the information obtained will be needed in carrying out section 307, dealing with suits on desegregation by the Attorney General. It will also be essential to the Commissioner of Education in administering the provisions of sections 302–305 which provide assistance to school boards in the desegregation of schools.

Mr. MEADER. Might I interrupt at that point?

Mr. Secretary, how would this responsibility of a commissioner under section 302 be different than the responsibility of the Civil Rights Commission in this area? Would it be a matter of overlapping?

Secretary CELEBREZZE. No, I don't think it will be overlapping because I think that the Commissioner of Education is focusing its attention specifically to the educational problem, whereas the Civil Rights Commission includes the whole problem. This is pinpointed to education.

Mr. MEADER. The Civil Rights Commission in the past has concerned itself with equal opportunity in schools, has it not, and it has authority to do so?

Secretary CELEBREZZE. They have concerned themselves with it, and they have spoken out as they did in the Mississippi case when they suggested to the President that we withhold all funds from the State of Mississippi.

Mr. MEADER. There is a certain parallel or duplicating responsibility in this field?

Secretary CELEBREZZE. There can be, yes.

Present law does not give us authority to make grants for the activities described. We were working with the various school districts in certain impacted areas trying to get them to desegregate their schools, which we suggested in about 15 cases. Indications to us by some of the school superintendents were that while they were willing to cooperate, their funds would have been cut off by the State. We found basically that the school people, themselves, want to cooperate, but the higher level authorities have authority to withhold funds.

This provision would then authorize, while the school district is in court, the loan of sufficient funds to run the schools. Those funds only apply to that percentage which the State would furnish. Districts also raise funds on a local level. That was one of the basic reasons that we wanted a loan provision in this particular act.

We have been able within the limit of appropriations to provide some technical advice. Representatives of the Department of the Office of Education in the past year have visited large numbers of school systems and have conferred with many administrators and other school officials. From this experience we have found that technical advice can play an important part in speeding desegregation and have concluded that the particular types of grants and services proposed in title III are necessary.

Mr. McCULLOCH. Mr. Chairman, I would like to ask the Secretary from what States or areas have come the requests for the advice mentioned in the next to the last sentence of the paragraph at the top of page 6?

Secretary CELEBREZZE. From what States have they requested advice?

Mr. McCULLOCH. With whom have you conferred, and what States or cities have you given advice?

Secretary CELEBREZZE. If I may be permitted, I would like to have Assistant Secretary Quigley to answer that because he is in charge of that program.

Mr. MEADER. Mr. Secretary, my next question may be answered in your statement but I don't recall hearing it or seeing it.

Have you made an estimate of the cost of title III—how many people you will need to carry it out, and how many dollars are involved?

Secretary CELEBREZZE. I have a cost estimate.

Mr. MEADER. I think we should have that in our record because some of these questions are asked on the floor of the House.

Mr. McCULLOCH. This statement represents that the employees of the Department of the Office of Education, in the past year, have visited large numbers of school systems and have conferred with many administrators and other school officials. That pinpoints the places from which there seems to be this need and from whence we will expect requests in the future.

be this need and from whence we will expect requests in the future.

The CHAIRMAN. Have you got those costs? You might put that in the record now.

Secretary CELEBREZZE. I have the costs. We are preparing an estimate as provided by Public Law 801, which will include all of the costs. That will be made available to the chairman.

Mr. CRAMER. How much is it, Mr. Secretary?

Secretary CELEBREZZE. We could only estimate on a 2-year basis, because we don't know quite what the magnitude of the program is going to be, and have no basic experience on it, but I might say that our figures in certain areas will be conservative figures. We estimate that the cost of investigations and reports for the year 1964 will be $750,000, and in 1965, $1,250,000. Technical assistance will be, in 1964, $150,000, and 1965, $500,000. Institutes for special training will be $5,600,000 for 1964; $8,400,000 for 1965. Grants to school districts

will be $3 million in 1964 and $5 million in 1965. The reason it is less in 1964 is because much of our year will be gone by the time the legislation is enacted.

Loans for school districts for operating expenses was a difficult thing to estimate because, if we receive a request for a loan from one large school district, it takes quite a bit of money, but we have $5 million for 1964 and $5 million for 1965. That may be a very conservative estimate.

Administrative expenses will run $315,000 in 1964, $405,000 in 1965, and other expenses will run $185,000 in 1964 and $145,000. This would be a gross budget of $15,100,000 for 1964, or a net budget of $10 million, because we anticipate that the $5 million in loans will be paid back.

In 1965 we would have a gross budget of $20,700,000, or a net budget of $15,700,000.

These figures are for the 2 years we were able to estimate. It is possible that the institutes for special training may have to go into the years 1966 and 1967, but we have nothing in the past which we could use as a guide. We have used our best judgment.

Mr. MEADER. For the 2-year period you have a total of $35,800,000, and on the assumption $5 million in loans would be paid you would have a net budget of $25,700,000 or $25,800,000?

Secretary CELEBREZZE. Yes.

Mr. CRAMER. Would the gentleman yield?

How many additional personnel do you contemplate hiring?

Secretary CELEBREZZE. We anticipate in the investigation and report—now, you must bear in mind there are approximately 33,000 school districts and approximately 2,000 higher education institutions of which about 800 are public, which this would apply to—we anticipated we would need, by making use of our regional staff that we have now, an additional personnel of about 50 to complete this work.

Mr. MEADER. Fifty?

Secretary CELEBREZZE. Fifty.

Mr. MEADER. On just that one matter of investigation?

Secretary CELEBREZZE. Yes.

Mr. MEADER. What would your figures be for personnel on the other title, the other section of the title?

Secretary CELEBREZZE. Let us take the technical assistance. The costs for 1964 anticipated in the Office of Education staff would be about 10 more people in 1964 and possibly 15 to 20 people in 1965 to gather and disseminate information concerning effective means of coping with educational problems associated with desegregation or racial imbalance. This staff of course would be extensively supplemented through the use of outside experts that would be sent for short periods of time to school districts to provide advice and assistance to them. The estimate assumes about 15 man-years of expert consultant help would be utilized in 1964 and 30 to 35 man-years would be needed in 1965.

Mr. CRAMER. What is the total personnel for the whole program?

Secretary CELEBREZZE. Man-years: 63 in 1964 and 96 in 1965.

The CHAIRMAN. You may proceed.

Secretary CELEBREZZE. The longer desegregation is delayed the greater become the numbers of young people who have been perma-

nently deprived of the advantages of equal education. The sooner this Nation can complete the transition to integrated schools, the sooner we will be able to turn all our energies to the creative task of classroom excellence.

The end of discrimination in education is the beginning of equality of opportunity and must have our first priority.

Mr. CRAMER. May I ask one or two questions before we go to the new title?

On page 21 of the bill, there is provided grants for providing the cost of giving teachers and other personnel inservice training. Also on page 20 you have arranged for contracts to be made with institutions of higher learning, to give special training designed to improve the ability of teachers, supervisors, counselors, and other elementary and secondary school personnel, to deal effectively with special educational problems occasioned by desegregation or measures to adjust racial imbalance in public school systems. Individuals who attend such an institute may be paid stipends for the period of their attendance at such institutes in amounts specified by the commissioner in regulations, including allowances for dependents and including allowances for travel to attend such institutes.

Do you have any idea what you anticipate paying these teachers in attendance?

Secretary CELEBREZZE. We would use the same formula as we use now. It is $75 per month plus $15 for each child.

Mr. CRAMER. Transportation? Is that mileage, or what?

Secretary CELEBREZZE. Transportation to the institute, the city?

Mr. CRAMER. So much a mile?

Secretary CELEBREZZE. Mileage, by train or second-class air, the lowest level of air travel.

Mr. CRAMER. What is the difference between this and Federal aid to teachers? This is Federal aid to teachers, is it not, teacher instruction?

Secretary CELEBREZZE. No; this is not Federal aid to teachers. This is a special course which will be given to about 15 percent of the 560,000 teachers that are now engaged. Rather than make it across the board which would send our costs sky high, we estimate 15 percent, so we would only send heads of departments and supervisors.

It would be a 2- to 3-week course, dealing with problems of human relations and problems of racial friction. It is not in any sense the same as our institutes now. They are directed to working for higher degrees or taking advance courses for teaching purposes. This is a special course in human relations and human problems which would last 2 or 3 weeks.

Mr. CRAMER. You provide for a grant for the cost of giving teachers and other school personnel inservice training. That is a form of aid to teacher training, is it not?

Secretary CELEBREZZE. Yes. I was referring to the special training course.

Mr. CRAMER. What do you contemplate doing under section 304 (b)(2), relating to grants for the cost of employing specialists in problems incident to desegregation or racial imbalance and of providing other assistance to develop an understanding of these problems by parents, schoolchildren, and the general public? What do you mean

specifically as to understanding by the general public and providing grants for that?

Secretary CELEBREZZE. I will ask the Commissioner to answer that.

Mr. KEPPEL. What we have in mind in connection with the second portion which you read is fundamentally technical advice. There is no intention under these funds for providing publicity of that sort.

Mr. CRAMER. That is what I am talking about, advertisements in the paper, radio, television.

Mr. KEPPEL. That is not our intention. This is technical advice and not in the sense of providing such materials at all.

Mr. CRAMER. It isn't limited to that by the wording in the act, is it? It is a wide-open grant for the cost of providing other assistance and for developing understanding of these problems by parents of school-children and the general public, so that whatever the local school board decides to do in that respect he would have authority to provide grants to assist them, would he not?

Mr. KEPPEL. He would have authority to provide, as I understand our plan, personnel assistance to the board in technical staff and technical staff assistance.

Mr. CRAMER. That is not what the section says. The section says a grant upon application of the school board for providing other assistance to develop understanding of these problems by parents, school-children, and the general public. That is pretty broad language.

Mr. KEPPEL. I think I might draw your attention to the opening part of subsection (2), the cost of employing specialists in problems incident to and providing other assistance to develop understanding. I had been focusing particularly on the first part of the section.

Mr. CRAMER. Don't you think we ought to limit it to what you intend to accomplish because, as I read it, it would clearly give the local school board authority to ask, and you the authority to give, matching funds for public relations programs, advertising, radio, and television, and what have you, to sell a program, or to prevent racial imbalance, for instance. Isn't that correct?

Secretary CELEBREZZE. Mr. Chairman, I think that perhaps the same theory would be followed that is used in many of our large cities in their police departments, where specialists sit down with policemen and work with them on problems of human relations. Here it would also be possible to send in experts to talk to parent-teacher organizations, the parents of children. I don't anticipate that we are going to make any grants to run ads in newspapers and on television. We have to use some sound discretion as to how these funds are used. What we are trying to do is to get experts to go into the area at the request of the local boards of education to deal with problems which not only affect the children but the parents—desegregation is something which the parents must understand. I think that was the intention of that particular part.

Mr. CRAMER. The point I was getting at is, How are you going to school the general public on this issue? What program do you have for doing it?

Secretary CELEBREZZE. The same way we do now, through boards of education, through various teacher organizations, through parent-teacher organizations, through the many associations which deal with education. That is what we are trying to do.

Mr. CRAMER. One other question. Page 20, section 304, (a):

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

Does that mean that if a school district has one school integrated, and all of the rest not, that that school district cannot qualify? That is what it says, as I read it. A school board which has failed to achieve desegregation in all public schools.

The CHAIRMAN. Are you going to read the balance of the sentence?

Mr. CRAMER. I read the whole sentence.

The CHAIRMAN (reading):

Which is confronted with problems arising from racial imbalance in the public schools within its jurisdiction.

Mr. CRAMER. Or in school districts.

Secretary CELEBREZZE. If the board of education in a particular district has failed in one particular area to desegregate, and they want assistance in that one area then we would give them assistance. I still maintain this is a thing which is going to be done at the request of the local school boards.

Mr. CRAMER. That is what I was getting at. Could a local school board request it if some schools are already desegregated? According to the wording of the language, they couldn't.

Secretary CELEBREZZE. I think they could still request it if they had one area in which they needed help in desegregation.

Mr. RODINO. That would be the purpose of it.

Mr. CRAMER. It is a question of draftsmanship. I wanted to be sure I understand your intention.

Secretary CELEBREZZE. We endorse the enactment of title VI. Simple justice, as the President said, requires that we do not use tax funds to support racial discrimination. The President has further stated that:

Many statutes providing Federal financial assistance, however, define with such precision both the Administrator's role and the conditions upon which specified amounts shall be given to designated recipients that the amount of adminstrative discretion remaining—which might be used to withhold funds if discrimination were not ended—is at best questionable.

We urge that Congress now provide effective statutory means to end grants that support discrimination, and that it do so in one broad stroke rather than by piecemeal amendment of program legislation with all the inconsistencies and delays that would result from a piecemeal approach.

This title is of particular importance to the Department of Health, Education, and Welfare as the administrator of over 100 separate programs—actually 128 programs—most of which involve allocations or grants to States and payments to individuals and institutions. By far the largest part of our operating budget goes to these payments.

In 1963, the Department administered grants or allocations to States in the fields of education, public health, or welfare in the amount of $3.7 billion. Payments to individuals and institutions were over one-

half billion dollars. Programs supported by these payments are authorized by many statutes enacted over a span of generations—from the Morrill Land-Grant College Act of 1862 to the Public Welfare Amendments of 1962—100 years separating the first from the last.

These programs take many different forms, ranging from statutory State allocations based on formulas of varying complexity to direct payments to individuals on the basis of applications to the Department. In many of the formula-grant programs, the Department is required to operate under conditions rigidly prescribed by statute; in other programs, the Department has great flexibility in determining who shall receive funds, in what amounts, and under what conditions.

Some time ago we commenced a review of the Department's programs to determine what authorities existed to enable us to limit funds paid to recipients who were discriminating in any program or any feature of a program. As a result of these studies, we have taken action in several areas where there was clear authority to do so, and we have participated in litigation in areas where judicial determination of our authority appeared necessary. But the extent to which we can act under present law, either administratively or through the courts, is limited.

Mr. McCULLOCH. Mr. Chairman, I should like to interrupt the Secretary at this time.

The sheer magnitude of this amount of money over which administrators would have such vast power under the proposed legislation, requires us to most carefully grant that power and most carefully provide for adequate review of the use or misuse of such power.

Secretary CELEBREZZE. Mr. Chairman, we automatically are under review every year when we appear before the Appropriations Committee. We have to explain these funds.

Mr. McCULLOCH. I have described two or three instances in which that review was too little or too late.

The CHAIRMAN. There is something in that, Mr. Secretary, because you wouldn't want to have this tremendous power involving so many billions and billions of dollars to be in the control of someone who would turn the spigot on or off with whim or caprice. I think what the gentleman of Ohio says is eminently sound.

Secretary CELEBREZZE. I believe profoundly in the checks-and-balances system of government, where the legislative has checks on the administrative or executive branch, and the executive branch has some checks on the legislative branch, and the courts have checks on all of us.

Mr. CORMAN. May I ask a question at that point?

If the Congress authorizes funds to be paid under certain conditions, and they are withheld by the Secretary on what he purports to be a reason based on discrimination, wouldn't the school district, or whatever other State agency is involved, have a right to action in the court to establish whether the discrimination existed?

Secretary CELEBREZZE. Not unless you give them that right specifically. There is no right existing now under law.

Mr. CORMAN. Under this proposal, if you withheld it by caprice, purporting it was because of discrimination, wouldn't a cause of action lie?

Secretary CELEBREZZE. I will have to defer to the Attorney General on it, but it is my opinion there is no court action that you could take at this particular time.

Mr. FOLEY. There is a case that has just been brought in Louisiana involving the Government funds given to schools in the impacted area. That is a pending case now.

Secretary CELEBREZZE. Yes, but there the Attorney General brought or entered the suit, and the question there was whether or not the Attorney General had the right to bring the suit.

Mr. FOLEY. It hasn't been decided yet.

Secretary CELEBREZZE. It hasn't been decided. That is pending. That is why I say there is no court decision on it.

Mr. FOLEY. Actually, it is based upon an implied contract between the school district and the Federal Government.

Secretary CELEBREZZE. I think it is assumed that whenever any discretion is given to any public official he just cannot use it capriciously or arbitrarily.

Mr. CORMAN. Without this statute, let us assume for the moment you capriciously decided to cut off my school district. We must have some remedy in court to require you to comply with the law.

Secretary CELEBREZZE. We wouldn't be able to cut off your school district because our contracts are usually with the State. Under the provision in title III, however, if the State is withholding funds from a school district because it is attempting to desegregate, under title III we could loan the money while the court is reaching a decision.

Mr. CORMAN. That is under title VI. There seems to be some concern that perhaps you will withhold funds when no discrimination existed, just by caprice rather than based upon discrimination.

Secretary CELEBREZZE. The administrator has to be given certain discretionary powers and, of course, he takes an oath of office, too.

Mr. CRAMER. Would the gentleman yield on that? That is the point I was getting to earlier.

Let us assume that an administrator, and I am not speaking of you, should abuse the discretion and it is not a discretion that would be difficult to abuse because he would have to make a factual determination as to whether discrimination was being practiced, and a second determination as to whether he should withhold funds because of the discrimination, including racial imbalance. These are many factual determinations. Let us assume he was wrong in some of his facts. Shouldn't the State have a right to review the facts on which he based his determination to decide whether those facts are correct or not, and would you object to the right of the State to a court review?

Secretary CELEBREZZE. I am in complete agreement with the chairman's statement on that particular fact. You do have the right of review. You have the Congress of the United States. Congress can call in and question the administrator as to why he acted in that way, and if they find he acted in a malicious manner Congress has a right to change the law. That is the check on it.

Mr. CRAMER. Why should the State be denied what might be termed "due process of law" in order to provide you——

Secretary CELEBREZZE. As the chairman said, in many of these cases they have been pending for 7 years, and you and I know as lawyers—we hate to admit it, defense lawyers, particularly—when we want a

delay we file all kinds of motions and actions which delay lawsuits. That is what is happening in some of the desegregation cases.

Mr. CRAMER. That being the case you don't come to the conclusion you should do away with the court system because there is a delay? Likewise, in this instance you can't come to the conclusion the State doesn't have a right to remedy because there may be a delay?

Secretary CELEBREZZE. What I am saying is I am in complete accord with the chairman, that in this specific problem we are talking about, if you give them the right to go to court it would be another 10 years before we accomplish anything.

The CHAIRMAN. Counsel wishes to ask a question.

Mr. FOLEY. Mr. Secretary, if any Government official acts in an arbitrary or capricious fashion, the party aggrieved, be it an individual or State, has a right to bring an action in mandamus, does it not?

Secretary CELEBREZZE. In certain areas.

Mr. FOLEY. The only defense is one of sovereignty.

Secretary CELEBREZZE. In certain areas where discretion is given to the Secretary to make a grant, it is up to the Secretary to make or not make that grant; but where the statute says that the Secretary or Administrator must do certain things, and then he doesn't do it, then that lies for a cause of mandamus to compel you to conform with the statute. There is a difference.

Mr. FOLEY. You can't deny the fact in exercising your discretion, you cannot exercise it in an arbitrary or capricious manner.

Secretary CELEBREZZE. No, but in one area you have a degree of judgment you don't have in the other. Mandamus is only to compel you to do that which the law says you must do, and you arbitrarily say "I refuse to do it." There is a distinction.

Mr. CRAMER. An abuse of administrative discretion is almost impossible to prove in the first place, but if you assume you had a right to action on abuse of discretion, why would you object to writing it into the law?

Secretary CELEBREZZE. I didn't say you had a right of action. I said in certain instances where the statute says you must do something, and you don't, then there is a possibility for mandamus. But where you say the Secretary may make a grant, and you don't spell out the conditions under which he may make the grant, then he uses his judgment on it. You don't have a cause of action there.

The CHAIRMAN. Isn't it true, Mr. Secretary, all of these years you have had the power to grant these funds up to an amount of $3.7 billion without any indication in any statute of a type that the gentleman from Florida wants? You had that power all along?

Secretary CELEBREZZE. Yes, sir, in most of our statutes that is true.

The CHAIRMAN. You had the power to make these grants, and pay out these funds?

Secretary CELEBREZZE. Yes. We have in some of the sections.

The CHAIRMAN. Have there been any suits brought against you by way of mandamus or against any of your predecessors that you know of?

Secretary CELEBREZZE. There was one suit brought against Ewing in the Arizona case in which the State of Arizona, under the social security program, or assistance program, withheld funds from the Indians on the theory that the Indians were primarily obligations of

the Federal Government under treaty. Ewing refused to pay funds to the State of Arizona, and the lawsuit was filed in the lower court, and the lower court upheld the administrator in that particular case.

The CHAIRMAN. For how many years have these grants been made by your department or predecessor department? How many years has it been going on?

Secretary CELEBREZZE. I have to go beyond my Department, because it has only been in existence 10 years, but the Office of Education, which is part of it, has been in existence almost 100 years.

The CHAIRMAN. They went through all types of administrations, Republican, Democratic, Whig, and what have you. There was never any desire, apparently, to foist upon that dispensing agency an obligation to go into the courts to defend what was done or was not done by it?

Secretary CELEBREZZE. Very few cases.

Mr. MCCULLOCH. Mr. Chairman, again I must refer to the Social Security Administrator, one of the predecessors of the present Secretary of Health, Education, and Welfare, where the Social Security Administrator made that decision with respect to the State of Ohio, and we still don't have the money. Call it capriciousness or prejudice, or what not, the unpleasant fact remains that Ohio was denied the funds.

Mr. BROOKS. Mr. Chairman, with your permission to change the subject just 1 minute and ask you, Mr. Secretary—on page 21, section (b)(2)—on the cost of employing specialists in problems incident to desegregation or racial imbalance, or providing other assistance in developing understanding of these problems by parents of schoolchildren. Do I understand that these grants, under this section, would cover payments to school districts who might desegregate their schools and who then would be obligated to have additional summer sessions, to have some remedial courses and other added expenses to bring up the level of some of the previously segregated students, so they could compete and make progress in the grade in which they were assigned?

Secretary CELEBREZZE. No, these funds are intended, prior to integration, building up the atmosphere. Once it is integrated, it is out of the picture.

Mr. BROOKS. There is no contemplation they would help to underwrite the cost of a special summer session for students that needed that help regardless of race?

Secretary CELEBREZZE. The school itself could set up a special summer session.

Mr. BROOKS. Yes, they could, but there is no provision that these grants would be used to help alleviate that additional cost?

Secretary CELEBREZZE. No, the purpose of these grants is before integration.

Mr. BROOKS. After which there would be a cutoff?

Secretary CELEBREZZE. The Commissioner informs me that once you have gone into the integrated schools, if you want to train one or two teachers, you can under our special grant program, not under this section.

Mr. BROOKS. For remedial work, or for special classes?

Secretary CELEBREZZE. Yes, that would be under the other section.

Mr. CRAMER. Of these 128 separate programs, I assume one obviously is the water pollution control program. Now, if a water pollution control or sewage disposal plant served only a white area, could you withhold funds under this discretion?

Secretary CELEBREZZE. I had a case called to my attention recently in Louisiana, where the sewer system was put in and it only served one Negro family. I had a complaint from a national organization, and my answer was that it doesn't apply in that situation.

Mr. CRAMER. It could apply in the wording of this title if you wanted to apply it.

Secretary CELEBREZZE. No, in the case of an actual sewer system, I think the community puts it where they need the sewer.

Mr. CRAMER. Yes, but the homes on it are white because they won't let Negroes buy in that neighborhood.

Secretary CELEBREZZE. I don't think it applies to the sewer situation. You can carry it down to paving of the street, if you want to. You can carry it all of the way down to the other end. I don't think we are talking about that particular thing. The matter before this committee involves basic educational needs. We are talking about basic educational needs; we are not talking about sewers.

Mr. CRAMER. I am talking about title VI, where you say you have 128 separate programs that could be subject to it. I would like to have you submit for the record a list of those programs so perhaps we can judge for ourselves the extent to which this is going to apply.

Secretary CELEBREZZE. We will give you a list of programs, but they may run into thousands of individual projects. Title VI may apply to some extent under the last sentence. It may apply to the employment situation where we grant moneys for the local community to let out a contract in which we are participating for the purpose of constructing a sewer in that area. Then I think it would come into play as to whether or not there was racial discrimination in employment.

Mr. CRAMER. Could you provide for the record the list of the 128 programs that you in your statement say could be involved under title VI which you administer.

Secretary CELEBREZZE. I didn't say it would apply to all 128 programs. I am merely trying to present to you the magnitude of the Department.

Mr. MEADER. Why wouldn't it apply to all 128 programs, Mr. Secretary? And if it doesn't apply to all 128, shouldn't we have the list of those that it does apply to and those that it doesn't apply to?

Secretary CELEBREZZE. For example, it wouldn't apply to the Cuban refugee program because the statute says specifically you pay it to Cubans. It wouldn't apply to the Indian health program because the statute says you only pay it to Indians.

Now, if you make title VI mandatory, then you are going to run smack into this: I can't pay it to the Indian because I am discriminating against all other classes and I can't pay the Cuban refugee program because I have to give it to all other people under the same circumstances.

Mr. MEADER. That is the exact point. Could you submit for the record the list of 128 programs which you administer and of those which you believe this section, title VI would apply? The Congress is entitled to know how you intend to exercise your discretion and what programs you intend to bring under the title VI provisions.

Secretary CELEBREZZE. I can give you the numbers of the programs. I cannot tell you how it would apply to the programs unless I have all of the basic facts existing at the particular time we entered into that particular program.

(The information supplied is as follows:)

PROGRAMS OF THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service (64 programs):
- Office of the Surgeon General:
  - National Center for Health Statistics.
  - Health mobilization.
  - International health.
- Bureau of Medical Services:
  - Hospitals and medical care (12 hospitals and 25 outpatient clinics).
  - Indian health.
  - Foreign quarantine.
  - Freedman's Hospital.
  - Hawaii leprosy payments.
- Bureau of State Services:
  - Environmental health:
    - Air pollution.
    - Water supply and pollution control.
    - Waste treatment works construction.
    - Water supply and pollution control research, demonstration, training, and research fellowships.
    - Radiological health surveillance and technical operations.
    - Radiological health research and institutional training.
    - Radiological health State program development.
    - Environmental engineering and food protection.
    - Sanitary Engineering Center.
    - Sanitary engineering training.
    - Arctic health research.
  - Community health practices:
    - Community health practice (general health).
    - Communicable disease training.
    - Communicable Disease Center.
    - Epidemic and disaster aid.
    - Venereal disease control.
    - Tuberculosis control.
    - Dental public health and resources.
    - Public health education and information.
    - Community health services.
    - Migrant health.
    - Vaccination assistance.
    - Hospital and medical facility construction.
    - Hospital and medical facilities research and demonstration.
    - Professional nurse traineeships.
    - Public health traineeships.
    - Public health training—Schools of public health.
    - Public health nursing.
    - Accident prevention.
    - Cancer control and demonstration.
    - Chronic disease and health of the aged.
    - Heart disease control.
    - Occupational health.
    - Mental health.
- National Institutes of Health:
  - Grant programs administered by NIH:
    - Research and general research support.
    - Research fellowships.
    - Training and direct traineeships.
    - Health research facilities construction.
    - Research contracts.

Public Health Service (64 programs)—Continued
National Institutes of Health—Continued
Grant programs administered by NIH—Continued
Research career award program.
International health and medical research (foreign currency program).
International centers for medical research and training.
International grants and awards.
Intramural research programs of the Institutes:
Child health and human development.
Cancer.
Arthritis and metabolic diseases.
Neurological diseases and blindness.
Mental health.
Heart.
Allergy and infectious diseases.
Dental research.
General medical sciences.
Biologics standards.
Clinical Center.
Gorgas Memorial Laboratory.
National Library of Medicine:
Food and Drug Administration (three programs):
Enforcement.
Certification, inspection, and other services.
Civil and defense mobilization.
Office of Education (26 programs):
State and local school systems:
Services and studies.
Strengthening of science, mathematics, and modern foreign language instruction.
Guidance, counseling, and testing.
Improvement of State statistical services.
School construction assistance in federally affected areas.
Grants for maintenance and operations of schools in federally affected areas.
Higher education:
Services and studies.
Land-grant college assistance.
Loans to college students.
National defense fellowships.
Guidance, counseling, and testing.
Language development.
Training teachers of the deaf.
Vocational and technical education.
Manpower development and training.
Assistance for occupational training and retraining in redevelopment areas.
Educational statistics.
Cooperative research and demonstrations.
Research and experimentation in more effective use of TV and other media.
Library services.
International:
Services and studies.
Teacher exchanges.
Foreign currency program.
Graduate fellowship program for professional preparation of leadership personnel in the education of the mentally retarded.
Captioned films for the deaf.
Cuban refugee assistance (education).
Social Security Administration (three programs):
Cooperative research or demonstration projects in social security old-age, survivors, and disability insurance.
Federal credit unions.

Welfare administration (18 programs):
- Public assistance:
  - Old-age assistance.
  - Medical assistance for the aged.
  - Aid to families with dependent children.
  - Aid to the blind.
  - Aid to the permanently and totally disabled.
  - Civil defense emergency welfare services.
  - Assistance to U.S. citizens returned from abroad.
- Children's Bureau:
  - Research.
  - Maternal and child health services.
  - Crippled children's services.
  - Child welfare services.
  - Juvenile delinquency.
  - Youth development.
  - Research, training, or demonstration projects in child welfare.
- International research in social welfare and maternal and child health—foreign currency program.
- Aging (including President's Council on Aging).
- Juvenile delinquency and youth development.
- Cuban refugee assistance (welfare).

Vocational Rehabilitation Administration (seven programs):
- Support of vocational rehabilitation services.
- Extension and improvement of vocational rehabilitation services.
- Research and demonstrations.
- Research and training centers.
- Training and traineeships.
- Vending stand program.
- International rehabilitation—research and training—foreign currency program.

St. Elizabeths Hospital (one program):

Office of the Secretary (six programs):
- Surplus property utilization.
- State merit systems.
- Howard University.
- Gallaudet College.
- American Printing House for the Blind.
- Educational television (facilities construction).

Mr. MEADER. Then I would like to have you submit the list of those that would come within this definition of direct or indirect financial assistance and in connection with any program or activity under HEW by way of grant, contract, loan, insurance, guarantee, or otherwise that you could use your discretion in applying this section.

Secretary CELEBREZZE. As a matter of fact, there is a point of view that we can use discretion now in all of these programs. I don't agree with that point of view, but there is constant communication from the Congress as to where we get the authority to do this and where we get the authority to do that. Unless I know what the particular circumstances are that affect that particular program, at the particular time that we are making the grant, I can't tell you whether we withhold or whether we don't withhold.

In certain programs, such as, for example, the Hill-Burton program, the Congress itself has said separate and equal. We are in court on that question. The Congress itself also said we cannot interefere with the internal affairs of the hospital. We probably have no discretion.

Mr. MEADER. I think the Congress is entitled to know what programs within Health, Education, and Welfare under your jurisdiction comes within this definition and in those you would have the discretion, if you cared to exercise it, to cut off funds because of participation being denied, because of race or color.

Secretary CELEBREZZE. What I am trying to convey to you, Congressman, is that if I give you that up to date, without knowing the exact conditions which will exist at the time, that it will not be an accurate report. If you want it with that in mind I will be glad to furnish it to you. I want you to understand that is not a binding one, because conditions may be applicable at the time of that particular program being in effect that I don't know of now.

Mr. MEADER. You also refer at the end of the page to those programs where you feel you have authority to do so now. Would you submit that list as well?

Secretary CELEBREZZE. I have a list here for that.

Mr. MEADER. Could you read off some of the programs where you are doing this by administrative function?

Secretary CELEBREZZE. One, we have taken action under NDEA, summer institute contracts for counseling and guidance in modern foreign language where the Commissioner is authorized to arrange for institutes and colleges and universities to improve the qualifications of personnel engaged in counseling and guidance of teachers in secondary schools and for the training of teachers in modern foreign language.

The contracts for these institutes now contain the nondiscrimination provision with respect to the conduct of the institutes. Racial or other discrimination in the conduct of the institutes would frustrate the achievement of the purposes of the program by denying admission to otherwise qualified personnel. That was effective last summer, 1962.

Two, the suitability rule under Public Law 874 and Public Law 815, commonly known as "impacted areas." Through the Department rule, the segregated schools do not provide a suitable education for the children who reside on Federal property, these statutes provide if no local educational agency is able to provide suitable free public education for these children, the Commissioner of Education is to make arrangements to provide education for the children.

This was reported to Congress in March of 1962 by my predecessor, Mr. Ribicoff. I put that program in effect last fall in order to prepare for the building of schools for the onbase children.

Three, we have requested and have brought five lawsuits to require nonracial assignment of federally connected children to public schools which have received grants under the off-base provisions of Public Law 874 and Public Law 815. To date, two of these suits have been dismissed. These decisions have been appealed, and a third case involving Prince George County, Va., the Federal district court has overruled a motion to dismiss, holding that the United States can require nonracial assignment of the federally connected children under one of the assurrances which school districts gave upon receipt of school construction funds under Public Law 815.

Fourth, the Library Services Act. This act authorizes payments of Federal funds for the further extension by the States of the public

library service to rural areas without such services or with inadequate service. A "public library" is defined in the act as a library that serves free all residents of a community, district, or region, and receives its financial support, in whole or in part, from public funds. Under this act, library services will not be federally supported if the services are not available to all residents on a nondiscriminatory basis.

The Library Service Act went into effect in 1957. I have been reviewing this program, and it was on the basis of the language in the statute which said that "serves free all residents of a community, district or region," that we made that finding in this case that we would not support segregated libraries.

Fifth, the United States has intervened in a Federal court action, contending that the separate but equal provision of the Hill-Burton Hospital Construction Act is unconstitutional. This case is now pending in the Fourth Circuit Court of Appeals.

Sixth, the Department provided in its regulation implementing the Manpower Development and Training Act that there should be no racial discrimination in the training of persons referred to the Department under this act.

Seventh, the Office of Education has informed State officials that beginning with contracts for the fiscal year 1964, contracts under civil defense adult education program will require that there be no racial discrimination with regard to the selection and attendance in training programs. One of the States, Mississippi, has canceled out their program because of this rule.

Eighth, a nondiscriminatory provision was put in regulations govearning the educational television program.

Together with the Secretary of Defense and Labor we issued in January 1962 amended merit system standards to require nondiscrimination on account of race and other nonmerit factors. We are now putting in effect the President's Order 11114 on nondiscrimination as to construction contracts.

These actions have been taken in the 11 months I have been Secretary. We are constantly studying and constantly reviewing our programs. There may be other programs where after proper study we may be able to take other action. There may be some other programs that we will not be able to take further action on, but one thing sure, we want to be fair and we want to have facts on which to base our decision, and we have to look primarily to the language of the statute before we can make a determination.

Mr. CRAMER. You mentioned National Defense Education Act at the outset. Would you withhold National Defense Education Act scholarships to students who intend to attend a segregated college?

Secretary CELEBREZZE. We have that under advisement.

Mr. CRAMER. You would have authority to do so under title 6, right?

Secretary CELEBREZZE. Yes. It would be about 40,036 students involved.

Mr. CRAMER. So that is an indirect way of forcing a student to go to an integrated college, correct? That is the indirect effect of it?

Secretary CELEBREZZE. Well, the moneys are given to the institutions. All our payments are to the institution, and if the institutions are going to be segregated institutions, then we will not give them the funds.

Mr. CRAMER. So a student wanting to go to the University of Mississippi previously would not be able to do so?

Secretary CELEBREZZE. That is a moot question now.

Mr. CRAMER. I said previously.

Secretary CELEBREZZE. That is a moot question. I think every one of the 50 States now has a desegregated university.

Mr. RODINO. Mr. Chairman.

The CHAIRMAN. Mr. Rodino.

Mr. RODINO. Mr. Secretary, I would like to get this point clarified because I think it is rather important. Under title 6, would it not actually mean that you would have power to withhold funds in most any program that you administer where there is direct or indirect financial assistance by way of grant, contract, loan, insurance? This is the way I read it. I mean, in any program you administer which relates to grants, contracts, loans, you would have that right; isn't that so?

Secretary CELEBREZZE. Under existing law we probably do not have that power. In the statutes, it now says we must do this, whether it be Hill-Burton or other programs. We do not have the clear right to withhold funds. Title VI says, in the first sentence, it says "Notwithstanding any other provisions of law, you will have this right." That is the difference.

It presents the Administrator, under existing law, with quite a concern, because there are many people, including Congressmen and Senators, that feel we have the right to do it in all programs, and we keep writing to them and say we may have the right and we are studying it, but I don't think it is quite that clear.

This title VI will then remove all doubt from an administrative point of view—the right will be granted to the Administrator to withhold funds upon due investigation and finding of facts.

Mr. RODINO. And upon a finding of discrimination?

Secretary CELEBREZZE. Yes. That is the difference between the existing law and this.

Mr. RODINO. It is a rather broad and sweeping power?

Secretary CELEBREZZE. It is a broad and sweeping power, and I assume the Administrator, even under title VI, the way it it, may have some difficulty in administering it. Because, if you have mandatory requirement you get objections from people that think you should not have done it, and if you have discretionary power there are other positions, so the Administrator has to constantly use good, honest judgment. This is going to require a good deal of wisdom.

Mr. MEADER. I want to see if I understand this language on page 35 that has been read:

> Under which individuals participating in or benefiting from the program or activity are discriminated against on the ground of race, color, religion, or national origin.

You mentioned the Library Services Act. Let's assume in an area where there is a library there is no segregation of the library so that both Negroes and whites are fully free to use the library, but in this same community the Negroes are denied voting privileges. Would you, in that case, because the participants or beneficiary is discriminated against on the ground of race with respect to voting, be able to withhold library funds?

Secretary CELEBREZZE. Not under my interpretation. It would be specifically aimed at the one program. For example, in some of the assistance programs, if the State discriminates in one part of the State, it is almost mandatory—if I can use that in a loose sense—for the Secretary to withhold all funds from the State. Now, title VI, I think, would remove that. If you have 42 counties and 20 are complying—you would have a right to pay to the 20 counties but you can't pay it to the other 22, whereas perhaps under existing law you would have to remove the whole amount of funds.

Mr. MEADER. The point I was getting at is, must the discrimination under title 6 relate to the particular program with respect to which the funds are withheld, or can you use the withholding as a means of discrimination in other programs?

Secretary CELEBREZZE. It would be my interpretation it would only apply to the specific program you are talking about. It would not apply to the other. Even under existing law we do have a hardship in some cases where, if it applies to one part of a State, it applies in the total State program. Title VI would avoid that part at least.

Mr. MEADER. Do you anticipate that the administration of title VI will require additional personnel and additional costs?

Secretary CELEBREZZE. We haven't been able to figure any cost factor on it because there are so many unknowns involved. I imagine that part of it will be absorbed by existing programs and part of it, depending upon what we run into, may involve additional costs. We have nothing upon which to base estimates of additional costs and personnel.

Mr. MEADER. Title VI does not apply only to Department of Health, Education, and Welfare. It applies Government wide.

Secretary CELEBREZZE. It applies to all departments.

Mr. MEADER. Have you made any estimate or, to your knowledge, has anyone else in the executive branch of the Government made an estimate, of the total number of grant programs to which title VI will apply and the total amount of annual appropriations in those programs?

Secretary CELEBREZZE. I can only furnish it for my Department. Maybe Secretary Wirtz can furnish it for his.

Mr. MEADER. I think perhaps, Mr. Chairman, somewhere we ought to get the Bureau of the Budget or somebody to give us some kind of an idea just how many of these programs there are and how much the total annual appropriations amount to comparable to the $3½ billion, and 128 programs of HEW.

The CHAIRMAN. I will ask counsel to address a communication to the Bureau of the Budget on that.

Mr. DONOHUE. Mr. Chairman, as a matter of information to me personally, does the Federal Government now grant or allocate or assist any State in the operation of their public school system; that is, the elementary and the secondary schools?

Secretary CELEBREZZE. Under the impacted area?

Mr. DONOHUE. Outside of the impacted area.

Secretary CELEBREZZE. Under the National Defense Education Act, titles III and V, with regard to science programs and math programs, and guidance and counseling, and vocational education. Those areas, plus the impacted areas program.

Mr. DONOHUE. But not in the school system as we know it generally; that is, the elementary and the other?

Secretary CELEBREZZE. You mean a blanket assistance program?

Mr. DONOHUE. No; it is all pinpointed. I think the heaviest ones are impacted areas.

The CHAIRMAN. All right; proceed.

Secretary CELEBREZZE. Many of the grant statutes we administer are mandatory in their terms, telling us to whom we shall make grants and how much each is entitled to. For example, Public Law 874 determines by statutory formula the eligibility and amount of entitlement of school districts which educate federally connected children. Many of our State grant programs are similarly structured. Since it is the Congress that has directed the making of these grants, it is appropriate that the Congress should relieve the Department of any requirement to make them when they support discriminatory practices.

Enactment of title VI of the bill before you will be a direction from Congress to discontinue support of programs that entail racial discrimination, placing discretionary power in the administrator as to the time and manner of implementation.

With respect to programs of my Department, I shall deem it my duty to give effect to title VI as rapidly as possible. By "possible" I do not mean "convenient" or "expedient," and I do not mean step-by-step gradualism. I do mean "possible" of achievement as rapidly as can be attained in fact. A measure of discretion in the application of the provision is essential. The Department should not be required to terminate payments to all discriminating grantees at the same time, whether that moment be the day of enactment or some later date.

Those grantees that are prepared to act should have opportunity to make the necessary adjustments. The admission policies of a university can be changed at a single meeting of the board of trustees, but the change will not have effect until the next semester or the next school year, and we ought to give all encouragement to an institution that is ready to move as rapidly as the academic schedules make possible.

In some programs we have commitments that should not be disregarded—a commitment, for example, to students who have borrowed under the National Defense Education Act student loan program and who are in midcareer in a segregated college or university. These students are not responsible for the discriminatory policy of the institution, and my present judgment is that we should withdraw loan funds from such an institution only with respect to future entrants into its student body.

Mr. RODINO. I think that is a very good statement.

Secretary CELEBREZZE. In the case of our larger grants which go to the States, discriminatory practices will often be local rather than statewide. Under some of these programs, present law requires, if a State does not conform to Federal conditions, that the whole State grants be terminated. We interpret title VI as permitting us to pinpoint withholding to the situations where discriminatory practices prevail. It will be necessary not only to explore the facts adequately but also to give the State agencies an opportunity to revise their own procedures to channel the Federal funds to areas not engaging in discrimination.

In the vendor payment programs for medical care of public assistance recipients, we know that there are participating hospitals,

nursing homes, and clinics in all sections of the country which engage in racial discrimination in some degree. Many adjustments may be necessary, such as greater use of local governmental facilities where they are available, provision for transporting patients to more distant institutions, perhaps special contract arrangements with some community hospitals for nondiscriminatory treatment of their indigent patients.

Racial discrimination presents our Nation with a challenge that calls for new instruments of correction as well as for all the wisdom we possess. I assure you that, with the new instrument which title VI affords, our objective will be to eliminate discrimination from federally aided programs. This title provides a tool as effective as any that has yet been proposed—a tool that, handled with wisdom and justice, can contribute much toward our goal of equal opportunity for all.

In conclusion, Mr. Chairman, the more than 100 programs of the Department, with their diverse structures and orientation, have a common interest—they are all concerned with people in a direct way. We are daily faced with human needs in health, in education, and in public welfare—needs that offer a great challenge in themselves without the additional and unjust situations that arise because of discrimination. We need the authority provided in this bill to deal with the problem of discrimination in the hundred different ways that may arise.

While the principal effects of this legislation for the Department of Health, Education, and Welfare will result from the enactment of titles III and VI, the entire bill, dealing as it does with human problems, human needs, and human rights, will provide a new birth of freedom for millions of Americans.

Mr. Chairman, I urge the enactment of H.R. 7152.

Mr. CRAMER. May I ask one question?

On the bottom of page 9, the last paragraph, you make an observation pointing to how this program would be carried out under title VI.

Mr. RODINO. You mean the statement?

Mr. CRAMER. Yes, sir; page 9 of the statement. In the vendor payment programs for medical care for your public recipients, that is administered by the local public welfare board, is it not?

Secretary CELEBREZZE. Yes, to a degree, but the payments are made directly to the supplier of the service by the States.

Mr. CRAMER. The States determine whether the person is qualified to receive welfare payments, do they not?

Secretary CELEBREZZE. Under the vendor payment program, yes. The State has to adopt it. We have to adopt it under the State program. Once we adopt the State program under vendor payment, they make the payments directly to the physician or directly to the hospital, whatever the case may be, under the vendor payment program.

Mr. CRAMER. Therefore, you would not make payments to a doctor, for instance, who chose a hospital or nursing home that practiced discrimination. If the doctor chose a given nursing home and that nursing home discriminated, you could not make payment to that doctor, is that correct?

Secretary CELEBREZZE. This isn't the way in which I described it in my statement. In my statement I said that the reason we wanted

discretion rather than completely cutting it off is that I am dealin with human problems. If we completely cut off funds we still hav these sick people we have to send to hospitals. If the only hospita that is available is a segregated hospital, and it is a matter of life o death with the individual, we would have to send them to that partic ular hospital. Meanwhile, I would try to make other arrangements later on either to use other governmental facilities or other institutions that can render the service. If a man needs medical attention we are not going to argue about the treatment while the patient is dying.

Mr. CRAMER. I understand that, but I wanted to get into the aspect that you would be controlling the choice of either the doctor or patient or the nurse as to the hospital or clinic or nursing home to which he might wish to go.

Secretary CELEBREZZE. When a man goes into the hospital he certainly gets medical treatment and we are not concerned as to the doctor who treats him. That is a question we are not primarily concerned with at this point. We may have that decision coming out of the separate-but-equal lawsuit under the Hill-Burton program. That is why I say that it is difficult to define these areas. Take the Hill-Burton program, for example. Let us assume the hospital is integrated, but it only has whites on its medical staff. What decision do you as an administrator come to?

Are you concerned that the patient is treated equally or are you also concerned with the internal operations of the hospital? These are difficult decisions. That is why I say there are a hundred different ways this may apply.

Mr. CRAMER. But you have authority under title VI if a given hospital does not have any Negro doctors on the staff to withhold funds under the vendor payment program and thus prevent a person from going to that hospital and receive medical service at that hospital.

Secretary CELEBREZZE You could do that if you carried it that far, and wanted to get into the internal management of the hospital.

Mr. CRAMER. You have it under title VI if you wish to use it: right?

Secretary CELEBREZZE. I think we could.

Mr. CRAMER. The same is true in a nursing home. If in fact a given nursing home refuses to employ Negro nurses, for instance, but permits Negroes as patients, you would have authority to cut off funds?

Secretary CELEBREZZE. We can go on and on with examples.

Mr. CRAMER. Precisely.

Secretary CELEBREZZE. Let me give you another example where you make a grant for construction. Now, in the actual construction, they do employ other than white, but what happens after the building is constructed?

It requires a great deal of wisdom and thought before you make these decisions.

Mr. CRAMER. And you are asking for Congress to give you blanket authority to make all of those decisions?

Secretary CELEBREZZE. Because Congress itself couldn't possibly in one bill delineate every instance that may arise. It is just physically impossible. That is the point I am trying to make to this com-

mittee. You can't take the 30,000-or-some areas in which the question may arise, and say you shall do it here and have 30,000 things listed in a bill.

The CHAIRMAN. If we start anything like that, then we are in real trouble because you might enter certain cases which would restrict you and who knows how many others which would have no restriction?

You cannot devise a bill like an architect's plan for a building. You do not have precisionlike instruments. You simply have to grant someone discretion. You had the discretion all of these years under many, many bills that Congress passed. Now in one fell swoop should we pass a bill that will hinder, bridle, and manacle the Secretary so that he wouldn't be able to do anything?

I think that is what would happen if you want to put every sort of restriction in this bill. You have to have discretion somewhere.

Mr. CRAMER. I am trying to find out, Mr. Chairman, and I think properly so, what the discretion is.

The CHAIRMAN. He says he has the power to do exactly what you ask. Now the question is either that you don't want to give the power or that you do want to.

Mr. CRAMER. Let's speak of architects. Let's say you have a sewage disposal plan that participates in the construction. Does the architectural firm that is engaged have to have an integrated architectural firm?

Secretary CELEBREZZE. Not necessarily, because you may have a situation where there are no Negro architects in the particular area. That is why I say I can't pinpoint this thing for you.

Mr. CRAMER. If you had an area where you had Negro architects and this firm wouldn't hire any, then you could refuse funds under title VI?

Secretary CELEBREZZE. It isn't only a question of race, it is a question of religion, too. You would have to use sound judgment. Certainly if a Lutheran organization wants to build a building and we make a partial grant to it and they prefer a Lutheran architect, I think that that is about as far as you can go.

Mr. CRAMER. You are talking about good judgment and you are asking for authority from Congress that would give somebody with bad judgment the same power and that is what concerns me.

Secretary CELEBREZZE. Because I do not believe, with all due respect, and the greatest regard for the wisdom of Congress, I don't believe that you could come up with a bill with all of the many diverse areas where the situation may arise, saying you shall do this in this situation.

You have to, as the chairman said, give some discretion to someone along the line to make sound decisions.

Mr. MCCULLOCH. Mr. Chairman, I would like to say at this point, this very clear discussion of feeling of members of this committee, and the Secretary of Health, Education, and Welfare is compelling reason why there is need for some review by somebody somewhere.

I hope that we can set ourselves to determine the proper and workable method of review. I haven't said judicial review necessarily, but I am doubtful if every administrator will always exercise the soundest possible judgment.

Mr. CRAMER. He would have to have the wisdom of Solomon under this section to ever come up with sound decisions in every instance

and even serve the purpose intended by title VI and not do greater damage in doing it.

The CHAIRMAN. I don't think the Congress has the wisdom of Solomon to fashion a bill to cover every instance. We have to have some discretion. We may have to put some sort of a ceiling on your authority in some fashion as the gentleman from Ohio stated. I don't think it should be judicial.

There may be some way we can find of doing that when we go into executive session, to try to refurbish this bill.

Mr. RODINO. I don't think there could ever be any bill to do that, Mr. Chairman.

Mr. KASTENMEIER. I have one question, Mr. Chairman.

In connection with desegregation of schools and school districts, what would be your position in connection with a provision in this bill to require as a first step, compliance by a specific date—let us say 1965. Would you support such a provision?

Secretary CELEBREZZE. You mean to write it in the bill step by step?

Mr. KASTENMEIER. Yes.

Secretary CELEBREZZE. I think that in the 9 years since the Supreme Court has ruled, there hasn't been compliance; the way I suggest we administer this, rather than give just a blanket authority, is to have us judge, as we sit down with the school officials, whether they are really making a diligent effort, what their problems are and how we can work out their problems.

Now, that may take 6 months or a year, but at least we would be actively engaged in it.

Mr. KASTENMEIER. The suggestion I might make is that actually there should be further sanctions so as to compel them. We have had the other situations where businessmen found it very hard to do away with certain business practices involving desegregation until all businessmen were required to do something simultaneously by a given time or to do it jointly.

Secretary CELEBREZZE. We recognize that and that was the purpose of section III where we would offer technical assistance and grants to make this transition.

Mr. COPENHAVER. Mr. Secretary, on page 4 of your statement you referred to these 2,000 school districts and then in the following sentence you refer to the degree of integration. I presume the 2,000 school districts referred to on page 4 are included within the 11 States you referred to?

Secretary CELEBREZZE. Yes.

Mr. COPENHAVER. With regard to page 6 of your statement, you indicate that individuals within your Department have had contact with various local school officials, school boards. Have any contacts been made with officials in these 2,000 school districts in which they have indicated a desire to receive the type of assistance that you would provide for in sections 303 and 304 if that were enacted into law?

Secretary CELEBREZZE. Yes; the chairman asked me that question, and I asked if I could call on the Assistant Secretary to answer it. I would have Mr. Quigley answer.

Mr. QUIGLEY. Counsel, I would say we negotiated or met with school officials, State and local, in at least 8 or 10 of the Southern States in the last year. We negotiated with some of them over a long period

of time and in great depth and in great detail. We ran into a variety of attitudes, ones varying from defiant resistance to an anxious desire to do something. They have a variety of problems—community relations, political relations, budget.

In many instances, in a number of States, there were school boards where there was what I would call an honest, good intention, good faith on their part. There wasn't any question but the process would have been speeded up if, in addition to meeting with them and thinking through and talking through their problems, exploring steps they might take and how soon they might take them, we were in a position to say to them, "There is a program on the statute books which would allow us to make a grant," or "there is a program on the statute books which would allow us to make available to you, for a limited period of time, people who have lived through this." This would have been very helpful to a number of districts.

Mr. COPENHAVER. The reason I asked that question is because I wonder if, in a State which has a climate of total segregation, whether a local school district would feel itself free to make a request of this nature?

Mr. QUIGLEY. Feel itself free?

Mr. COPENHAVER. From fear of retaliation, you see.

Mr. QUIGLEY. If the ice was once broken, I think many would. I don't think we would wait for our mail, when some brave school superintendent or some chairman of some school board would sit down and write a letter to the Secretary. However, in the tempo of our times, the pressure is on. If they knew that they were facing this moment of truth and very quickly, when something had to be done, then I think that they would contact our regional office. They would contact the Commissioner of Education and say, "This is the situation we are faced with. Can you be of any assistance; can you give us any help?"

Now, I think that initially, at least, these approaches might be off the record. They might be telephone calls rather than formal communications for fear that they might have to back away if the community wasn't in a mood to stand for it, but my experience and the experience of other people in the Department who have been involved in this effort in the last year, clearly convinces or indicates to me that an unbelievable number of school boards, school superintendents school principals are ready, willing, and anxious to take advantage of this kind of service if the Federal Government can render it; and if the Federal Government can't render it, they are still anxious to have this service from private organizations, foundations, universities, anybody that will help them over what is admittedly an extremely difficult period.

Mr. DONOHUE. Let me ask this question, as a sort of supplement to the previous question: We are not granting any funds now to any State or any subdivision of any State to carry on their educational system outside of impacted areas, are we?

Mr. QUIGLEY. This is correct.

Mr. DONOHUE. Now, if that is so, what inducement have we to offer them to integrate their schools? Supposing they say "No, we won't." What do they do?

Mr. QUIGLEY. In quid pro quo dollars and some cents, in many instances they would not be losing anything, but I would point out that

our particular operation over the past year has involved Federal impact school districts, and their numbers are legion, particularly in some of our Southern States where this problem is most acute.

Mr. DONOHUE. In those impacted areas, we are granting funds, but in those areas where we do not have an impacted situation, then what?

Secretary CELEBREZZE. May I address myself to that?

I think the only inducement you might have is that a good portion of education funds are handled from the State level; that is, they send a portion back to the district.

Mr. DONOHUE. Mr. Secretary, we are not granting or allocating or assisting States.

Secretary CELEBREZZE. That is true, but, under this bill, a local community which might now be fearful of bucking the State because the State would withhold the funds could receive a loan while the case is argued out through the courts. That is perhaps the only monetary inducement.

Mr. DONOHUE. Mr. Secretary, don't you think that is farfetched for those areas that the counsel has pointed out where the climate is such that all sorts of resistance and all sorts of reasons are given for not integrating?

Secretary CELEBREZZE. That is true, but we find this—at least I have found it within my limit of knowledge of talking with some persons—that the basic problem of integration is not with the school people. The basic problem of integration is with the political element. I think that was true in the case of the University of Alabama. The trustees immediately desegregated it when the court ordered it to; and it was partly true in the *University of Mississippi* case. Superintendents or school districts are relying heavily upon the political structure for State funds and if they buck them in any way and the State withholds their funds, they are in difficulty and they have no place else to turn.

Mr. DONOHUE. Doesn't it work the other way? Aren't the superintendents and the public officials dependent upon the people that you say would go along with desegregation? Aren't they dependent upon them to hold their offices?

Secretary CELEBREZZE. To a degree, but you can lose one county and still get elected.

Mr. DONOHUE. In other words, if any one of us went contrary to the wishes of our constituents, for any period of time on a major subject, do you think we would be here?

Secretary CELEBREZZE. That is true.

Mr. DONOHUE. Speaking practically?

Secretary CELEBREZZE. I am speaking practically as a former legislator, and I have been on both sides of the fence. Most State funds are granted through legislative bodies. They are elected from a great many districts, and the individual members are not going to be worried about a district which is completely outside of their jurisdiction. You have a political situation where the balance is with those who are elected outside of the district, so it doesn't make much difference whether they chop off the funds there or don't.

Mr. DONOHUE. The climate, as counsel points out, in many areas is not regional, it is statewide.

Mr. KEPPEL. Mr. Congressman, I would say on the basis of my experience that this was one of the revisions in my own thinking that

I had to go through. The situation is not uniform and attitudes are not uniform throughout the State. You have integration in Arlington and northern Virginia without a hitch particularly, yet you have the tragic situation in the same State, of Prince Edward County. We found areas in Alabama where, frankly, I believe integration could occur tomorrow in the public school system without incident or any disturbance. Yet there are other areas of that same State where I would hesitate to state it would happen for some time to come.

The same thing was true in our dealing in the State of Mississippi. There are areas in that State where, frankly, I think with a little effort and a little encouragement and a little concern on the part of the local officials, they could and would integrate their schools, but they can't operate without considering what is going to happen in the State capital, what the reaction is going to be.

I think if there was a Federal program of assistance and aid and help to which they could turn during this interim period, that it might encourage many of them to move in many States, including the States where nothing has happened, a lot more rapidly than we would imagine.

Mr. DONOHUE. I go along with you up to a certain point; that if we granted loans to these communities that would integrate their schools they might go along, but would they go along realizing that they are dependent upon the State for many other funds to carry on their local government? Wouldn't they be fearful of losing that?

Mr. KEPPEL. This would be a factor in the thinking.

Secretary CELEBREZZE. I think under existing conditions we would have to answer "Yes," and if this act was in effect, I think that there is a possibility.

Mr. COPENHAVER. Mr. Secretary, do you envision that the technical assistance grants and loans which you seek to have authorized under title III would be limited to the 2,000 school districts which I just referred to?

Secretary CELEBREZZE. No; that was one of the problems we had in estimating costs. Even school districts which are now desegregated might want consultation and advice, and if they make a request we would render them the same service. It would apply equally to the 33,000 school districts in the country.

Mr. COPENHAVER. In your estimation of cost, approximately how many school districts did you envision might call upon you for this type of assistance?

Secretary CELEBREZZE. We estimated—we didn't do it by district—we estimated in the 33,000 school districts there are 560,000 teachers. We reduced that to about 15 percent, including only heads of department and supervisors.

You would have to base it on the number of teachers rather than the number of school districts.

Mr. MEADER. Mr. Secretary, I want to draw your attention to the paragraph on page 8 in which you say "title VI would give direction from Congress to discontinue support of programs." As I recall it, you said there were 128 programs, but some 20,000 projects. Did I hear that figure correctly?

Secretary CELEBREZZE. It runs in the thousands.

Mr. MEADER. I thought you referred to 20,000.

Secretary CELEBREZZE. It fluctuates from day to day.

Mr. MEADER. Your next paragraph indicates that you may find that this is quite a sizable task to carry out this direction of Congress, and you refer to the fact that you are going to do it as rapidly as possible. How are you going to go about this? Are you going to wait until complaints are made or send investigators into the field and reexamine these programs and decide whether there has been discrimination or not; and isn't it also a difficult thing sometimes to decide what constitutes discrimination? It might not be refusal to employ, but perhaps not paying the same wage rate, or there might be differences of opinion.

Won't you have a multitude of very difficult problems to decide before you withdraw support of programs?

Secretary CELEBREZZE. I think that we would use all of those factors and also make available to ourselves the community relations boards that would be set up to see if they can't adjust these differences. It would be of tremendous value to a community to have a board where people could come in and where groups could get together and try to solve their problems.

We will make good use of community relations boards which have been established, and quite a few have been established up to the present time.

What I meant by that statement was I probably have a directive now from the Congress on the impacted areas for off-base children to pay these moneys even though there is segregation. Title VI would remove that and say so long as they are operating with segregated schools they should not be entitled to funds under the impacted area. That is what I was referring to, or the Hill-Burton situation.

I might add even in those areas which I have come to a conclusion, there are doubts. I mean, I have received opinions that we do have authority under Hill-Burton and legal opinions that we do have authority under the impacted areas for off-base schools. The way I analyze it, under existing circumstances and to the best of our judgment, it has come to be my determination that we do not have the authority.

Mr. MEADER. In other words, you do not see the magnitude of the task I implied in my question in examining these 20,000 programs and determining whether in fact there has been discrimination in one form or another?

Secretary CELEBREZZE. I think it is not going to be an easy matter. I said it is going to be a difficult matter, and that is why we need all of the wisdom we can possibly muster. But I think it is something we have to do. I think we have prolonged it too long and we have to start at it. We will use whatever authority that we may have.

Mr. MEADER. If I get the picture of the complexity of the operations of your Department and the nationwide extent in which the 128 programs are involved, and you have to determine not with respect necessarily to a State, but to a program or project, whether in fact discrimination is being practiced, it seems to me you must not only have a lot of wisdom, but a lot of investigators to go out and make a factual determination and come up with a reliable, fair judgment as to whether in fact discrimination was practiced.

Secretary CELEBREZZE. Yes; we would, but that is no different than any other laws we have existing now. You have to investigate and determine it whether you are in the civil field or criminal field.

Mr. MEADER. I would think that title VI would require you to employ a very sizable army of investigators.

Secretary CELEBREZZE. I don't think so. While the nerve center would be here in Washington, most of it would be handled out of our nine regional offices. These programs are now handled through the regional offices. Those in the regional offices know the complexity of the problem and the people involved. It wouldn't be quite as difficult as you state, because we certainly wouldn't overnight go through all of the programs. It has taken me 11 months now to get to the point where we have made a decision in about eight or nine programs, major programs. So this is going to have to be a continuing process of studying, evaluation.

In many areas I think we will not have much difficulty. In many areas we will have difficulty. By that time I anticipate that some of these court decisions will be out, which will remove us from that particular area because we will have basic court decisions. What would cause us great turmoil is for Congress to tell us at this particular moment to cut off all of the funds, and then we would have a great deal of concern.

Mr. CRAMER. Would the gentleman yield on that? That is what I was trying to get to, the extent of authority being granted and the problems involved. Take, for instance, a Hill-Burton addition to a hospital. Let's assume while the application is pending a Negro nurse tries to become employed and is denied. Under this authority you would refuse the Hill-Burton funds for the construction program, but then you have to go in, do you not, and make a determination as to why that person was denied employment; was it because of race? Let's assume it was because the party was not reliable. Perhaps her grades in nursing school were not adequate for employment. Maybe she didn't meet the standards of all other nurses in the hospital. That is a factual determination that you have to make, or you are given authority to make, and your decision based upon those facts in order to not grant funds would have to be different from the hospital administrative authority.

That is another example of the extent to which you would have discretion under this section, with no right of review by the hospital administrator, for instance.

Isn't that a correct analysis?

Secretary CELEBREZZE. That is true. As I stated earlier, we would avail ourselves of community relations boards to get these problems settled on a local level.

Mr. CRAMER. That is an interesting observation. As it relates to the loan section or title III, is it your opinion that you could use that section to subsidize such community relations groups?

Secretary CELEBREZZE. No.

Mr. CRAMER. Could you hire any of them as specialists?

Secretary CELEBREZZE. You mean hire them because they are members of community relations boards?

Mr. CRAMER. Regardless of whether it is because they are members; the fact is they are members and are also specialists, and you could hire them, could you not? They become specialists by being members?

Secretary CELEBREZZE. I think we could hire them. That doesn't say we would.

Mr. RODINO. Mr. Secretary, I want to get one point clear. Under section 304, where a school board makes application for a loan, the Commissioner then must find that the school board has authority to receive or expend. What happens when the State legislature suddenly decides to enact a law saying that that school board cannot receive or expend?

Secretary CELEBREZZE. It all depends on what State you are in. Many local school boards raise much of their own money with local taxes. The only assistance some States give them is under a School Foundation Act.

In States where the schools supply money locally, the city charter, or other arrangement the local community sets up as the manner in which the board of education shall be established, has granted them powers to raise money, so they could do it under those powers. They would still have power to issue bonds and power to borrow money.

That may vary from State to State. I am giving you my experience in the State of Ohio.

The CHAIRMAN. Thank you very much, I say to you, Mr. Secretary, and Mr. Quigley and Dr. Keppel.

Mr. Secretary, I want to state that your excellent reputation is confirmed by the intelligence and forthrightness and patience you have manifested here this morning. You have been subject to quite a number of penetrating questions by the members, and that is a token of keen interest the members have in this legislation, and the members don't usually buy a pig in a poke; they want to know what the words are and they want to know what the import of the words are, and that is why these questions have been propounded to you.

Again I want to thank you.

The hearing will now be adjourned until 10 o'clock tomorrow morning when the Members of the House will testify for or against the proposal.

(In response to questioning, the following data were supplied:)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 6, 1963.

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

DEAR MR. CHAIRMAN: Enclosed are three papers which the Department was asked to provide in connection with Secretary Celebrezze's testimony before Subcommittee No. 5 of your committee on July 10, 1963. These are: (1) Note on statistics on educational attainment of the young adult population; (2) case citations involving State action interfering with local desegregation attempts; and (3) accreditation of secondary schools.

Sincerely yours,

WILBUR J. COHEN, *Assistant Secretary.*

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, OFFICE OF THE SECRETARY

(Note on statistics on educational attainment of the young adult population in statement of Secretary Celebrezze on H.R. 7152 before Subcommittee No. 5 of the House Committee on the Judiciary, July 10, 1963)

On page 3 of his statement, Secretary Celebrezze said:

"Nearly 70 percent of the white young adult population have finished high school, as compared with only about 40 percent of the nonwhites in this group."

The Secretary was asked to provide a State-by-State breakdown of this data. A table is attached to this note.

The statistics in the Secretary's statement were taken from the March 1962 Current Population Reports, series P–20, No. 121 of the Bureau of the Census. This report (pp. 8 and 9) has these national aggregate figures: 69.2 percent of the white and 41.6 percent of the nonwhite population aged 25 to 29 had 4 years of high school education or more. This report does not have State-by-State figures.

The latest State-by-State data come from the U.S. Census of Population: 1960, PC (1)–10, pp. 1–400–07. These data are found in the attached table. Note that the national aggregate figures are not identical with those for the March 1962 report. In the 1960 report, 63.7 percent of the whites and 38.6 percent of the nonwhites had 4 years of high school education or more.

The following comment from the report P–20, N–121 is important:

"The education data from the March 1962 Current Population Survey may differ from those from the 1960 census for the following reasons: (1) The March 1962 survey results were weighted by adjusting them to broad-age intervals of the population as enumerated in the 1960 census; consequently, some of the differences between the survey and the census is due to differential weighting of the population within these age intervals. This fact is especially important for age groups in which the younger persons within the group have considerably higher average educational levels than the older persons within the group * * *; (2) the smaller group of Current Population Survey enumerators were more experienced and had more intensive training and supervision than the large number of temporary decennial census enumerators and may have more often obtained more accurate answers from respondents; (3) members of the Armed Forces in the United States living offpost or with their families onpost are included in the survey, but all other members of the Armed Forces are excluded from it. All members of the Armed Forces in the United States are included in the census data. Because of the differences mentioned above, particular care should be exercised in comparing the data for March 1962 with those from the 1960 census. * * *"

Despite the differences in the statistics for the two different years, these data provide an effective comparison of white and nonwhite educational attainment.

Population, aged 25 to 29, with 4 years of high school or more, by color and by State, 1960

State	White			Nonwhite		
	Population, 25 to 29	25 to 29 population with 4 years of high school or more	Percent with 4 years of high school or more (col. 3 divided by col. 2)	Population, 25 to 29	25 to 29 population with 4 years of high school or more	Percent with 4 years of high school or more (col. 6 divided by col. 5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
50 States and District of Columbia [1]	9,565,462	6,096,593	[2] 63.7	1,304,924	503,446	[2] 38.6
Alabama	145,218	80,111	55.2	49,039	14,079	28.7
Alaska	16,728	11,586	69.3	4,051	1,257	31.0
Arizona	74,634	44,062	59.0	8,910	2,204	25.4
Arkansas	76,098	40,975	53.8	15,989	3,490	21.8
California	917,624	616,744	67.2	99,291	60,846	61.3
Colorado	107,561	75,059	69.8	4,568	2,789	61.1
Connecticut	140,544	94,981	67.6	9,186	3,771	41.1
Delaware	25,965	17,470	67.3	4,043	1,269	31.4
Florida	238,030	151,258	63.5	60,589	16,295	26.9
Georgia	188,423	104,231	55.3	62,399	15,120	24.2

See footnotes at end of table, p. 1556.

Population, aged 25 to 29, with 4 years of high school or more, by color and by State, 1960—Continued

State	White			Nonwhite		
	Population, 25 to 29	25 to 29 population with 4 years of high school or more	Percent with 4 years of high school or more (col. 3 divided by col. 2)	Population, 25 to 29	25 to 29 population with 4 years of high school or more	Percent with 4 years of high school or more (col. 6 divided by col. 5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Hawaii	17,337	11,908	68.7	27,209	20,008	73.5
Idaho	[2] 37,313	[2] 24,740	[2] 66.3	----------	[4]	[4]
Illinois	529,328	352,395	66.6	78,823	33,492	42.5
Indiana	265,762	164,419	61.9	18,493	8,014	43.3
Iowa	149,627	108,331	72.4	2,015	1,046	51.9
Kansas	123,347	88,998	72.2	6,943	3,634	52.3
Kentucky	163,378	73,240	44.8	12,146	4,288	35.3
Louisiana	142,208	84,778	59.6	55,739	13,842	24.8
Maine	[2] 57,491	[2] 33,430	[2] 58.2	----------	[4]	[4]
Maryland	161,570	98,949	61.2	35,107	12,028	31.3
Massachusetts	288,085	199,472	69.1	10,304	5,344	51.9
Michigan	425,449	274,103	64.4	50,088	21,241	42.4
Minnesota	190,958	138,605	72.6	2,982	1,508	50.6
Mississippi	75,873	44,022	58.8	39,520	6,400	6.2
Missouri	222,813	141,534	63.5	24,478	10,304	42.3
Montana	[2] 38,853	[2] 26,159	[2] 67.3	----------	[4]	[4]
Nebraska	78,942	58,527	74.1	2,760	1,274	46.2
Nevada	[2] 19,643	[2] 3,037	[2] 66.4	----------	[4]	[4]
New Hampshire	[2] 34,600	[2] 21,745	[2] 62.8	----------	[4]	[4]
New Jersey	320,215	214,662	67.0	42,668	17,246	40.4
New Mexico	60,861	30,242	59.5	5,274	1,493	28.3
New York	904,054	593,254	65.6	118,451	53,660	45.3
North Carolina	230,104	123,186	53.5	62,662	18,341	29.3
North Dakota	[2] 36,040	[2] 22,764	[2] 63.2	----------	[4]	[4]
Ohio	535,672	339,144	63.3	56,309	23,379	41.5
Oklahoma	124,015	80,891	65.2	11,634	5,059	43.5
Oregon	94,080	65,273	69.4	2,556	1,487	58.2
Pennsylvania	587,691	385,098	65.5	57,203	24,387	42.6
Rhode Island	[2] 47,265	[2] 26,458	[2] 56.0	----------	[4]	[4]
South Carolina	105,868	55,359	52.3	42,177	8,554	20.3
South Dakota	35,918	24,398	67.9	1,716	545	31.8
Tennessee	186,151	94,451	50.7	32,442	9,892	30.5
Texas	546,441	319,163	58.4	76,981	30,837	40.1
Utah	[2] 56,848	[2] 41,637	[2] 73.2	----------	[4]	[4]
Vermont	[2] 21,421	[2] 12,935	[2] 60.4	----------	[4]	[4]
Virginia	205,403	118,496	57.7	49,202	15,556	31.6
Washington	159,178	113,167	71.1	7,915	4,593	58.0
West Virginia	97,503	50,009	51.3	3,412	1,583	46.4
Wisconsin	221,272	155,702	70.4	8,155	3,234	39.7
Wyoming	[2] 21,448	[2] 14,847	[2] 69.2	----------	[4]	[4]
District of Columbia	28,413	18,116	77.4	32,039	15,743	49.1

[1] The State totals do not add to the U.S. total. See footnotes 2 and 3.
[2] A March 1962 sample survey of educational attainment by the Bureau of the Census found 69.2 percent of the whites and 41.6 percent of the nonwhites aged 25 to 29 with 4 or more years of high school. (Current Population Reports, series P-20, No. 121, pp. 8-9.)
[3] Includes the nonwhite population (not shown separately).
[4] Data not available.

Source: U.S. Census of Population: 1960, PC-1D series.

Population, aged 25 to 29, with 4 or more years of college, by color and by State, 1960

State	White			Nonwhite		
	Population, 25 to 29	25 to 29 population with 4 years of college or more	Percent with 4 years of college or more (col. 3 divided by col. 2)	Population, 25 to 29	25 to 29 population with 4 years of college or more	Percent with 4 years of college or more (col. 6 divided by col. 5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
50 States and District of Columbia [1]	9,565,462	1,131,001	11.8	1,304,924	70,207	5.4
Alabama	145,218	13,081	9.0	49,039	2,158	4.4
Alaska	16,728	1,912	11.4	4,051	58	1.4
Arizona	74,634	8,880	11.8	8,910	277	3.1
Arkansas	76,098	6,417	8.4	15,989	652	4.1
California	917,624	123,514	13.5	99,291	8,522	8.6
Colorado	107,561	15,939	14.8	4,508	543	11.9
Connecticut	140,544	21,213	15.1	9,186	483	5.3
Delaware	25,965	3,368	13.0	4,043	102	2.5
Florida	238,030	27,713	11.6	60,589	2,492	4.1
Georgia	188,428	18,265	9.7	62,399	2,533	4.1
Hawaii	17,337	2,533	14.6	27,209	2,966	10.9
Idaho	[2] 37,313	[2] 3,336	[2] 8.9	----------	(3)	(3)
Illinois	529,328	65,609	12.4	78,823	4,166	5.3
Indiana	265,762	24,252	9.1	18,493	924	5.0
Iowa	149,627	15,264	10.2	2,015	182	9.0
Kansas	123,347	15,195	12.3	6,943	502	7.2
Kentucky	163,378	11,483	7.0	12,146	412	3.4
Louisiana	142,268	17,444	12.3	55,739	2,687	4.8
Maine	[2] 57,491	[2] 3,777	[2] 6.6	----------	(3)	(3)
Maryland	161,576	21,699	13.4	35,107	1,871	5.3
Massachusetts	288,685	44,029	15.3	10,304	1,033	10.0
Michigan	425,449	44,505	10.5	50,088	2,117	4.2
Minnesota	190,958	24,450	12.8	2,982	447	15.0
Mississippi	75,873	7,607	10.0	39,520	1,353	3.4
Missouri	222,818	23,951	10.7	24,478	1,149	4.7
Montana	[2] 38,853	[2] 3,897	[2] 10.0	----------	(3)	(3)
Nebraska	78,942	7,981	10.1	2,700	160	5.8
Nevada	[2] 19,643	[2] 1,744	[2] 8.9	----------	(3)	(3)
New Hampshire	[2] 34,600	[2] 3,394	[2] 9.8	----------	(3)	(3)
New Jersey	320,215	44,386	13.9	42,668	1,770	4.1
New Mexico	60,861	6,822	11.2	5,274	124	2.4
New York	904,054	135,922	15.0	118,451	6,603	5.6
North Carolina	230,104	21,781	9.5	62,662	2,981	4.8
North Dakota	[2] 36,040	[2] 3,094	[2] 8.6	----------	(3)	(3)
Ohio	535,672	56,192	10.5	56,309	2,475	4.4
Oklahoma	124,015	14,420	11.6	11,634	476	4.1
Oregon	94,070	11,312	12.0	2,556	288	11.3
Pennsylvania	587,691	58,311	9.9	57,203	2,568	4.5
Rhode Island	[2] 47,265	[2] 4,877	[2] 10.3	----------	(3)	(3)
South Carolina	105,858	10,039	9.5	42,177	1,849	4.4
South Dakota	35,918	2,870	8.0	1,716	33	1.9
Tennessee	186,151	15,905	8.5	32,442	1,498	4.6
Texas	466,441	66,039	12.1	76,981	4,555	5.9
Utah	[2] 56,848	[2] 7,721	[2] 13.6	----------	(3)	(3)
Vermont	[2] 21,421	[2] 2,058	[2] 9.6	----------	(3)	(3)
Virginia	205,413	18,661	9.1	49,202	2,119	4.3
Washington	159,173	21,969	13.8	7,915	966	12.2
West Virginia	97,508	6,371	6.5	3,412	192	5.6
Wisconsin	221,272	24,026	10.9	8,155	535	6.6
Wyoming	21,448	[2] 2,524	[2] 11.8	----------	(3)	(3)
District of Columbia	23,413	7,229	30.9	32,039	2,831	8.8

[1] The State totals do not add to the U.S. total. See footnotes 2 and 3.
[2] Includes the nonwhite population (not separately reported).
[3] Data not available.

Source: U.S. Census of Population: 1960, PC-1D series.

Number and percent of Negroes in the population and in professional, technical, and kindred occupations, 1960

State	Total population	Total Negro population	Percent Negro (col. 3 divided by col. 2)	Total employed in professional, technical, and kindred occupations	Negroes employed in professional, technical, and kindred occupations	Percent Negro (col. 6 divided by col. 5)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
50 States and District of Columbia	179,325,057	18,848,019	10.5	7,232,410	287,969	4.0
Alabama	3,266,740	980,051	30.0	96,037	14,010	14.6
Alaska	226,167	6,858	3.0	9,290	114	1.2
Arizona	1,302,161	43,585	3.3	51,453	645	1.3
Arkansas	1,786,272	388,140	21.7	40,120	4,352	9.4
California	15,720,860	880,486	5.6	787,018	16,391	2.1
Colorado	1,753,925	39,827	2.3	83,048	933	1.1
Connecticut	2,535,234	107,066	4.2	129,885	1,502	1.2
Delaware	446,292	60,847	13.6	22,798	838	3.7
Florida	4,952,788	880,218	17.8	176,510	12,633	7.2
Georgia	3,942,038	1,120,909	28.4	117,627	14,604	12.4
Hawaii	632,772	4,694	.7	25,299	52	.2
Idaho	667,191	1,694	.3	23,985	18	.1
Illinois	10,081,653	1,037,068	10.3	417,477	14,603	3.5
Indiana	4,662,451	268,358	5.8	168,815	3,536	2.1
Iowa	2,757,537	24,941	.9	99,335	398	.4
Kansas	2,178,618	91,027	4.2	90,779	1,607	1.8
Kentucky	3,038,156	215,402	7.1	83,319	2,807	3.4
Louisiana	3,257,022	1,038,668	31.9	103,530	13,444	13.0
Maine	969,265	3,396	.4	30,697	26	.1
Maryland	3,100,687	518,257	16.7	153,567	8,698	5.7
Massachusetts	5,149,317	111,096	2.2	256,539	2,474	1.0
Michigan	7,824,965	717,209	9.2	312,590	9,253	3.0
Minnesota	3,413,864	22,313	.7	141,329	576	.4
Mississippi	2,178,141	915,722	42.0	54,516	10,101	18.5
Missouri	4,320,774	390,574	9.0	153,628	6,378	4.2
Montana	674,767	1,460	.2	25,927	53	.2
Nebraska	1,411,312	29,648	2.1	52,327	386	.7
Nevada	285,278	13,424	4.7	12,386	115	.9
New Hampshire	606,921	2,089	.3	23,868	30	.1
New Jersey	6,067,412	513,663	8.5	291,940	8,150	2.8
New Mexico	951,023	17,109	1.8	40,982	249	.6
New York	16,783,604	1,414,184	8.4	825,021	29,213	3.5
North Carolina	4,556,155	1,114,970	24.5	126,421	16,755	13.3
North Dakota	632,446	899	.1	20,561	51	.2
Ohio	9,707,136	784,239	8.1	381,502	11,123	2.9
Oklahoma	2,328,284	154,662	6.6	89,711	2,542	2.8
Oregon	1,768,675	18,225	1.0	71,067	301	.4
Pennsylvania	11,320,580	850,852	7.5	441,149	12,763	2.9
Rhode Island	859,488	18,170	2.1	31,114	266	.9
South Carolina	2,382,594	829,337	34.8	64,421	10,678	16.6
South Dakota	680,514	1,181	.2	23,046	48	.2
Tennessee	3,567,089	586,210	16.4	112,150	8,424	7.5
Texas	9,581,512	1,185,476	12.4	356,884	19,065	5.3
Utah	890,627	4,172	.5	39,411	115	.3
Vermont	389,881	543	.1	15,689	24	.2
Virginia	3,954,429	814,134	20.6	153,729	12,208	8.0
Washington	2,853,214	47,994	1.7	130,744	886	.7
West Virginia	1,860,421	89,393	4.8	55,590	1,580	2.8
Wisconsin	3,952,485	74,511	1.9	146,786	783	.5
Wyoming	330,066	2,156	.7	14,593	20	.1
District of Columbia	763,956	411,612	53.9	49,300	11,998	24.3

Source: U.S. Census of Population: 1960, PC-1D series.

The committee requested information concerning instances in which efforts were made by State or local governments to withhold funds from or otherwise to interfere financially with school districts which were attempting to desegregate their schools. There are listed below citations to cases in which there was litigation concerning such efforts. The courts' opinions describe completely the factual situations which were involved.

Aaron v. *McKinley*, 173 F. Supp. 944 (E. D. Ark., 1959), affirmed per curiam, *State Board of Education* v. *Aaron*, *Faubus* v. *Aaron*, 361 U.S. 237 (1959).

Bush v. *Orleans Parish School Board*, 190 F. Supp. 861 (E. D. La., Dec. 21, 1960), affirmed per curiam *City of New Orleans* v. *Bush*, 366 U.S. 212 (1961) and *Bush* v. *Orleans Parish School Board*, *Williams* v. *Davis*, 187 F. Supp. 42 (E. D. La., 1960), affirmed per curiam, *Orleans Parish School Board* v. *Bush*. 365 U.S. 569 (1961).

In each of these cases, the courts held the State and local actions to be unlawful. See also, *Allen* v. *County School Board of Prince Edwards County*, 198 F. Supp. 497 (E. D. Va., 1961) and 207 F. Supp. 349 (E. D. Va., 1962); *Borders* v. *Rippy*, 247 F. 2d 268 at 272, opinion on petition for rehearing (5th Cir., 1957); *Hall* v. *Saint Helena Parish School Board*, 197 F. Supp. 649 (E. D. La., 1961), affirmed, *Saint Helena Parish School Board* v. *Hall*, 308 U.S. 515 (1962); *James* v. *Duckworth*, 170 F. Supp. 842 (E. D. Va., 1959), affirmed, *Duckworth* v. *James*, 267 F. 2d 224 (4th Cir., 1959), certiorari denied, *Duckworth* v. *James*, 361 U.S. 835 (1959).

Staff memorandum for the record to accompany testimony of Secretary Celebrezze before the Subcommittee No. 5 of the House Committee on the Judiciary on H.R. 7152, July 10, 1963:

ACCREDITATION OF SCHOOLS IN 11 SOUTHERN STATES

This memorandum is in response to the request for information that would provide some measure of the number and percent of schools in 11 Southern States that are accredited and some measure of the relative number and percentages of Negro and white schools in these same States that are accredited. Although the request was for both elementary and secondary schools, this response is directed to the secondary level. Some of these States have a procedure for the approval or accreditation of elementary schools, but there is no system for all of the States nor is there consistency among the different State procedures for accreditation at that level.

An accredited school is one which has met the standards and the requirements of a recognized accrediting agency and which, following its evaluation, is included in that agency's listing of approved schools. In all States, except California, the accrediting of secondary schools is performed on both a State and a regional basis. Public secondary schools in California are not accredited by any regional association. Neither the Office of Education nor any Federal agency accredits any school. The Office of Education publishes certain information about schools which are accredited by other agencies.

Accreditation by the States is not controlled by any regional organization, and the standards and criteria are different for almost all States. Most States list their schools as either accredited or unaccredited. A few, however, classify their accredited schools by the extent to which they meet State standards or evaluative criteria. That is to say, the accredited schools are rated as class I, II, and III; A, B, and C; or AAA, AA, and A. In such cases standards for each group classification are defined and assigned by the respective States. If a school cannot measure up to standards required for a top group, it may be certified for a lower classification for which it can qualify.

The tremendous variance among the 11 States in State accrediting procedures and the variety of classifications like those indicated above make a tabular presentation of the accreditation status of the schools in these States extremely difficult and of questionable value. It is not possible to compare the percentages and numbers of schools accredited by one State against those of another. Furthermore, for certain of these States the data necessary to show numbers and percentages of schools accredited by race are not available.

Regional accreditation of secondary schools in the United States is conducted by five associations. Ten of the States among those 11 for which information was requested are in the territory for which the Southern Association of Colleges and Secondary Schools has jurisdiction. Schools in the other State, Arkansas, are accredited by the North Central Association of Colleges and Secondary Schools. The data on regional accreditation is, therefore, the most consistent that is available for this group of States.

It must be emphasized that membership of schools in regional accrediting associations is voluntary. The fact that a school is not in a regional association list of accredited schools is not necessarily evidence that it does not meet the standards of the association. It may mean only that the school has not applied for membership.

The attached table has been prepared from information taken from the annual reports of the State departments of education and from the lists of schools accredited by the Southern and North Central Associations. This table provides a measure of the proportion of all public secondary schools that are accredited in these States. Also attached are the Standards for Secondary Schools of the Southern Association.

Number of public secondary schools and number and percent of such Negro and white schools accredited or approved by regional accrediting associations, 1961–62

State	Number of public secondary schools	Number of public secondary schools accredited or approved by regional accrediting association [1]	Percent of schools accredited or approved by regional accrediting association
Alabama:			
Total	1,230	171	13.9
White	785	129	17.6
Negro	404	42	8.5
Arkansas:			
Total	614	138	22.5
White	472	124	26.3
Negro	142	14	9.9
Florida: [2]			
Total	555	221	39.8
White	408	177	43.4
Negro	147	44	29.9
Georgia:			
Total	576	275	47.7
White	383	217	56.7
Negro	193	58	30.1
Louisiana:			
Total	623	310	49.8
White	436	265	60.8
Negro	187	45	24.1
Mississippi:			
Total	552	103	18.7
White	354	96	27.1
Negro	198	7	3.5
North Carolina:			
Total	870	164	18.9
White	618	114	18.4
Negro	252	50	19.8
South Carolina:			
Total	417	106	25.4
White	268	88	32.8
Negro	149	18	12.1
Tennessee:			
Total	550	151	27.5
White	448	130	29.0
Negro	102	21	20.6
Virginia:			
Total	486	128	26.3
White	366	100	27.3
Negro	120	28	23.3

[1] Schools in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia accredited and approved by the Southern Association of Colleges and Secondary Schools. White schools are accredited. Negro schools are approved. The standards for accreditation and approval are identical. Schools in Arkansas accredited by the North Central Association of Colleges and Secondary Schools. Data for Negro and white schools in Texas are not available.

[2] Data for 1960–61.

Source: Reports of the State departments of education; Proceedings, 67th Annual Meeting of the Southern Association of Colleges and Schools, November 1962; North Central Association Quarterly, vol. XXXVII, summer 1962, No. 1.

Years of school completed by persons 25 years old and over

[Median figures]

State	Total	White	Nonwhite
South Carolina	8.7	10.3	5.9
Mississippi	8.9	11.0	6.0
Louisiana	8.8	10.5	6.0
Georgia	9.0	10.3	6.1
Alabama	9.1	10.2	6.5
Arkansas	8.9	9.5	6.5
Florida	10.9	11.6	7.0
North Carolina	8.9	9.8	7.0
Virginia	9.9	10.8	7.2
Tennessee	8.8	9.0	7.5
Texas	10.4	10.8	8.1
Kentucky	8.7	8.7	8.2

Source: Statistical Abstract of the United States, 1962, p. 118; 1960 figures.

Principles and Standards of the Commission on Secondary Schools of the Southern Association of Colleges & Secondary Schools, 1963

Standards for Secondary Schools

Aims of the Southern Association

The southern region has been characterized by a strong interest in education and by the belief that education should be continuously concerned with the changing needs of its people. The Southern Association of Colleges & Secondary Schools was organized to improve educational conditions in the South and bring about closer relationships between schools and colleges. During its early years, a large part of the energy of the association was given to accrediting. The creation of the three commissions—secondary in 1912, higher education in 1917, and curricular problems and research in 1935—were steps that extended and broadened the purposes of the association and gradually resulted in the diminution of emphasis on accrediting. Broader aims are evident in programs that include educational research, graduate study, preparation of teachers, the improvement of instruction, and studies of the social, scientific, and economic factors that affect the region.

Dissatisfaction of the association with existing plans for admission to college led to the creation of the Commission on Secondary Schools in 1912. This event and two earlier ones—the advent of the Carnegie unit and provision for professors of secondary education in southern universities who served also as high school inspectors—gave impetus to the development of secondary education. By 1919 significant progress had been made in educating the public concerning the needs for secondary schools, in securing desirable legislation, developing standards, and in the improvement of the organization, administration, and programs of the schools. In that year impetus was given to the progress of secondary schools in the South by provision for high school supervisors in the State department of education.

Efforts to improve rural schools and develop flexible curriculum programs gave greater recognition to the needs of the large majority of students who would not have the opportunity to attend college. Consideration was also given to improve the opportunities of those who planned to enter college. In response to social and economic demands, an increasing number of Southern Association schools modified their programs and procedures even though existing quantitative standards tended to restrict these changes. Slowly the purpose of school improvement has come to supersede accreditation that had brought order out of chaos in the development of secondary schools. Efforts of members of the Commission on Secondary Schools now seem to be directed toward the development of standards and of accrediting procedures that will contribute to the continuous improvement of the schools.

Accreditation Principles, Policies, Procedures, and Criteria

Accreditation is included among the stated purposes of the Commission on Secondary Schools. The chief function of accreditation should be the stimulation of improvement in the schools through varied means of which the enforcement of

minimum standards is only one. The achievement of this function can be promoted by a greater amount of coordination and an accompanying reduction in the amount of duplication of the services of this Commission with those of State accrediting agencies. Services which are being rendered acceptably by these State agencies should be recognized, utilized, and supplemented by this Commission.

Principles of accreditation

The Commission observes the following principles in its accreditation of schools:

1. A school should be evaluated in terms of its functions and purposes.
2. Both quantitative and qualitative criteria should be used in accrediting a school.
3. Standards should be used as a means of implementing the principles controlling the school's functions, purposes, and improvements.
4. Standards and procedures for the accreditation of schools should be developed cooperatively by all concerned.
5. A school's effectiveness should be judged by the extent to which it meets the needs of the people served.
6. Standards of accrediting should be sufficiently comprehensive to stimulate each school toward the achievement of its purposes.
7. The accreditation of a school should be based upon its composite program and the facilities it requires.
8. The accreditation of a school should depend not only upon its status on a given date, but also upon the progress it makes between two dates.

Policies of accreditation

The Commission's accreditation of schools is done in accordance with the following policies:

1. A secondary school which is located in a State or area over which the Southern Association of Colleges & Secondary Schools has jurisdiction, is eligible to make application for accreditation by this association, provided the application is presented through the association's State committee and is supported by the report of results of inspection of the school's program.
2. A school may be advised, warned, or dropped from the list of accredited schools for failure to conform satisfactorily to the commission's standards, or for failure to show a reasonable amount of progress since the preceding report, depending upon the nature, extent, or duration of the deficiency.
3. Membership in the southern association should not be acquired or retained if as a consequence other schools in the same administrative unit are handicapped in achieving their purpose.
4. Applications are required each year from member schools and schools that are seeking membership. Complete reports are required of all schools once in 3 years. For the 2 intervening years, schools will submit reports showing changes that have taken place since the last complete report was made. Applications and reports must be filed with the chairman of the State committee before October 15 each year, and must be accompanied by the school's annual dues, to be computed according to the following schedule:

Enrollment:	*Annual dues*
Up to 199	$35.00
200 to 499	52.50
500 to 999	70.00
1,000 and above	87.50

5. Member senior high schools participating in interschool athletics or other interschool activities shall be members of, or be eligible for membership in, their appropriate State or regional organization. Interschool activities in all member schools shall be under the control of the principals of those schools.
6. The principles and standards which follow are not retroactive; however, all member schools are expected to make reasonable progress toward their observance.

Accreditation procedures

The central purpose of evaluation and accreditation involves a determination of the level of quality of excellence of the organization, process, or service under examination. It has been pointed out that in the case of school evaluation and accreditation sound determination of quality or excellence can be achieved only

in terms of criteria that indicate that the schools' operations and accomplishments are in conformity with their purposes.

School evaluation and accreditation have as associated purposes the stimulation of improvement and the development of an educational program which will meet the educational needs of the area served. Membership in an association of schools with kindred goals is one means of stimulating and assisting schools in progress toward higher degrees of quality and excellence.

There is a general agreement that a first step in school evaluation and accreditation involves concise determination and statement of the school's purpose. Once this purpose is defined, it is then possible to select criteria which are indicative of the soundness of the school's operations and accomplishments. Thus the responsibilities of each school include: defining its specific purpose within the matrix of State, regional, and national purpose; selecting criteria in terms of which its operations and accomplishments can be judged; reexamining, from time to time, its purpose, program, and accomplishments; setting, if there is need, new purposes, goals, and programs. Acceptance of membership in the Southern Association of Colleges and Secondary Schools carries the additional responsibility of reporting to the association, through the State committees, such accounts, information, and data as may be involved in establishing the schools qualification for membership.

Of major importance in the work of the secondary commission of the southern association are the State committees. Because they are in a much better position than any other group in the association to judge the merits or demerits of the schools in their State, they must assume increasing responsibilities in evaluating and accrediting schools. It is to be taken for granted that schools can be adequately judged only on the basis of their total educational pattern and in terms of their own expressed philosophy. This means that the State committees will have, and must assume the responsibilities involved in, wide discretionary powers in applying the instruments of evaluation and accreditation. For example, where they find a deficiency in one field is more than compensated for by superior strength in other fields, it shall be within the power of the State committees to recommend such a school to the association.

These newer responsibilities afford an excellent opportunity for the State committees to assume more effective educational leadership. They are now in position to encourage and stimulate progress in member schools; to promote conditions that will enable member schools to meet satisfactorily the requirements of the association; and to assist nonmember schools in attaining membership.

Thus in the secondary commission the State committees become the key agencies, responsible for making decisions relative to the standing of member schools, supplementing the standards of the commission by such quantitative and qualitative criteria as are demanded by a particular situation, inspiring schools to progressive improvement, initiating, promoting and carrying into effect plans to improve the quality of secondary education in the South.

Of paramount importance is the duty of the State committees to maintain close relationship with the schools within each State by visitation of the schools, by conferences with administrators and faculties, and by frequent exchange of ideas and materials dealing with the association and member schools.

It is also the responsibility of the State committees to review the annual reports from member schools and to make recommendations to the central reviewing committee of the commission concerning these reports and other matters of vital interest to the schools of the State.

The secondary commission's functions include the promotion of secondary school improvement throughout the region it serves. School accreditation is a means through which the commission seeks to accomplish this aim. Incident to accreditation, the commission, in a regional sense and in collaboration with the schools, assumes responsibility for defining the purpose of secondary schools, for setting standards of school excellence, and for determining qualifications for membership in the association.

Related responsibilities of the commission include regional leadership in secondary education, delegation of proper responsibility and authority to its State committees, supplying member schools with such report forms, materials, information, and assistance as are needed in connection with accreditation and other activities it initiates and sponsors. It is obligatory that the commission assume the responsibility of regional leadership in secondary education. The commission can reasonably be expected to serve the further purpose of effecting

desirable coordination of its activities with those sponsored by the other commissions of the association.

Criteria of accreditation

The degree of excellence which a school shall attain to hold membership in the association is determined by measuring its program in terms of a general purpose deemed sound for schools in the southern region and in terms of certain requirements necessary if this purpose is to be accomplished by a school. This school purpose, together with the criteria and standards related to its accomplishment, becomes the criteria in terms of which the excellence of the school is judged and accreditation granted.

A SCHOOL'S PURPOSE AND MEANS OF ITS ACHIEVEMENT

Purpose

The purpose of a school is to promote the development of the individual for personal, social, and economic living as a participating member of a democratic society. This general purpose includes the following:

Growth in understanding of, and in readiness to assume the rights and duties inherent in membership in a democratic society.

Understanding and appreciation of the social heritage and an acceptance of responsibility for evaluating and contributing to it.

Formulation and practice by the individual of moral and ethical values which will serve as guides to desirable conduct in personal, family, and community living.

Acquisition and maintenance of good physical, mental, and emotional health.

Maturation of intellectual abilities and processes, including self-direction, critical thinking, and problem solving.

Development of an appreciation of aesthetic values.

Growth in creative ability and in the use of media of communication such as speech, reading, writing, and mathematics.

Development of economic and vocational competency.

Principles and standards

Principle A: The school's processes of administration and supervision, the pattern of its program, and the relationships of those engaged in the program should conform to democratic principles.

Standards:

1. (*a*) The governing board responsible for the formulation and statement of the policies that control a school's program and operation shall be representative of the community or clientele served by the school, and shall formulate its policies in collaboration with members of that group. This statement of policies shall be incorporated in the official minutes of the board.

(*b*) The board's policies shall be such as will assure the observance of professional ethics by all concerned and will attract, retain, and promote the professional development of competent school personnel. Political interference in the administration of schools shall be considered a violation of this standard.

(*c*) The governing board shall delegate executive and administrative functions, including recommending of staff personnel, to the principal administrative school officer.

(*d*) All activities commonly classified as extra class, such as, bands, glee clubs, and athletics shall be completely controlled by the administration of the school, or designated school personnel. This control shall include the handling of all finances, including expenditures for capital outlay; the purchase of equipment and supplies; and the employment of and payment of salaries to all personnel connected with the activity.

2. The school's program shall be consistent with its purposes, and shall incorporate provision for the maximum social and personal development of all those served by the school.

3. The pattern of a school's operation shall give evidence of the acceptance of responsibility, mutual respect for the rights of individuals, and respect for the authority established through freedom in the exchange of ideas.

4. Provisions should be made for pupils, teachers, and parents to make contributions to the planning and operation of the school program.

Principle B: The school's program should evolve from the educational needs and aspirations of the people served by the school, and shall provide opportunity for personal growth and achievement.

Standards:

1. Provision shall be employed for determining the educational needs and interests of those served by the school.

2. The record of curricular changes shall reflect adjustments made with reference to the findings of studies to determine the educational needs of those served by the school.

3. The school program shall include areas of study and educational activities suited to the needs, interests, and abilities of those served by the school.

4. The school shall provide services which will assist pupils in making intelligent occupational choices, selecting appropriate educational activities, evaluating progress, and in determining sound courses of action. Each member school shall show evidence of developing such services, headed by a staff member who has a minimum of 3 years of teaching experience and 12 semester hours of study in counseling and guidance. Schools enrolling as many as 500 pupils must provide the services of the equivalent of 1 full-time professionally trained counselor.

5. The school's evaluation of the development of pupils, and its recognition of their achievement shall include processes consistent with the school's purposes.

6. The school's records (financial, athletic, guidance, academic, pupil, and personnel) shall be maintained in functional, accessible form, and shall be properly safeguarded.

7. The responsibilities of the librarian shall include the acquisition, organization and cataloging of materials; acquainting those served by the library with its collection, potential services and uses; and planning with teachers the use of the library in the instructional program. It is the further responsibility of the librarian to train and supervise the services of such additional personnel as is needed to provide adequate library services. Schools enrolling as many as 1,000 pupils provide at least 1 library assistant, preferably a trained librarian.

8. All schools being admitted to the association must conduct a self-study program using the evaluative criteria. After admission all schools are expected to carry on a continuous program of school improvement to be reported to the State committee annually. Once each 5 years a detailed written report based upon the evaluative criteria will be submitted to the State committee. Once each 10 years the school will conduct a self-study based upon the evaluative criteria and a committee representing the State committee will visit the school for an on-the-scene reevaluation. The State committee may at any time that it deems advisable require a reevaluation by a visiting committee.

Principle C: Community resources (agencies, organizations, lay and professional personnel, and physical facilities) shall be analyzed, and the appropriate ones used by the school in the accomplishment of its purpose.

Standards:

1. The school's records shall include an analysis of the community's resources and an indication of those that can be used in the accomplishment of the purposes of the school.

2. Available community resources shall be utilized by the school in ways that reflect the school's alertness to the advantages of, and the community's cooperation in, their use for accomplishing the purposes of the school. (These ways may include illustrated lecture by safety officer as part of instruction on community organization, and use of services of mobile health units as a supplement to the school's health instruction and services.)

Principle D: The school's schedule should take its form from the activities and arrangements necessary to accomplish its purpose.

Standards:

1. The schedule shall possess such flexibility as is required to provide the varying time periods needed for the types of activities included in the school program. The time periods acceptable to the official State accrediting agency are recognized by the association, but member schools are encouraged to conduct studies to determine needed revisions of the time periods and to establish the time periods required for new inclusions in the school program.

2. The pupils' and teachers' daily schedules shall incorporate combinations of work, recreation, and rest compatible with their individual requirements for mental and physical health. The teacher's daily schedule should include one or more periods unencumbered by instructional or supervisory responsibilities.

3. The record of adjustments in the school schedule shall reflect efforts to meet the continuing, year-round educational needs of those served by the school.

4. An academic year of 175 schooldays is recognized as a currently acceptable minimum, but member schools are obligated to alter the length of the academic year if such alterations promote the achievement of the school's purposes.

5. Summer study offered by member schools shall be administered by the school's board of control and administrative officers. The amount of credit pupils may earn in summer schools shall not exceed that earned in corresponding periods during the regular school year, and the qualifications of teachers, the instructional aids, and all other standards shall equal those effective during the regular school year.

6. Credit shall not be given by member schools for private tutoring.

7. When adult or evening schools give standard high school credits and are a part of a member school, this division must meet all standards required of member schools.

Principle E: Personnel should be provided in the amount and quality needed to provide the adult guidance, influence, instruction, and leadership requisite to creating the environment that will accomplish the purpose of the school.

Standards:

1. The administrative head of the system (superintendent) and of the school (principal, headmaster, etc.) shall have received a graduate degree from an institution approved by the association, and the major portion of 1 year of such advanced study shall be designed as preparation for administrative and supervisory functions. This standard is not retroactive.

2. All members of the instructional staff shall have received a bachelor's degree from an institution approved by the association, shall have completed as a minimum, 12 semester hours of professional study and the amount of preparation in their fields of work that is recognized as adequate by their State accrediting agency. Expansion may be made for teachers in trades and other special cases recommended by the State committee of the southern association.

3. The school personnel shall be sufficient in number to provide the administrative, instructional, supervisory, clerical, lunchroom, health, and other services required for efficient operation of the school program. A school enrolling as many as 300 pupils must employ a minimum of at least 1 full-time secretary. Any member school must employ at least a one-half time secretary.

Principle F: The environment provided school personnel, including such factors as the nature and amount of work, opportunities for study and recreation, remuneration, living conditions, and status in the community, should be such as to contribute to the welfare, happiness, and professional growth of staff members.

Standards:

1. The school shall recognize in comparing teaching loads and teacher schedules such factors as the number of classes taught, the number of preparations required, class size, total number of pupils taught daily, library and study hall duties, and the supervision of student activities. In no instance shall the teaching load or schedule exceed that specified by the official State accredited authority. A pupil-teacher ratio of 25 to 1 is recognized as a currently acceptable maximum. Seven hundred and fifty is the currently acceptable maximum pupil periods per week.

2. The school shall encourage professional growth of staff members and program improvement through formal and informal programs of professional study.

3. The school's salary schedule should be so planned that the remuneration of the members of its staff will be commensurate to the importance of their services, and will be adequate to insure a standard of living comparable with the social and professional demands made on them. Salaries paid to superintendents of systems including member schools shall in every case be at a higher monthly and annual rate than that paid to the principal or other

members of the administrative staff. Salaries paid to principals of member schools shall in every case be at a higher monthly and annual rate than that paid to any member of the faculty. Any reduction of the salary of a person in order to meet this standard will constitute a violation of the standard. A minimum annual salary of $3,500 for a degree teacher and a minimum average salary of $4,000 are required by the commission, effective in September 1964.

Principle G: The school's physical plant and its operation should meet the needs and safeguard the welfare of those served by it; and should be designed to contribute to the achievement of the school's purpose.

Standards:

1. The school grounds and buildings should facilitate an adequate educational program consistent with the school's purposes and the educational needs of its community.

2. The school plant should provide for present activities, multiple use of rooms and floorspace, and for anticipated expansion and services.

3. The location and construction of the buildings, the lighting, heating, and ventilation of the rooms, the arrangement of the corridors, water supply, school furniture, and methods of cleaning shall be such as to insure hygienic conditions and safety for both pupils and teachers.

4. The school plant shall include rooms properly arranged and equipped for such activities and programs as laboratory study, vocational programs, audiovisual education, fine and applied arts education, clinics, cafeterias, adult and physical education, and health programs.

5. The school's physical facilities shall include a library room or rooms, readily accessible to pupils, attractive in appearance, properly lighted, fitted with standard library equipment, and with sufficient floorspace to provide adequately for the maximum number of pupils which will use the library at any one time.

6. The school's equipment shall include school supplies and instructional materials commensurate in kind, quality, and amount to the activities in its program.

7. The library collection and services shall be adequate in quantity and quality to supply the instructional aids and the opportunities for reading required to achieve the personal and cultural development of those served by the school.

8. The library materials shall include a basic book and periodical collection as recommended by the American Library Association for high school libraries.

Principle H: There shall be evidence of financial support sufficient in amount to promote achievement of the school's purpose. Approved budgetary procedures shall be followed in the administration of the school funds.

Standards:

1. There shall be evidence that local responsibility for adequate financial support of the school is recognized and that reasonable effort is being made to meet this responsibility.

2. The records of all funds collected and disbursed in connection with the operation of any part of the school program must be kept in accurate and systematic form, properly safeguarded, and audited at appropriate intervals.

3. Money-raising activities of pupils and teachers should be limited to those that have recognized educational value and should not be used primarily as a means of providing equipment, materials, and services which are ordinarily financed by capital outlay or maintenance and operation funds.

4. The school's budget shall include items in adequate amounts for the purchase of library books, periodicals, supplies, and audiovisual materials (exclusive of equipment). The minimum expenditure for the purchase of library books, periodicals, library supplies, and audiovisual materials (exclusive of equipment) for any school shall be $350. A beginning school library must have a minimum of 500 usable and acceptable library volumes or not less than 5 volumes per pupil, whichever is greater. The following schedule is required as a minimum:

Enrollment and expenditure per pupil:

Up to 500: $2.50.

501 to 1,000: $1,250 for the first 500 pupils and $2 per pupil above that number.

1,001 and over: $2,250 for the first 1,000 pupils and $1 per pupil above that number.

Principle I: Member schools are encouraged to carry on active experimental programs designed to improve the school.

Standards:

1. Where experimental designs are at variance with the standards, the proposed study shall be presented to the State committee for approval prior to the implementation of the experiment. (Forms for outlining of proposed studies may be obtained from the office of the executive secretary of the commission on secondary schools.)

2. Reports of the results of experimental studies shall be filed with the annual report.

Member and applying schools will find the following publications helpful in maintaining membership in the Southern Association of Colleges and Schools or in achieving accreditation. They may be secured from the chairman of the State committee or by writing directly to the association office: "Why Accreditation?" "Guide to the Evaluation and Accreditation of Secondary Schools," and "A Guide to Followup Evaluation in Member Secondary Schools."

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE,
Washington, D.C., August 16, 1963.

Hon. EMANUEL CELLER,
Chairman, Judiciary Committee,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to your request on July 10, 1963, there is enclosed a list of programs administered by the Department, with approximate sums administered under them during the past 20 years, i.e., for fiscal years 1944 through 1963. The programs are organized in four categories, and the basic statutory authority for each program is indicated: "I. Programs without statutory provisions for administrative hearing or judicial review"; "II. Programs with statutory provisions for administrative hearing, but not for judicial review"; "III. Programs with statutory provisions for administrative hearing and judicial review"; and "IV. Programs with statutory provisions for appeal to the Congress." The totals in each of the four categories are: I. $10,448,398,000; II. $28,532,166,000; III. $4,035,949,000; and IV. $738,126,000.

You asked also for litigated cases in which the Department's "authority as to any grants" was challenged. The cases are the following:

Arizona v. *Hobby*, 221 F. 2d 498 (D.C. Cir. 1954) (State plan for aid to the permanently and totally disabled; complaint dismissed on ground of lack of jurisdiction because no consent of the United States to be sued);

Indiana v. *Ewing*, 99 F. Supp. 734 (D.D.C. 1951) (State plans for old-age assistance, aid to families with dependent children, and aid to the blind; court upheld administrative disapproval of plans);

School City of Gary v. *Derthick*, 273 F. 2d 319 (7th Cir. 1959). (School construction in federally affected areas; court upheld administrative denial of grant application); and

Metropolitan Hospital, Inc. v. *Celebrezze*, U.S.D.C., D.C., Civil Action No. 1491-63 (1963). (Hospital and medical facilities construction; court denied motion for mandatory injunction to compel approval of application for a project which was subject to a local zoning restriction.)

We shall be happy to supply any additional information which you may request.

Sincerely,

JAMES M. QUIGLEY,
Assistant Secretary.

I. Programs without statutory provisions for administrative hearing or judicial review

WELFARE ADMINISTRATION

1. Juvenile Delinquency and Youth Offenses Control Act of 1961 (Public Law 87-274, 42 U.S.C. 2541-2546)	$5,859,000
2. International research and training (International Health Research Act of 1960, Public Law 86-610, 22 U.S.C. 2101-2104, 42 U.S.C. 242f, and sec. 104(k), Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704(k))	98,000

1. Programs without statutory provisions for administrative hearing or judicial review—Continued

3. Cooperative research or demonstration projects on social security or related programs (sec. 1110, Social Security Act, 42 U.S.C. 1310)	$1, 679, 000
4. Federal aid to Cuban refugees (Migration and Refugee Assistance Act of 1962, Public Law 87–510, 22 U.S.C. 2601–2605)	99, 777, 000
5. Child welfare services (pt. 3, title V, Social Security Act, 42 U.S.C. 721 et seq.)	156, 804, 000
6. Research, training, or demonstration projects in child welfare (sec. 526, Social Security Act, 42 U.S.C. 726)	870, 000
7. Temporary assistance to repatriates (sec. 1113, Social Security Act, 42 U.S.C. 1313)	459, 000
8. Hospitalization of mentally ill repatriates (Public Law 86–571, 24 U.S.C. 321–329)	403, 000

SOCIAL SECURITY ADMINISTRATION

1. International research and training (International Health Research Act of 1960, Public Law 86–210, 22 U.S.C. 2101–2104, 42 U.S.C. 242f, and sec. 104(k), Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704(k))	1, 607, 000

OFFICE OF FIELD ADMINISTRATION

1. Surplus property disposition and utilization (Public Law 152, 81st Cong., sec. 203, 40 U.S.C. 484 (based on acquisition cost of property, not depreciated value at time of disposition))	4, 392, 622, 000

VOCATIONAL REHABILITATION ADMINISTRATION

1. Vocational rehabilitation research and demonstrations (secs. 4 and 7, Vocational Rehabilitation Act, 29 U.S.C. 34 and 37).	
2. Vocational rehabilitation training and traineeship (secs. 4 and 7, Vocational Rehabilitation Act, 29 U.S.C. 34 and 37). Total 1 and 2	99, 932, 000
3. International research and training (International Health Research Act of 1960, Public Law 86–610, 22 U.S.C. 2101–2104, 42 U.S.C. 242f, and sec. 104(k), Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704(k))	4, 302, 000

OFFICE OF EDUCATION

1. Financial assistance for maintenance and operation of schoolst in federally affected areas (Public Law 874, 81st Cong., 20 U.S.C. 236–244)	1, 590, 671, 000
2. National Defense Education Act of 1958 (Public Law 85–864, 20 U.S.C. 401–589). Title II: Loans to Students in Institutions of Higher Education; Title IV: Graduate Fellowships; Title V: Language Development; Title VII: Educaships; Title V—Part B: Counseling and Guidance Training Institutes; Title VI: Language Development; Title VII: Education Media	434, 689, 000
3. Area redevelopment program (Public Law 87–27, 42 U.S.C. 2501–2525)	5, 514, 000
4. Cooperative research in education (Public Law 531, 83d Cong., 20 U.S.C. 331–332)	19, 469, 000
5. Teaching of mentally retarded children (Public Law 85–926, 20 U.S.C. 611–617)	5, 997, 000
6. Grants for teaching in education of the deaf (Public Law 87–276, 20 U.S.C. 671–676)	1, 377, 000
7. Manpower development and training (Public Law 87–415, 42 U.S.C. 2571–2620)	29, 189, 000

I. Programs without statutory provisions for administrative hearing or judicial review—Continued

8. International research and training (International Health Research Act of 1960, Public Law 86–610, 22 U.S.C. 2101–2104, 42 U.S.C. 242f, and sec. 104(k), Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704(k))	$431,000

PUBLIC HEALTH SERVICE

1. Community health services, particularly for chronically ill and aged (sec. 316 of the Public Health Service Act, 42 U.S.C. 247a)	9,000,000
2. Cancer demonstration and control (Department of Health, Education, and Welfare Appropriation Act, 1963, Public Law 87–582)	54,350,000
3. Hospital and medical facilities research and demonstrations (sec. 636 of the Public Health Service Act, 42 U.S.C. 291n)	19,407,000
4. Air pollution (Public Law 158, 84th Cong., 42 U.S.C. 1857–1857g)	1,260,000
5. Radiological health (sec. 314(c) of the Public Health Service Act, 42 U.S.C. 246(c); Department of Health, Education, and Welfare Appropriation Act, 1963, Public Law 87–582). There is no provision for hearing or court review, except as to sec. 314(c) funds. See pt. II	1,500,000
6. Public health traineeships (sec. 306 of the Public Health Service Act, 42 U.S.C. 242d)	14,[illegible]4,000
7. Professional nurse traineeships (sec. 307 of the Public Health Service Act, 42 U.S.C. 242e)	37,361,000
8. Schools of public health and public health training (sec. 314(c) of the Public Health Service Act, 42 U.S.C. 246(c))	5,725,000
9. Graduate training in public health (sec. 309 of the Public Health Service Act, 42 U.S.C. 242g)	5,430,000
10. Research, field investigation, and general research support (sec. 301 of the Public Health Service Act, 42 U.S.C. 241)	1,995,564,000
11. Fellowships, traineeships, and training grants (secs. 301 and 433 of the Public Health Service Act, 42 U.S.C. 241, 289c)	792,902,000
12. Health research facilities construction (title VII of the Public Health Service Act, 42 U.S.C. 292–292i)	230,000,000
13. Water treatment works construction (sec. 6 of the Federal Water Pollution Control Act, 33 U.S.C. 466e)	404,219,000
14. Domestic agricultural migratory workers (sec. 310 of the Public Health Service Act, 42 U.S.C. 242h)	750,000
15. Intensive vaccination programs (sec. 317 of the Public Health Service Act, 42 U.S.C. 247b)	8,700,000
16. International research and training (International Health Research Act of 1960, Public Law 86–610, 22 U.S.C. 2101–2104, 42 U.S.C. 242f, and sec. 104(k), Agricultural Trade Development and Assistance Act of 1954, 7 U.S.C. 1704(k))	15,507,000

II. Programs with statutory provisions for administrative hearing, but not for judicial review

WELFARE ADMINISTRATION

1. Old-age assistance and medical assistance for the aged under title I, Social Security Act, 42 U.S.C. 301–306. Hearing provisions, 42 U.S.C. 303(c)(2) and 304	$17,599,255,000
2. Aid to families with dependent children under title IV, Social Security Act, 42 U.S.C. 601–609. Hearing provisions, 42 U.S.C. 603(c)(2) and 604	7,715,185,000
3. Maternal and child health services under pt. 1, title V, Social Security Act, 42 U.S.C. 701–705. Hearing provision, 42 U.S.C. 705	269,401,000
4. Crippled children's services under pt. 2, title V, Social Security Act, 42 U.S.C. 711–715. Hearing provision, 42 U.S.C. 715	242,235,000

II. Programs with statutory provisions for administrative hearing, but not for judicial review—Continued

5. Aid to the blind, under title X, Social Security Act, 42 U.S.C. 1201–1206. Hearing provisions, 42 U.S.C. 1203(c)(2) and 1204	$634,279,000
6. Aid to the permanently and totally disabled under title XIV, Social Security Act, 42 U.S.C. 1351–1355. Hearing provisions, 42 U.S.C. 1353(c)(2) and 1354	1,545,225,000
7. Aid to the aged, blind, or disabled, and medical assistance for the aged under title XVI, Social Security Act, 42 U.S.C. 1381–1385. Hearing provisions, 42 U.S.C. 1383(c)(2) and 1384. Effective fiscal year 1963; as of June 30, 1963, no State had an approved plan	

PUBLIC HEALTH SERVICE

1. General health, tuberculosis, mental health, heart disease control, and venereal disease control (sec. 314 of Public Health Service Act, 42 U.S.C. 246). Hearing provision, 42 U.S.C. 246(i)	526,586,000

III. Programs with statutory provisions for administrative hearings and judicial review

VOCATIONAL REHABILITATION ADMINISTRATION

1. Vocational rehabilitation services (sec. 2, Vocational Rehabilitation Act, 29 U.S.C. 32). Hearing provision, 29 U.S.C. 35(c); judicial review, 29 U.S.C. 35(d)	$592,220,000
2. Vocational rehabilitation extension and improvement grants (sec. 3, Vocational Rehabilitation Act, 29 U.S.C. 33). Hearing provision, 29 U.S.C. 35(c); judicial review, 29 U.S.C. 35(d)	8,916,000

OFFICE OF EDUCATION

1. School construction in federally affected areas (Public Law 815, 81st Cong., 20 U.S.C. 631–645). Hearing provision, 20 U.S.C. 636(c); judicial review, 20 U.S.C. 641	1,030,780,000
2. Library services for rural areas (Library Services Act of 1956, 20 U.S.C. 351–358). Hearing and judicial review provisions, 20 U.S.C. 356	41,599,000
3. National Defense Education Act of 1958 (Public Law 85–864, 20 U.S.C. 401–589). Title III: Financial Assistance for Strengthening Science, Mathematics, and Modern Foreign Lauguage Instruction; Title V—Part A: State Programs in Guidance, Counseling, and Testing. Sec. 1009 (20 U.S.C. 589), grants to assist States to improve and strengthen educational statistics. Hearing provision, 20 U.S.C. 584(b); judicial review, 20 U.S.C. 585	252,321,000
4. Area vocational education programs (title VIII of the National Defense Education Act of 1958, Public Law 85–864, 20 U.S.C. 15aaa–15ggg). Hearing and judicial review provisions, 20 U.S.C. 15eee	42,685,000
5. Vocational education in practical nurse training (Public Law 911, 84th Cong., 20 U.S.C. 15aa–15jj). Hearing and judicial review provisions, 20 U.S.C. 15cc. (Included in total for vocational education in part IV.)	

PUBLIC HEALTH SERVICE

1. Hospital and medical facilities construction (Hill-Burton) (title VI of the Public Health Service Act, 42 U.S.C. 291–291z). Hearing provision, 42 U.S.C. 291h (a), 291j (a), judicial review, 42 U.S.C. 291j (b)	2,043,628,000
2. Water pollution control programs (section 5 of the Federal Water Pollution Control Act, 33 U.S.C. 466d). Hearing provision, 33 U.S.C. 466d (f), 466d (g) (1); judicial review 466(g)(2)	23,800,000

IV. Programs with statutory provisions for appeal to the Congress

OFFICE OF EDUCATION

1. Land-grant college program (7 U.S.C. 301–308, 321–331). Appeal provision, 7 U.S.C. 326	$121,956,000
2. Vocational education (20 U.S.C. 11–34). Appeal provision, 20 U.S.C. 26	616,170,000

(Whereupon, at 1:15 p.m., the subcommittee adjourned, to reconvene at 10 a.m., Thursday, July 11, 1963.)

CIVIL RIGHTS

THURSDAY, JULY 11, 1963

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

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

Present: Chairman Celler (presiding) and Congressmen Rodino, Rogers, Donohue, Brooks, Toll, Kastenmeier, Corman, McCulloch, Miller, Cramer, and Meader.

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

The CHAIRMAN. The committee will come to order.

We would be privileged to hear this morning from our distinguished colleague from South Carolina, Representative W. J. Bryan Dorn.

We are happy to hear from you.

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

Mr. DORN. Thank you, Mr. Chairman.

This looks like a very familiar setting over here. I have been here so many times on this same subject, but I do appreciate and am grateful for the opportunity and the courtesy always extended by the distinguished chairman of the full committee in permitting all sides to be heard, and for his fairness and courtesy in conducting this hearing.

I might say that the chairman is really a great institution in the Congress, and I wish for him many more happy years of service to his country and to his people.

The CHAIRMAN. Thank you very much.

Mr. DORN. As I said, this is a rather familiar procedure which indicates that Federal legislation and Federal agitation and consideration of this moral problem is not solving the problem.

I remember reading back when I was a kid about the great debates on the poll tax and on the antilynch bill, and all of this FEPC years ago and various civil rights legislation, and apparently the situation grows gradually worse with the Federal efforts to solve the problem.

I would like to point out the bright part of the picture, and that is that the States of the Union have solved the heinous, horrible crime of lynching. This was the principal civil rights legislation that used to come up periodically before the House, and the other body, and some people were frantic for a Federal law. No Federal law was ever

passed against lynching, and this crime was eliminated by the States, the local communities, and the people of this Union—completely eliminated. I haven't heard of a lynching in years, thus proving that with legislation of this nature, it is best handled at the local and the State level.

The same is true of the poll tax. I remember some of the greatest debates in the history of this country——

The CHAIRMAN. Your State eliminated poll taxes.

Mr. DORN. Yes, sir. There is a ridiculous farce going on around the country right now in the form of a constitutional amendment against the poll tax. The States have already handled that problem. They have all handled it except five States. It would just be a matter of time before they eliminate the poll tax as a requirement to vote.

So this problem has been handled. We had an unfortunate experience with prohibition which was a moral question. Finally, after a few years, it was decided that the Federal Government couldn't handle it, and it must be returned to the States. This was done in 1933, and I think wisely so.

So the only real accomplishment, the only major accomplishments, in this field that I can point out to the subcommittee this morning are accomplishments achieved by local and State governments.

The CHAIRMAN. Didn't your university admit a Negro without any incidents?

Mr. DORN. Mr. Chairman, I was not going to mention that fact, but since the distinguished chairman brought it up, Clemson is in my congressional district, and I am quite proud of the complete lack of any disorder there. We are making great progress. This was handled by the State, by local people.

As far as I know, the Attorney General and the President—and I conferred with the President about this situation—acted with restraint; that is, the President and the Federal Government, and so did the local people. This was handled in a marvelous way that the whole country can point to with pride.

I might say, Mr. Chairman, that I have never, in any of my political campaigns, raised the race issue. I think discrimination in any form is heinous and reprehensible, and repulsive.

The people who agitate—the extremists on both sides—are largely responsible for much of the trouble we have had in this country. So, personally, I have refrained from bringing up the subject in any of my political campaigns, and I have refrained from joining certain organizations.

I think I played a small part in setting the stage and atmosphere for the fine conduct of the people at Clemson College. I am not claiming much of the credit, but some, Mr. Chairman.

Here is what disturbs me about this legislation more than anything else and I know this wasn't true on the part of the chairman, because you have always been for legislation of this nature, but suddenly it receives the priority over all other legislation, over the tax bill, even foreign policy. It seems that the No. 1 question now before the Congress, and urged before the Congress by the administration, is this bill right here, and I believe, at least the majority of the American people seem to think so, largely as a result of demonstrations, of violence, of disorder, and agitation.

If this Congress, Mr. Chairman, and I respectfully submit this, if we are going to consider legislation as a result of mob violence and demonstrations and agitation—the throwing of whisky bottles at policemen, beer bottles and general disrespect for the uniform, insults to our law enforcement agencies—if we are going to legislate in that atmosphere, then we have come to a sad state in this country.

I might warn this committee, Mr. Chairman, about those who throw liquor bottles and beer bottles at peace officers, men who are underpaid, doing extra duty sometimes 18 hours a day out on the street in the hot sun; this may happen today to them but tomorrow it will be demonstrations against the Armed Forces of the United States, and disrespect for the uniform of our armed services.

This is a dangerous pattern. It is a blueprint for insurrection and anarchy. It is a dangerous new technique for the United States. It is not new in some of the other countries of the world—anarchy, disrespect of law and order, mob violence is a pattern followed by Lenin and by the late Fascist dictators. This is an old technique, but a new one to the United States of America.

I might remind the committee the friendly Government of South Korea was overthrown by mobs. The Government of Turkey, a strong ally, was overthrown by mob demonstrations in the national capital, so I might warn this committee that personally I think we ought to postpone consideration of legislation of this nature until tempers cool, until we can legislate in the cautious legal atmosphere intended by the framers of the Constitution of this country.

The CHAIRMAN. I might say at that point, that I, as chairman, and I am sure quite a number of the members of this committee have in no uncertain language deplored any attempt of a march on Washington, and they have sought in every way possible to persuade the leaders of the Negroes not to stage any such demonstration because it will not do any good, and it is only going to do harm.

Mr. DORN. I commend the chairman. I think the chairman is very wise in issuing that statement. You are absolutely right.

You have always, as I said in the beginning, heard all parties. You are willing to hear all today, but this mob business and mass demonstrations is dangerous. I could point back in history to any number of governments overthrown. No one can predict what a mob will do. It might be well during these critical times for some members of the subcommittee, and the counsel, to study mass psychology, mass hysteria, such as has manifested itself in Detroit in the riot in June 1943 when it took 6,000 combat troops 2 days to even restore order.

We might study the Boston riots in 1919 when Calvin Coolidge was Governor of Massachusetts. It is a mystic thing. It is something that we ought to study and look into.

If I recall correctly, the police went on strike in Boston, and there were no police. Two and three people would walk down the streets, and then suddenly they realized that there was no restraint, and so the 2 and 3 became 50 and 100, and finally there were thousands of people in downtown Boston looting stores. They couldn't explain afterward why they did this. Finally, the Governor had to call out the National Guard, depose the mayor, and declare martial law.

I think today the Federal Government should in no manner encourage local demonstrations and mob violence—illegal demonstra-

tions and mob violence—because we just don't know where it might lead. It could lead to the overthrow of this great Government.

Mr. MEADER. Mr. Chairman, I wonder if the gentleman from South Carolina didn't make reference to the last demonstration in Washington?

Mr. DORN. It was a minor demonstration compared to the next one. That was an excellent example out here at the District of Columbia stadium last fall. You have been to football games, I am sure, in the Big Ten, and you don't have too many free-for-alls at the football games, but I have been to one or two where people condemned this kind of conduct, and 5 minutes later were in the middle of the group swinging with both fists and couldn't explain why afterward.

This is a peculiarity of human nature and hard-core organizers will manipulate and will use it, to get things out of control, for the overthrow of everything we hold dear—our principles and ideals upon which this country was founded.

Mr. MEADER. There isn't any question of the right of people to assemble to petition their government if they do it in an orderly way and present facts and persuasion, but the bonus march was a group that wanted some legislation passed, and that resulted in, as I recall it, General MacArthur had to use troops to put down the riot.

Mr. DORN. He was Chief of Staff at the time. They were trying to force through legislation, just as this demonstration which is supposed to take place here in August in Washington. The way I understand it, it is called for the purpose of forcing Congress to pass this civil rights bill, to break the filibustering, and I think that is wrong. It is not the American way, Mr. Meader.

Mr. Chairman, I know I am taking up a little time. Let me run briefly over the bill.

The CHAIRMAN. We want to get your views, and don't worry about taking the time.

Mr. DORN. I will say this, then, Mr. Chairman, that I get tired, and many of the American people get tired, of people who are always talking about their rights. In fact, I get suspicious of a man who is always talking about his rights. I like to hear a man talk about his opportunities and his duties and his obligations to this country during this time of cold war, and international gangsterism in the world.

I like to hear a man talk about his duties to America, and to society, and not about what he can get out of the Federal Government, and what the Federal Government owes him. I think it is high time this country should get off the defense and get on the offense. We have a good record in the field of civil rights. We have a good record in the realm of tolerance as compared to the other nations in the world. Look at the trouble that is going on between my distinguished chairman's people, Israel and the Arabs. This is a religious racial difference that has flared into open conflict, and thousands have been killed since World War II.

Look at Africa where they still maintain the institution of slavery. Look at the Hindus and Moslems, and the untouchables in India.

The CHAIRMAN. Of course, in India they have passed the law to do away with the so-called untouchables, but the law has been more honorable in the breach than observed.

Mr. DORN. The point I make is, when we consider the whole world picture, and we acknowledge the fact that there is racial and religious prejudice throughout the world, and in the light of a careful analysis of the racial and religious prejudice throughout the world, the U.S. record of tolerance is probably better than any other area of the world.

I would like to remind the chairman that the Axis Powers attempted to solve their race problem by liquidation, gas chambers, and mass deportation. Of all the ridiculous arguments in the world that I have ever heard, the most ridiculous is that we ought to pass this bill because of Russian criticism. It is incredible. It is too fantastic, really, to even discuss when Russia liquidated the white Russians. They liquidated the Poles, they liquidated the Ukrainians. They have liquidated millions of people to solve their racial and religious problems. In fact, they have outlawed religion, and then for the United States to change its way of life to please Russia is one of the most ridiculous arguments, Mr. Rogers, that I could possibly conceive of, and I think it shocking to suggest we should change our Constitution and change our way of life to suit Russia. Next she will demand that we tear down our churches. She doesn't believe in God. We cannot appease Russia on that or the racial front. We might as well forget appeasement along that line.

As far as this bill is concerned, I am not only against title II, but title I and all titles. I think title II is a long step toward controlling the economics and the business of this country, the property rights, which are basic and elemental and fundamental in our American democracy and economic and social order.

Mr. ROGERS. Did you say title II?

Mr. DORN. Title II, the public accommodation section.

Mr. ROGERS. Do you see anything on the voting rights?

Mr. DORN. I am going to get to that, Mr. Rogers. I was saying that I am not only against title II, but I am equally opposed, I am equally as violently opposed to title I and title III and title IV, and, in fact, the whole bill.

Mr. ROGERS. Pardon me. The only reason I mentioned it to you, I thought you studied the bill——

Mr. DORN. Well, it is generally assumed that most of us who oppose this type of legislation at this time, it is assumed that we object mostly to title II, but I think I have just as much objection to title I because I believe, and I am not an attorney, I am just a layman, Mr. Chairman, but I believe that title I is a step toward Federal control of elections.

When you appoint referees and when you say, well, people can vote after 6 years in school, if you start setting the criteria, what is going to keep the Attorney General, and I am not talking about the present Attorney General—I have a high regard for him—but any Attorney General in the future from tampering with the election and controlling the elections. I see much danger in that title as in title II.

Mr. ROGERS. You remember in the Civil Rights Act of 1960 we said that where a pattern or plan or design to discriminate comes forth, then the Attorney General could step in. Now, your State has found it necessary or has he found it necessary or found any pattern of discrimination against people?

Mr. DORN. Not that I know of.

Mr. ROGERS. As far as you know, there has been no action on that?

Mr. DORN. As far as I know. There might be some isolated case, but as far as I know anyone who desires to vote in my State can do so, and I think that right should be defended at all costs. However, I want to point out to my distinguished chairman and to my friend from Colorado, that there is a difference in voting and being voted, and that is the thing I worry about. This is the thing that worries me.

We hear a lot about people's voting rights, and I am all in favor of a man walking up to the polls unintimated and of his own free will and accord and voting, but I am just as opposed to a gang or group or political machine rounding up people and voting them usually for certain remunerations, either jobs or possibly money to carry a certain precinct.

This is the point, this is the thing I greatly fear in title I, Mr. Chairman. Some day some unscrupulous Attorney General or unscrupulous President, might use this vast power not to permit people to vote, but to vote people—round them up and vote them and say, oh, you have to vote—this is the dangerous thing.

Mr. MCCULLOCH. Mr. Chairman, I am very happy to have our colleague with us, and particularly happy to have his comment about improper voting.

I wonder if our colleague feels, as I do, that it perhaps is of equal importance that people who are legally authorized to vote have their vote counted strictly in accordance with law and in accordance with the way the ballot is cast?

Mr. DORN. Of course my distinguished colleague is absolutely right. It is just as important that that election be conducted fairly, and that all of the votes be counted honestly and fairly.

I might say this, too. I remember some years ago seeing a picture in the Washington newspapers—I believe it was a preferential Presidential primary in Washington between Senator Kefauver and our good friend Averell Harriman—and I remember seeing the picture of a minister marching his congregation down to the polls in a long line, about two blocks long, to vote in that preferential primary.

This type of tactic of voting people is a mockery of democracy. It makes a sham and a fraud of the great Constitution of the United States, and the legal safeguards around citizenship. I object to this power here that you are giving the Attorney General to vote people, to line them up and vote them, bring them down in trucks. This could happen under this section of the bill, with referees and stooges created in the bill.

Title IV of the bill, you know that is a bad thing, too. There are a lot of bad features of the bill.

Mr. ROGERS. What about the title I that persons who have completed a sixth grade education is presumed to have enough knowledge or is knowledgeable to be qualified as a voter? What comments do you have on that?

Mr. DORN. Mr. Rogers, I think any determination like that should be left up to the States and the local communities and those election managers and officials, many of whom are serving without pay, who believe in democracy, and they believe in our election processes. This should be left up to them. I don't think the Federal Government

should walk in and say this fellow here is more qualified than that one or 6 years is the minimum educational requirement. I just don't agree with that, Mr. Rogers.

Mr. ROGERS. Thank you.

Mr. DORN. I object, Mr. Chairman, to title I, and the voting power you place in the hands of the Attorney General, and the power to go out and vote people en masse. I have already voiced my objection to title II.

Of course, title III would place in the hands of the Commissioner of Education and again our old friend the Attorney General, whoever he is, the power to go out and control education. This Congress has consistently rejected Federal aid to education bills and here by the back door, in my opinion, we are setting up an instrumentality through which they can step right in and control education, the trustees, the boards of education, and every school in the country.

Mr. MEADER. Mr. Chairman, I know our colleague has already said he is not a lawyer, and I don't want to ask him for legal advice, but yesterday we had before us Mr. Celebrezze, the Secretary of Health, Education, and Welfare, and some of us were concerned about the phrase "racial imbalance," which is contained in title III. For example, one phrase at the top of page 21, under section 304, loans to school boards are authorized—let me read the beginning of the section, starting at line 23 on page 20:

> (a) A school board which has failed to achieve desegregation in all public schools within its jurisdiction, or a school board which is confronted with problems arising from racial imbalance in the public schools within its jurisdiction, may apply to the Commissioner, either directly or through another governmental unit, for a grant or loan, as hereinafter provided, for the purpose of aiding such school board in carrying out desegregation or in dealing with problems of racial imbalance.

Mr. DORN. I would take that to mean, Mr. Meader—and I appreciate your recognition of the fact that I am only a layman—but I would take that to mean that some parent, far removed from a particular school, at the instigation of some of these people under title IV of this bill—it is all tied in—at the instigation of some of those people, or some agitator, they could say that we have a certain imbalance in this school, and this would be a way to get Federal aid. Not only that, but possibly they could bring in a certain balance from many miles away, by bus or train or airplane or some way. They just say, well, we have to have a certain balance here. Who would set this balance?

Mr. MEADER. Well, the Secretary mentioned that some school district lines were drawn intentionally to provide segregation which led me to wonder, and the thought hit me just at that time that this bill might empower someone in the Federal Government, possibly the Secretary of Health, Education, and Welfare, to decide that local governmental units were not properly arranged.

Mr. DORN. Exactly.

Mr. MEADER. Because if you talk about racial imbalance, it seems to me that is the opposite of racial balance, and to have racial balance I would presume that you would have in schools the same proportion of Negroes and whites as you have in the population in that particular area, so that if the imbalance occurred because the area is 99 percent Negro, or 99 percent white, and that is conceived to be segregation of schools, then the only way that that could be corrected is to take away

from the local people the power to decide the areas of the unit, the school board, or the city, or the township or the county or whatever it may be, whatever the area may be, and vest in some Federal officer, possibly the Secretary of Health, Education, and Welfare, the power to redraw those lines and reconstitute local units of government.

Is that an unreasonable possibility under the language?

Mr. DORN. It is not an unreasonable possibility at all. In fact, it will follow with the passage of this legislation as surely as night follows the day.

What about the recent redistricting by the Supreme Court of the legislatures of the 50 States of the Union? You wouldn't have a ghost of a chance under this bill of continuing to draw your own school district lines.

Mr. Meader, I think that would be ridiculous. Of course, they would be drawn by the Secretary of Health, Education, and Welfare, or the Attorney General, or the Commissioner of Education under the Secretary of Health, Education, and Welfare.

Mr. MEADER. The significance of that matter is perhaps heightened if a certain interpretation of title VI is correct. Title VI refers to discrimination and if racial imbalance is discrimination, that would give rise to the power in all Federal officials administering grant-in-aid programs to withhold funds and the Secretary of Health, Education, and Welfare testified in his department alone there were 128 such programs, totaling about $31½ billion a year. In other words, I wonder if this is an unreasonable view of the possible mechanics of this operation, that the Secretary make a determination that the school district lines were not properly drawn and resulted in racial imbalance in the schools, and therefore under title VI, if there were any funds for that area under his control, he could say you will not receive these funds unless you redraw those school district lines in such a fashion as to create racial balance.

Mr. DORN. I am sure that that would be exactly what would happen under title III and I am glad you jumped over to title VI as related to title III.

Title VI in my opinion is just as dangerous. I mean it just gives the President and, of course, all under him, blank power to withhold any Federal funds, and I would take that to include funds to States, local communities, business establishments that indirectly might be affected by interstate commerce; I would take that to cover the railroads, any business receiving any type of subsidy, the airlines, the shipping lines.

I would take it to cover a farmer who gets a few dollars under the soil bank. He could be accused of discrimination.

The CHAIRMAN. Mr. Dorn, may I point out to you a statement of the Civil Rights Commission in one of its reports, speaking of voting rights in your State of South Carolina. We have the following:

The Commission never received any sworn complaints from South Carolina. Unfortunately, this lack of complaints cannot be more than an occasion to be taken as conclusive proof that there is no discrimination in the voting process.

Then they go on to Calhoun County and McCormick County:

In its 1959 report the Commission stated that McCormick County when Negroes comprised 62.6 percent of the total population, there was not a single Negro registered.

Would you care to comment on that?

Mr. DORN. Mr. Chairman, I would be glad to because I remember this case very well. McCormick is in my congressional district, and, as a matter of fact, the town of McCormick used to be named Dornville, and Cyrus Hall McCormick, of Chicago, bought the town right after the War Between the States, and it became McCormick, and then eventually became a county.

I remember this case. We asked the local officials about this, and they could not recall any incident where a person qualified and desiring to vote was turned down; but with the attendant publicity to this incident, quite a few people did apply and were subsequenly registered, and I have heard no further complaints about this county.

The CHAIRMAN. They go on further and say in connection with what you have just said:

> The first Negro, as a matter of fact, registered in August 1959, however, and three other Negroes registered in early May 1960. Then the U.S. Attorney General announced that the voting records of McCormick were to be inspected and started on the day a formal demand for inspection was delivered by FBI agents. Forty-five more Negroes registered. Some of these Negroes lost their jobs because they had registered, however, and, as a consequence, only 1 of the 49 registered appears to have voted in the June primary of 1960 and none in the November election of 1960. Fear of reprisals was the principal reason why Negroes had not registered until May 1960, and the same fear has deterred any further registration or voting.

Mr. DORN. I do not think that would be true now, Mr. Chairman. I am sure that anybody in McCormick County who will go up to the board on registration day, those days set for registration of voters, and who is qualified, can vote. I am sure of that.

But now, on the other hand, you do not believe in agitators coming in there in the form of Federal officials or anybody else, and getting a group of people, and putting their names on the registration books, and then going back and voting those people, regardless of race, creed, or color, or anything else. I don't think that would be the solution to the situation in McCormick County; in this voting business, a person should have the privilege not to vote if he so desires.

I believe in protecting his right to vote, but just as strongly I do not think he should be rounded up and voted. And I think his vote should be counted.

The CHAIRMAN. The statement goes on further. It says in 1958 about 26 Negroes—this is Calhoun County—or eight-tenths of 1 percent in Calhoun, who registered, and something less than 2.2 percent were registered in Williamsburg. In Williamsburg Negro registration appears to be kept down not only by threat of reprisals but by use of a separate room and waiting line for Negroes. This is the report of the Commission.

Mr. DORN. I am not as familiar with Williamsburg County and Calhoun as I am with McCormick.

Again, let me emphasize that great progress is being made at the local and State level in the registration of qualified voters and citizens. If we will just turn the clock back a few years, there were very few registered throughout the South, whereas today there are hundreds of thousands, and even millions of this minority race registered. So let us emphasize the progress that is being made, and not point out the few isolated cases in South Carolina in the last few years.

I would say in Calhoun and Williamsburg Counties today that it is a different situation, and that anyone desiring to vote I know in McCormick County has that right, and will not be discriminated against, but, on the other hand, I want to emphasize again, that these people who get in automobiles and ride out through the country and through areas and stir people up and put their names on the books, the power that can do that will be back on election day and they will vote these people, and then maybe they will count the vote, too, like I know they do in some sections of the country. I don't want to bring——

Mr. McCULLOCH. Mr. Chairman, I would like to ask our colleague, or if our colleague doesn't know, then I would like to ask our counsel whether or not the Department of Justice has brought any suits, in South Carolina, of and concerning the facts reported by the Civil Rights Commission?

The CHAIRMAN. The statement speaks of cases brought by the Department of Justice. It doesn't speak of any cases other than those reported by the Civil Rights Commission.

Mr. McCULLOCH. But no litigation has been instituted in any Federal court in South Carolina up to this time to enforce the rights of qualified citizens?

May we conclude that correctly for the record?

The CHAIRMAN. There have been cases brought——

Mr. McCULLOCH. In South Carolina?

The CHAIRMAN. This statement follows:

At the time of this report—

this is 1961—

at the time of this report, the Department of Justice had inspected the voting rights in Clarenden and Hampton Counties as well as McCormick. No suits had yet been brought in South Carolina to protect the rights of voters.

Mr. McCULLOCH. I would like to inquire whether, in the meantime, since this is now July 1963, whether any suits have been brought in the Federal court to redress the grievances alleged by these citizens or for their benfit?

Mr. DORN. I know of none.

Mr. McCULLOCH. Mr. Chairman, I ask that question for this reason: We enacted legislation in 1957 to give authority where there is this sort of action, and we enacted legislation again in 1960 which would give authority to redress these grievances, and I am surprised, and I am unhappy that if these facts are true and correct that no action has been brought to redress those grievances.

The CHAIRMAN. From what I know, I don't think that the Department of Justice has brought any cases, but from what I know, the Department of Justice has been most vigilant for bringing lawsuits for various reasons, not on the grounds of voting, but on the grounds of schools, and so forth, and I don't think anyone has given more thought to protecting those rights in the courts than the Attorney General.

There is the question of manpower, and lawsuits are not necessarily going to accord these rights, those rights that Mr. Dorn very succinctly stated have to come from within. I mean it is better if you can get the populace of the various States, themselves, to realize these wrongs

must be righted, and you cannot rely too much on the lawsuits. That is not in the cards.

I do think that the Attorney General has been very painstaking and has devoted dedicated service in bringing these suits.

Mr. McCULLOCH. Mr. Chairman, I do not make the inquiries that I have made to indirectly criticize the Department of Justice, and the present administration, or the Department of Justice in the former administration. It will be recalled that I mentioned the Civil Rights Act of 1957 as well as the Civil Rights Act of 1960. I am trying to bring out this point which has been important to me as a legislator both at the State and Federal level, that when there is statutory authority on the books to redress certain grievances, that it is incumbent upon those in power to use that statutory authority.

We, and properly, Mr. Chairman, are spending a great deal of time studying the necessity of additional legislation to redress such grievances, and others, and I was anxious to have the record show that all of the existing law has not been used to its fullest possible extent.

Mr. Chairman, I would like to refer again to titles III and VI, about which my colleague, Mr. Meader, asked some questions.

It is my opinion, although I want to be very frank in saying to the witness it is not necessarily the opinion of all of the members of this committee, that in the bills which we are discussing, and to which titles I have just referred, H.R. 7152, would give authority to a Secretary of Health, Education, and Welfare, any person who might become the Secretary of Health, Education, and Welfare, to withhold funds or withhold lawful grants as the penalty for alleged discrimination pursuant to the terms of this bill.

I would like to ask the witness, our colleague, whether or not he has any opinion about the principle that authorizes one person in the Federal Government to make that determination with full discretion and without any provision for review thereof when even now, as my colleague said, it could involve as much as $3.7 billion a year?

Mr. DORN. I would say to my distinguished colleague from Ohio that I am violently and bitterly opposed to the confirmation or conferring by legislation upon any official of the Federal Government, unelected Federal official, that much power, and I go back to my original statement. Of course he could control education in this country eventually, regardless of the political party, and I want to go further and get back to what I said about it. The Secretary of Agriculture could do likewise under title VI as far as soil bank and compensatory payments to farmers. There is no end to where this type of power could lead conferred in the hands of unelected, empire-building Government bureaucrats.

Mr. McCULLOCH. Might we conclude, then, Mr. Dorn, that you would urge some kind of a review of a decision that might affect the health and welfare of this country in this broad title?

Mr. DORN. Absolutely, and I respectfully submit to this committee that this committee should very carefully study this section of the bill and give the American people some safeguards against a possible controlling of our industry and our business, and what the distinguished gentleman from Michigan mentioned, power in the hands of the Secretary of Health, Education, and Welfare to draw school dis-

tricts, and that is what it amounts to, this imbalance that is mentioned in the bill.

Mr. FOLEY. Congressman, on the question of authority of the Secretary of Health, Education, and Welfare to draw district school lines, I point out to you in this case, *Clemons* v. *Board of Education of Hillsboro, Ohio*, where the district court found a gerrymander of the district, but nevertheless refused to uphold it; but, on appeal, the court said this:

> The Hillsboro Board of Education created the gerrymandered school districts after the Supreme Court had announced its first opinion in the segregation cases. The board's action was, therefore, not only entirely unsupported by any color of State law, but in knowing violation of the Constitution of the United States. The board's subjective purpose was no doubt, and understandably, to reflect the "spirit of the community" and avoid "racial problems," as testified by the superintendent of schools. But the law of Ohio and the Constitution of the United States simply left no room for the board's action, whatever motives the board may have had.

There is another instance, *Henry* v. *Godsell*. Here the district court refused the plaintiff's request and it involved Pontiac, Mich., and said this:

> In the absence of a showing that attendance areas have been arbitrarily fixed or contoured for the purpose of including or excluding families of a particular race, the board of education is free to establish such areas for the best utilization of its educational facilities.

And then the third one, *Taylor* v. *Board of Education of New Rochelle, N.Y.*, the court found that the school board had denied the plaintiff equal protection of the law by deliberately gerrymandering Lincoln School, an irregular school zone to create and maintain an all-Negro school.

So the fact of the matter is that you can go into the school, and if the court finds you are gerrymandering school districts, you are violating the Constitution of the United States.

Mr. DORN. Well, I still say it won't even get to the courts if we confer upon the Secretary of Health, Education, and Welfare the power enumerated in this bill. The Commissioner of Education, and others in his Department, with the power in title VI, can just about, with the power of the Federal purse strings, control education almost completely.

The CHAIRMAN. I take it also that you are opposed in its entirety to title VI with reference to withholding of funds?

Mr. DORN. Yes, sir.

Mr. MCCULLOCH. Mr. Chairman, I would like to make one comment on the very clear reading of the *Hillsboro* case by counsel. That comes from my State of Ohio. There was, of course, a gerrymandering with certain intentions in mind, but there could be an imbalance in school districts that would be of a most pronounced character, which would fix lines that wouldn't be gerrymandering. The very crux of the decision written by the very able Mr. Justice Stewart was that it was a gerrymandering in that town for purposes of discrimination. At least that is my interpretation of the case.

Mr. FOLEY. That is true. That is exactly the holding in the case.

The CHAIRMAN. You may proceed.

Mr. DORN. Mr. Chairman, before we proceed I would like to go back to this McCormick business for a minute that I didn't quite finish.

My position, as I stated in the beginning, and I want to state it again for emphasis, that every American qualified to vote should be permitted to vote. I mean I am against discrimination. It is repulsive in any form. But I do think that when the Federal Government enters this field with the power placed in his hands under this bill, title I, elections could very well become like the elections under Hitler. They claimed they were democratic. The Russians claim they have a democracy today, but with one ticket on the ballot. I am more afraid of that than I am of the fear of some local discrimination somewhere which is being improved every day.

Now, Mr. Chairman, I didn't want to bring any sectionalism into this, and I am not, but when they had this question about the vote count in Chicago in 1960, I would be the last one in the world that would want the Attorney General of the United States to go in there and appoint referees, and impound the ballot boxes. I think that is a question for the great city of Chicago, and the State of Illinois, and when the Federal Government starts tampering with elections, to an extreme, going too far, then this will be the greatest threat to free elections. This is what we are up against all over the world while conducting free elections, that is the strong arm of centralized government to manipulate and control elections.

I would be the last one in the world to criticize any of the great cities of this country, or the city of Chicago or any of the States for the way they conduct elections. This is largely their right, and I would uphold and defend their right to conduct their own local and State elections.

The CHAIRMAN. Mr. Dorn, the Civil Rights Commission representatives testified here and gave us figures which indicated the total number of eligible Negro voters, and the numbers of States, and the total number that were registered among those duly qualified, and they only showed a miniscule number of those who were qualified who are registered, and the conclusions seem to be borne upon me particularly that for some reason or other Negroes in appreciable numbers did not vote or could not vote.

Now, let's assume that is true. I just assume that. I can put the figures in the record which show the tremendous disproportion between the white and colored. I will put that on the record. What are we supposed to do to remedy that situation? You say the matter can be adjusted by the States.

Mr. DORN. And is being adjusted, constant improvement in the situation.

The CHAIRMAN. But the point is, according to these figures, there has been very little improvement over the years. How long would it take before the Negro can vote and may I ask this question: You believe, I presume, that the Negro should vote if he is qualified?

Mr. DORN. I believe a person of any race, creed, or color, who is a naturalized American, and a citizen of the United States, should be permitted to vote if he so desires. Since I have been in Congress, Mr. Chairman, the Negro registration in South Carolina, if I recall correctly, has gone up from approximately 10,000 to way up to an estimated 100,000. I happen to know of the fantastic progress that is being made constantly at the local level and the State level.

The CHAIRMAN. Let us take some figures, for example, that the Civil Rights Commission gave us. In Allendale, S.C., in 1958, there were

2,419 whites registered and nonwhites registered that same year was only 140.

In Varnville, 3,267 whites, 393 colored. In Calhoun, 1,699 whites registered in 1958, and 1960, 2,154. Nonwhites, colored, in 1958 only 74 were registered, and in 1960 only 26.

In McCormick, 1,399 whites were registered in 1956 and 1,737 in 1960; in 1958 for nonwhites, registered, none, and in 1960, 49 were registered, and so forth.

I could go on and read many other places in South Carolina. Would you say that shows any degree of progress as far as Negro voting is concerned?

Mr. DORN. I think if you would take the overall picture, Mr. Chairman, they are making great progress.

Again, I want to say that it is very important for a person to vote, and it is important for us to prevent people from being voted by gangsters and machines. I think there is just as much danger in the people being voted by certain groups as in not voting at all. I think this is a question of the choice of the individual; and Mr. Chairman, let me say this. In 1948, we had four candidates, if I recall, running for President of the United States. Forty-eight million Americans voted in that election, and 47 million didn't vote, although they were adults and apparently were qualified. Only 51 percent of the American people voted, and 49 percent did not vote in that crucial election.

Well, now, Mr. Chairman, I don't know the reason why.

The CHAIRMAN. These are figures about those registered, not voting. This has nothing to do with voting. These were people that were qualified or registered voters.

Mr. DORN. What I am trying to point out is this, that those 47 million people in 1948, who exhibited no interest in a national election, they should not be coerced, and intimidated, harassed by the Federal Government, or by any individual, or by and political machine. It is their right to vote or not to vote, and I say again if a person wants to vote, then he should be protected in that desire, and encouraged to do so, but because 47 million people did not vote in 1948, I am not ready to pass legislation in Washington and force these people to participate in national elections.

It is true that we do have as a nation—I think we take freedom for granted—we have the worst voting record of any free country in the world. I think in Australia 95 percent of the people vote. But again that is a right that we have to vote or not to vote that I am quite proud of.

The CHAIRMAN. Title I has nothing to do with voting but only has to do with registering.

Mr. DORN. Naturally, you have to get registered before you can vote.

The CHAIRMAN. I can assure you as far as I personally am concerned, it is with great reluctance that we even attempt anything like this. I had hoped that if the States, themselves, would make these changes, even appreciably gradually, with assurance, however, I would be the last man in the world to want this kind of legislation, but I am doubtful in my mind whether that can happen when we reflect over the years what is happening in some of these States.

I would like to ask you what should we do under those circumstances, or what can we do under those circumstances?

Mr. DORN. Mr. Chairman, I would suggest that we permit this distinguished subcommittee to abandon or postpone any action on this type of legislation until the tempers and tensions created by agitators and mob violence cool off in this country, and until the States of this Union have a little more opportunity to continue the fine work they are now doing and have been doing.

The CHAIRMAN. We passed with reference to voting in 1957, which is almost 6 years ago, and apparently the records don't show very much, if any, improvement.

Mr. DORN. That is exactly what I am talking about. It is not going to show any improvement under the bayonet of the Federal Government, under the strong arm of the Federal Government. It has to be by local brotherhood and local enlightenment, and education.

I say it is just as dangerous to take a man and make him put his name on the registration book, which can be done under this section of the bill, it is just as dangerous to do that as it is to deny some qualified citizen the right to vote. In fact, it could be more dangerous. This is the thing I worry about.

I have confidence in the other States of this Union, and I am not proposing legislation to pry into the vote count. But if we are going to do this, title I of this bill, then we ought to add a few things to it, Mr. Meader, and check in on the vote count and voting machines and have a thorough investigation of this whole voting business.

Mr. MCCULLOCH. Mr. Chairman, I am glad to say to our distinguished colleague that a title in 1 of some 40 bills before this committee provides for just that in Federal elections or in elections in which Federal officials are being elected.

Mr. DORN. This is a very delicate subject, and I don't mean delicate in terms that we should avoid discussing it or looking into it, but I mean we can go too far. I have known cases of where the medicine will kill the patient, and that is what I am afraid of here, an overdose of it.

I know of instances in my own political experience where people would go out and take the registration books with them and go up and down the highway and put the names of the people on there, whether they could read or write or not, and, brother, the same man would be back on election day hauling them in, giving them a marked ballot to put in the ballot box, and have this person give them the unmarked ballot when they walked out of the booth.

That is just as much of a mockery of democracy and just as much of a threat to democracy, as this great concern that we have about the number of people voting in certain areas.

The CHAIRMAN. You see the difficulty—I recognize the difficulties, they are almost insurmountable in your State. You have many counties where the Negroes are preponderant, and I have a list of such situations in South Carolina, and the percentage of whites of voting age registered in 1958 was 81.2 percent, and the percentage of nonwhites of voting age registered even in those places where the Negroes far outnumber the white population, the percentage of nonwhites that vote or are registered, an average throughout the State, is only 10.8 percent.

Now, of course, there is where the real difficulty lies, where you have a greater number of Negroes than you have whites. The

reluctance to vote is obviously understandable at times. It may not be logical, but I can understand after the mores and customs that have existed for a century it is difficult to make these changes, but I think we have reached the point where something has to be done about it, and if something is not going to be done, we are in trouble. That is what we are worried about.

Mr. DORN. Mr. Chairman, I hate to disagree with my distinguished chairman. I can recall instances in history where this very thing was done, and Thad Stevens, when he dominated the Congress of the United States, openly made the statement that this registration drive in the South—now, of course, that has been a long time ago, but it is still a blueprint for power, it is part of the art and science of power—he said this registration and subsequent control of the vote in the South will assure the ascendency of the party of the Union, and I say it happened to be the Republican Party at that time, and I think that was very dangerous for democracy, and it was dangerous for the country. It boomeranged, and I prefer this approach we are making today of education, of keeping the Federal Government's power at a minimum.

Mr. Chairman, I went all over the world with many of the boys in World War II. We fought for freedom. I think I know what this issue is all about, but, on the other hand, it is, and, again, may I repeat, dangerous to democracy to have a controlled electorate. And I think the power conferred on the Attorney General in title I of this bill to appoint referees and all of that could lead to controlled elections.

The CHAIRMAN. Isn't it right to say it is the court, not the Attorney General?

Mr. DORN. Well, Mr. Chairman, I could comment on that. It appears to me lately that the Attorney General is very much the court in so many instances that I could recall, and I didn't want to go into a discussion of that, but it is mighty easy now to get a court order. In fact, it is done in a matter of minutes. They wake people up in the middle of the night and do things like that.

The CHAIRMAN. I want to say at this juncture, this is a well-reasoned argument, and we may disagree, but I would like the high plane on which this debate is going on. This is the way it should be.

Mr. DORN. Thank you. I always find this atmosphere when I come before your subcommittee.

If I may proceed, I have covered title I, and referred to titles II and III.

Now, title IV, Mr. Chairman, puzzles me, with kind of a bloated Federal bureaucracy, the people complaining all over this country—and I make talks everywhere, all over the United States—people complaining about the increase in Federal expenditures, about the increase in the number of Federal employees, and here you turn around and create another agency of the Federal Government. I forget the name of it—Council of Human Relations?

The CHAIRMAN. Community Relations Service.

Mr. DORN. Community Relations Service, and in the same bill we continue for 4 years the Civil Rights Commission with power to investigate. That is in title V of the bill. Then, lo, and behold, over in section 7 we create an old FEPC—that is what it amounts to, a piece

of legislation that this Congress has rejected over the years. So actually in this bill we are creating two new agencies. And I say it could be a department of the Federal Government; and once they are created there will be empire building, and bucking for Cabinet status in a few years.

This community relations is a new agency. Now, it is true in title VII you have had a committee headed by the Vice President, but it has never had official status, so you are creating two new official agencies of the Federal Government in the so-called Civil Rights Act of 1963, and, not only that, you are continuing another for 4 years with vastly increased powers, the Civil Rights Commission under title V, and with people clamoring for a tax cut—I mean we are making ourselves ridiculous, Mr. Chairman, before the people of this country with all these commisisons and investigatory powers overlapping here and three practically new agencies of the Federal Government this bill would set up, all under duress—in my opinion, this is under duress.

The demonstrators have blackmailed some of us here in Washington and said we have to have this thing, and if we don't we are going to have a powerful demonstration in Washington and throughout the country.

Mr. McCULLOUCH. Mr. Chairman, right at that point I would like again to say, speaking obviously only for myself, that it is my earnest desire that calm people who are advising citizens of this country so advise them to act in accordance with the great traditions of this country. I regret to say before this committee that there were some citizens in my own State of Ohio who moved into the well of the house of representatives, there to seat themselves until it was necessary for a greater speaker of the Ohio House of Representatives, who has served longer than any man in the history of Ohio, to order those people forecfully removed so that the legislative business of the State of Ohio could continue.

I repeat, Mr. Chairman, I hope those of influence among the citizens of this country dissuade them from any unruly activity in the Capitol of this great country.

Mr. DORN. Mr. McCulloch, I notice that in this morning's paper, that in the great city of Columbus, in the capitol building, this took place. It seems to be a pattern, and I believe it could be tied in over the weekend with this riot in Kansas. I might remind the subcommittee that the Kansas riot was a student riot. This is what I am afraid of. This is the type of thing that overthrew the Government of South Korea, the strong, stable government of Syngman Rhee, and overthrew the Government of Turkey. This thing in Kansas was a terrible thing, student riots, the National Guard being alerted and hundreds of policemen, and with the usual barrage of whisky bottles and beer cans thrown at the uniformed policemen; and I think they had a little one in Brooklyn last night, Mr. Chairman. And I commend the chairman. You have condemned this method of trying to get legislation passed, and I commend you for it.

You are absolutely right. This thing can get out of hand.

The CHAIRMAN. We are having lots of trouble up north, lots of trouble in New York City, and we are put to the end of our patience and the police in our city find it very difficult to cope with the situation, and if this march is staged on Washington I am fearful there is

going to be all kinds of incidents, and I don't know how it is going to be stopped, and I do hope that better counsel will prevail among the Negro people to not stage this march.

Mr. DORN. A mob of a few hundred at the local level today tomorrow could become a chanting, screaming mob of a million people, and when it is composed of students and young people you are not going to get your tanks to fire on people like that. They obstruct traffic, they obstruct the movement of the military, they create anarchy and chaos and governments fall under such circumstances.

Mr. FOLEY. Right there, Congressman, we have a statute on the books that any demonstration on these Capitol Grounds is a violation of law and punishable by fine and imprisonment.

Mr. DORN. And the law should be upheld. It is the law of the land. This Congress should be permitted to operate in a cool, deliberate, cautious manner, as envisioned by the Founding Fathers. You need only look at the Parisian mobs that overthrew the Government of France time and time again back over the years. This is a serious thing. That is why I think this legislation, consideration of it should be postponed. We should not appease the agitators and mob violators, because if you reward them with this bill, they will be back and threaten even larger demonstrations, and there is no end.

This Machiavellian theory of power, the control of the majority by the minority, it is something all of us need to consider. I rather think that these power mad, pressure groups, well heeled, well financed, trained in the art of rolling over in the street, oh, there is a mastermind behind it somewhere. I have been told by policemen that these mob leaders know more jujitsu than the paratroopers. They have been trained. They can be manipulated by hard-core subversives, and, gentlemen of the committee, we should not reward this type of agitation with legislation at this time. I think we ought to postpone this a while because they will be back if you pass this and demand more and more and more. Read Benjamin Kidd's book, "The Science of Power," written back before World War I, and it will tell you why these people cannot stop. I am not talking about race or creed, I am talking about any group whose powers are based upon dues. The more dues you extract, the more you agitate. The more legislation you get the more you demand, until you control that country and dominate that country, and establish a dictatorship. They can't stop any more than Hitler could stop, any more than Khrushchev can stop with the machine he has built up.

Mr. CRAMER. One basic question I want to ask, and before I ask it I wanted to comment that I have felt for some time that the level-headed leaders of government should call for an end to rioting which is causing anarchy and violence such as occurred yesterday in Savannah, where they destroyed private property and broke windows, and also burned a white church.

I can remember gasps of indignation that arose from Congress, and I was one, when we had bombings of Jewish synagogues. I have been in a number of them, and have spoken in behalf of them, and rightly so there was great indignation in the Congress of the United States when this occurred, and I think it is time for level heads to call for an end to this violence that results in destruction of private property, and results in breaches of the peace.

It has been, I think very noteworthy that in practically every instance these demonstrations have not been opposed by white citizens as such, as far as I know anywhere in the country, be it the South or be it the North. So this isn't a white versus Negro uprising on the facts themselves. It is the Negroes who are perpetrating these violent acts, these demonstrations, and the ones that are trying to keep the peace are the police and the police are the ones that are being attacked.

Now would you care to comment on it?

There is just something wrong in our American system where the law enforcement agencies are attacked with open violence by mobs, and there is too little, in my opinion, call for peace and tranquility in the United States under these circumstances.

I am not saying that peaceful demonstrations are not perhaps justified and perhaps should not be made, but violent demonstrations, destruction of property, burning of churches is something else.

Mr. DORN. Mr. Cramer, I think you are right, that the local law enforcement agencies, sheriffs and sheriff deputies and policemen and chiefs of police, State policemen, State patrolmen, they have all shown great restraint.

When you are under a barrage of whisky bottles and beer bottles with your uniform on, it takes a lot of restraint and coolheadedness to keep your head.

I think they need to be commended all over this country for their restraint and coolness under the most adverse of circumstances. But I would like to point out again that those who today throw bottles and show disrespect for the uniform of policemen that tomorrow they will conduct that same demonstration against the Armed Forces of the United States, the Marines, Mr. Brooks, and the U.S. Army and Air Force.

It has happened in other countries, and this is the danger. And I agree with you that this is not the uprising of a downtrodden minority who are ill-fed and ill-clothed and ill-housed. This is a demonstration being led by cool, calculated agitators, well heeled—again let me say, men who walk into the Republican and Democratic National Convention and demand civil rights planks and get it.

This is no little w k, imposed-upon minority. It is the most powerful group behind these demonstrations in the political world of today. Let me say this, Mr. Cramer, to my distinguished chairman: the Honorable Solomon Blatt has been Speaker of the South Carolina House of Representatives longer than any man in the history of our State.

I served under his able leadership in 1939. He is still there. He is a fine man, a distinguished gentleman. There are a lot of States in this Union where a Jew could not be speaker of the house, but not so, Mr. Chairman, in South Carolina, and Mr. Blatt has been there for a generation and I might add that Bernard Baruch told me one time, or told the people of South Carolina, that he had never been denied membership in any club in South Carolina. He is a native South Carolinian and he is proud of it. This is not so, he said, in his adopted city.

And, Mr. Lindsay, I won't call the name of that great city, but he——

Mr. LINDSAY. I am not arguing with the gentleman one bit.

Mr. CRAMER. The point I wanted to get to and which I was leading up to is there seems to be an impression, and I think there are some Members of Congress who perhaps feel the same way, that the solution to the problem is the passage of this bill.

Now does the gentleman believe, and I have some great reservation about it, if everything in this bill is passed without changing a comma or a single word in the legislation, that this is going to solve this problem of rioting in the streets?

Mr. DORN. Mr. Cramer, this will only aggravate the situation, just as the last Civil Rights Act accomplished very little. There is more agitation today than before we passed the last act. So I say this will increase the tension. It will advertise the situation.

Knowing psychology as the gentlemen does, this will aggravate and create more inclination to mob violence. I mean there is no doubt in my mind about that. If you put the motels under the strong arm of the Attorney General and the boys move across the street—and I know of any number of cases in this country where it is just three or four steps from the restaurants and the motel to the Elk's Club and Moose Club—they will just walk over there and get membership or be invited in by their friends.

How far can hypocrisy and sham go? Let me go back to prohibition again. This will aggravate the situation and this problem can only be solved eventually and completely at the local level by human understanding, by the advancement of culture and education, which is taking place daily.

And I want to emphasize again, Mr. Cramer, before you came in I told the distinguished chairman of the subcommittee I think the States of the Union, when left alone, solved the lynching problem. This was the major civil rights problem of this country for many years.

For 50 years, every year they would get up and have the greatest debates in the country on the lynch bill. The Congress rejected it but the States slowly but surely completely eliminated the atmosphere in which lynchings took place, and lynchings are no more.

They did the same with the poll tax, except as the chairman pointed out in five States. This was done by local people, and I think this should be encouraged and advertised.

You know this is a story they don't tell you on the Voice of America, and what is that other one—they have two or three of them that broadcast all over the world. They always play up these riots and agitators, but they don't play up the good things that are being done.

The CHAIRMAN. Counsel wants to put something in the record.

Mr. FOLEY. I am reading from the United States Law Weekly, volume 32, No. 2, July 9, 1963. It reads as follows:

Counsel fees awarded attorneys for Negroes seeking school integration. Official resistance to school desegregation may well become as costly as it is human. A majority of the U.S. Court of Appeals for the Fourth Circuit en banc orders a Federal district court to award counsel fees to the attorneys for Negro pupils and their parents who brought a suit to end school segregation in a Virginia county.

Characterizing the denial of such fees as an abuse of discretion, the court takes into account the long continued pattern of evasion and obstruction that included not only the school board's unyielding refusal

to take any initiative, thus casting a heavy burden on the children and their parents, but the board's interpretation of a variety of administrative obstacles to thwart school integration in any other context, the court emphasizes such tactics would be instantly recognized as discreditable.

The equitable remedy would be far from complete and justice not obtained if reasonable counsel fees were not awarded in a case so extreme.

Mr. DORN. I have no comment, Mr. Chairman, on the reading of this into the record. I will say that under title IV, where this council would be created, this new agency of the Federal Government, what would be—I envision all kinds of people coming down—kind of a glorified domestic peace corps of a sort, coming down and prying into religious activity, social gatherings, trying to work out some kind of a hypothetical dream, or imagining discrimination exists somewhere and projecting themselves into it, into all fields, checking up on the Kiwanis Club or Rotary Club or Lion's Club or the Lion's dinner for charity, stirring up suspicion, distrust and hatred and, oh yes, sending reports to Washington. I can envision just all kinds of investigations and activity from a group like that. It is not just title II I am against—it is title I, title III, title IV, titles V, VI, VII, and VIII.

The CHAIRMAN. Any questions?

Mr. MCCULLOCH. Mr. Chairman, does that mean the witness has concluded his statement?

When the witness leaves the stand, I would like to make it unmistakably clear by reason of the intensity of feeling with which I made the statement that I am as strong an advocate as there is in this country for the rights of the people under the first amendment of the Constitution to exercise freedom of speech, the press, and the right of the people to peaceably assemble and petition their Government for a redress of grievances.

On the other hand, I am as strongly opposed to hotheads who would make it impossible for these orderly processes and rights to be fully effected.

Justice may be obstructed by mobs and by citizens as well as obstructing an unstayed order of a court, be it the Supreme Court or any inferior court.

Mr. DORN. I wish to commend my distinguished colleague from Ohio for that fair and impartial attitude concerning this threat to our country today.

You know I believe that our colleague, Gordon Scherer, from your great State, who was on the Un-American Activities Committee, was subjected to this type of violence in San Francisco during one of the hearings of the committee—a committee of the Congress of the United States. A sit-in demonstration there which was worse than some of these today.

The same thing happened in the State capital yesterday in Ohio. This is a pattern that is being established and has been established by certain subversive groups, and I think the Dies committee proved that some of the activities of the original sit-in on February 2, 1937, in Detroit later was proven to be instigated and led by subversive and hard-core enemies of our very American way of life, so we have to watch and control demonstrations.

I mean it is a serious thing. And legislation should never be rushed through this Congress and given priority because of demonstrations, and I commend the chairman again for putting his foot down on that way to get legislation passed. It is not the American way.

The CHAIRMAN. I want to thank you for your appearance here this morning.

I want to say this: As I indicated a little while ago, this colloquy between us has been most revealing. It has been calm and has been objective, and that is the way all colloquy should be. And I want to say you have shown yourself a most able and welcome witness.

We welcome the discussion on these terms, because only in that way can we get any kind of proof and, again, I want to thank you.

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

The CHAIRMAN. The Chair wishes to announce that we have checked with the Department of Justice and no suit has been brought in connection with voting in South Carolina.

The Chair wishes to place three statements in the record, Representative Baldwin, of California, McMillan, of South Carolina, and Congressman Stafford.

(The statements referred to are as follows:)

TESTIMONY OF CONGRESSMAN WILLIAM JENNINGS BRYAN DORN, DEMOCRAT, OF SOUTH CAROLINA, BEFORE HOUSE JUDICIARY COMMITTEE ON CIVIL RIGHTS

Mr. Chairman, a dangerous tactic by powerful pressure groups is forcing consideration of this legislation. Suddenly, as a result of illegal demonstrations, calculated violence, and disrespect for law and order, this bill has the No. 1 priority—priority over domestic legislation and priority over foreign policy during a critical stage in the cold war. This legislation was not originally scheduled for this top priority consideration. We are acting under duress. We have been threatened and we are acquiescing and bowing to that threat. Lawlessness is being rewarded. A new technique in the United States is emerging for the passage and consideration of legislation. Yes, Mr. Chairman, a new technique for this country, but an old technique for the minority seeking to dominate and control the majority. This is an old technique of cultivated chaos and anarchy well known to Machiavelli, Lenin, and the dictators of the Nazi-Fascist era. When legislation is considered by the Congress as a result of highly organized, well-financed, and violent demonstrations, then we are on the road to anarchy. Law and order can collapse. The citizen will no longer be protected in his property rights. The law of the jungle will prevail.

The Republic is in dire danger if the President, the Attorney General, and the Congress can be stampeded into hasty, ill-advised, and ill-conceived legislation. If the Congress and the President are to succumb to this type of blackmail, then the pattern is already set for complete domination of the Federal Government by power mad masters of the science of power. By considering this legislation, we are thus encouraging mob violence and mass demonstrations.

My purpose in appearing here is to urge this committee to reject consideration of the so-called Civil Rights Act of 1963, particularly at this time. Legislation of this magnitude should be considered in a calm, cautious, legal atmosphere. This country desperately needs a cooling-off period. Tempers need to simmer down. Passion and emotionalism must be brought under control. If this legislation should pass as a result of mass demonstrations throughout the country and in the Federal City of Washington, the Constitution will become a scrap of paper and individual liberty will pass from this continent. The next act in the drama would be mass demonstrations similar to the student riots which overthrew the Government of South Korea, the student riots which overthrew the Government of Turkey, and the riots which caused former President Eisenhower to cancel a planned trip to Japan.

The Federal Government must support and back up local law enforcement agencies and law enforcement agencies of the States. Sheriffs, chiefs of police, policemen, State patrolmen, and local courts need the backing of the Federal

Government as never before. These local peace officers are on the front lines of action to preserve law and order, prevent subversion and guard against Communist agitation. Let me warn this committee that disrespect for the uniform of a local policeman today can lead tomorrow to disrespect and insurrection against the men in uniform of our Armed Forces. Many patriotic and dedicated law enforcement officers now feel that mob violence has been encouraged by the Federal Government. This is dangerous for the security of our Nation. Unless controlled, local mobs of a few hundred or a thousand will tomorrow become a chanting, yelling, screaming, inferno of a million in the Nation's Capital or in Chicago or New York, paralyzing traffic and obstructing the movement and deployment of our Armed Forces. The Government could become powerless to act and could be overthrown.

Before seriously considering this legislation under threats of demonstrations, this committee might do well to study mob psychology and mass collective hysteria such as that which gripped the mobs in Detroit in June 1943, when it took 2 days for more than 6,000 combat troops to restore order; and the strange mystic mass violence that gripped the surging mobs in Boston in 1919, forcing Governor Coolidge to declare martial law and depose the mayor. Incidentally, this forthright action started Coolidge on the road to the Presidency with the famous slogan of "Law and order." This committee might carefully study the riots at Princeton University; Cambridge, Md.; and the Kansas student riot last weekend.

Mr. Chairman, these demonstrations were the work of novices compared to what will happen today if this Congress rewards these demonstrators with the passage of this bill. Mobs in the future will be led by men trained in the art of manipulating crowds, men sworn to overthrow democracy.

Mr. Chairman, I recall that when I first came here in the 80th Congress, the President called a special session of the Congress to consider civil rights legislation in the summer of 1948. This problem has occupied much of the time of the Congress for generations. I know of no major lasting accomplishment by the Federal Government in this field. Fantastic progress has been made against discrimination, the caste system and religious prejudice; but this has been accomplished principally at the local level through education, brotherhood, and understanding in the grassroots of our country. This is the only lasting area where this moral question can be eventually solved. Seventy years ago lynching was a very serious major problem in the United States. This evil has been eliminated from our society by the valiant efforts of our people at the local and State level. No Federal law against lynching has ever passed this Congress. Its elimination is a tribute to our people at the local and State level. Likewise, the States of the Union have eliminated the poll tax as a requirement to vote. We are now going through a ridiculous farce of adopting a constitutional amendment against the poll tax. This has already been overwhelmingly solved by the States of the Union. Only five States remain requiring a poll tax. We should compliment our people at the local level rather than condemn and harass them with this type legislation.

The continual introduction of such legislation as this is the principal cause of agitation, racial conflict, and growing friction between the races. Mr. Chairman, prohibition is a classic example of an ill-fated effort on the part of the Federal Government to legislate morals. After a sad experience with Federal enforcement, the Federal Government had to admit failure and return the problem to the States.

We would see a vast improvement in race relations if the Federal Government would admit failure to solve this problem at the Federal level by Federal legislation and leave this responsibility to the States and local communities.

Title I of this proposed bill before this committee would place in the hands of the Attorney General power to control elections. There is a vast difference between voting one's convictions, free of intimidation and mobs, and being voted by the Attorney General of the United States. Title I is a blueprint for power. It compares with the policy of Thad Stevens during Reconstruction days when he said, "Only when the Constitution has been amended so as to secure the perpetual ascendancy of the party of the Union" (the Republican Party). Election managers and volunteers who tally the vote will live under constant fear of a snooping, prying, Federal gestapo. Free elections could become controlled or manipulated elections.

Title II would be a long step toward the socialization and communization of the United States. The very foundation of our Nation is individual property rights. The motivating force behind growth and economic expansion is the right

to own and manage personal property. The power of the Attorney General to decide the property rights of barbershop owners, motels, or restaurants is stark-naked usurpation of property rights and business rights of the individual citizen. The power that can initiate injunctions and Federal actions against a motel or restaurant will soon move across the street with injunctions and Federal raids on the Moose, Elks, or other private organizations. Under this title, what would eventually happen, Mr. Chairman, to the local Lions charity dinner, the Rotary Club luncheon, the Kiwanis or the American Legion barbecue?

This Congress, time and again, has rejected Federal control of our public schools and direct Federal aid to the public schools. Title III of this bill will provide the means whereby the Attorney General and the Commissioner of Education can and will control education in the United States. School boards will be powerless to operate local schools in the best interests of the people in the community. Local schools will be subjected to constant harassment, litigations, injunctions and Federal bribery to accept teachers and pupils from other schools and other areas. It would make it most difficult for substantial citizens to offer for the time-honored positions of school trustee and school board official.

Title IV would create another agency in our already bloated Federal bureaucracy. This title would provide more Federal campaign workers for the party in power and would become a glorified parade of freedom riders prying into every community activity, volunteering their services in religious, fraternal, educational, and social gatherings—Mr. Chairman, another agency which would immediately launch an empire building campaign and agitation for Cabinet status. Mr. Chairman, let's not subject the taxpayers to this additional unnecessary and unwise burden.

Title V will continue the Civil Rights Commission and vastly increase its power.

Title VI would place in the hands of the President the power to withhold Federal funds from any contractor in America. Every State, every local government, and every school could be coerced and intimidated by the President. I would interpret this title to include control of railroads, airlines, shipping lines, communications media, and even a farmer receiving soil bank payments. The American people could be literally coerced and harassed into complete submission with Federal edicts and decrees.

Title VII would officially create a FEPC—another high-sounding commission, department, or agency of the Federal Government lobbying for a slice of the Federal pie in the name of fighting discrimination. The Congress has always rejected all old FEPC proposals.

Mr. Chairman, this bill alone would create three agencies of the Federal Government, two of them entirely new. At a time when we are hopeful that we can provide a tax reduction for the American people, we are creating more agencies which will increase the tax burden.

This bill is negative. It is defensive. It is hypocrisy. It is an effort to turn the clock back to worn out, decadent socialism and centralized power. This bill is an admission of the failure of the Federal court decisions and orders. It is an admission of the failure of all past Federal legislation to promote harmony and good will and morals. This bill will paint an untrue picture of our successes and efforts for the world to see. It is past time that we begin to talk about what we have accomplished in the field of race relations in the United States and the fantastic progress that we have made. We have a better record in race relations than any other country in the world with a similar problem. Our record, Mr. Chairman, is far superior to that between Israel and the Arab world where there is constant friction purely because of race and religion. Compare our record with the Hindus and Moslems. Compare it with the liquidations of millions in Russia and in China. Compare it with the continuing slavery in Africa and with the untouchables in India. Yes, Mr. Chairman, it is past time that we begin to tell our story of tolerance to the whole world. We should advertise our many accomplishments and our standard of living on Radio Free Europe and the Voice of America. We need apologize to no one.

We need to go from the negative to the positive, from the defense to the offense. How ridiculous can we be when we apologize to the world, and to Russia, in particular, when she liquidated millions of people because of race and because of religion. She now has the United States on the defense about race relations although she murdered the White Russians, the Poles, and the Ukrainians.

The great majority of the American people are becoming tired of agitators who talk about their rights and what the Government should do for them. If we are to survive as a great nation, all of our people must begin to inquire about their opportunities, their duties, and their obligations to this great Nation.

STATEMENT OF CONGRESSMAN JOHN F. BALDWIN, OF CALIFORNIA, ON CIVIL RIGHTS LEGISLATION

Mr. Chairman, as you know, I have introduced H.R. 6733, which is one of the civil rights bills now pending before your committee. I should like to urge that your committee act favorably upon this measure.

It is my understanding that your committee is now also holding hearings upon H.R. 7152, a somewhat similar civil rights bill recommended by the President. I support either of these bills.

The platforms of both political parties in recent years have included strong civil rights planks. In my opinion it is important that Congress take positive action to carry out these platforms in the field of civil rights legislation.

I feel very strongly that all U.S. citizens, regardless of race, creed, color, or national origin, should be able to use public schools, public parks, public transportation, and other public facilities on an equal basis. They should likewise be able to use places of business which are licensed to serve the public, such as theaters and restaurants, places of business, and hotels and motels. The State laws and local city and county ordinances which still exist in some of the States barring the use of the above-mentioned facilities on the grounds of race are clearly unconstitutional in my opinion. However, it has been evident that it will take a long time for the courts to handle enough cases to eliminate segregation resulting from these discriminatory State laws and local ordinances. As a result, it seems to me it is time for Congress to take positive action in this field. The purpose of the above-mentioned bills is to do this. I, therefore, hope very much that this committee will approve either of the above-mentioned bills and will bring this legislation before the House of Representatives at the earliest possible moment so that this legislation can be enacted into law during the current session of Congress.

STATEMENT OF HON. JOHN L. MCMILLAN, OF SOUTH CAROLINA, ON CIVIL RIGHTS LEGISLATION

Mr. Chairman and members of the House Judiciary Committee, I want to take this opportunity to thank you for giving me the opportunity to appear before your committee in opposition to the civil rights bills now under consideration.

During the past week I have had an opportunity to give some study and thought to the proposed civil rights legislation now pending before your committee. My reason for being here today is to state that we have had no race problem in the State of South Carolina and certainly will experience no difficulty in handling any problem we may be confronted with between the white and the colored people in our State provided the Federal Government officials, the NAACP, and other outside agitators keep out of South Carolina. We all know that this has become a very explosive matter since the Federal Government officials decided to give the NAACP authority to walk over the white people who reside in the South and force them with "bayonet in back" to accept rules, regulations, and court decisions that have never been legislated by the Congress of the United States.

I am certain that relations between the colored and the white people in South Carolina were at its highest peak at the time the Supreme Court rendered its unfortunate decision in 1954. The colored people had been provided with the best schools that could be built and second to none in the United States, and they had several thousand excellent colored teachers throughout the entire school system, including the agricultural college at Orangeburg and the two universities for colored students in Columbia, S.C.

The Attorney General has compelled the people of the South to obey the Supreme Court decision on school and numerous other decisions which completely abolish the laws that have been passed by the individual State legislature in the South. Our own Government has incurred lawlessness when it allowed the colored people to break the laws of the cities and States by permitting them to

enter private property and obstruct the entrances to private business establishments in a number of States.

We all certainly feel that if our Government thought it was necessary to call on the U.S. marshals and all other Government law-enforcement officers to enforce the Supreme Court decision in 1954, they certainly should use the same treatment to protect the property owners throughout the United States by seeing that the State laws and the city laws are enforced.

I seriously doubt that the people in these United States who are responsible for building one of the greatest farming and industrial countries in the world will sit idly by and see all that they have worked for go down the drain in disguise of a vicious attempt to try to get the Negro vote. I believe that the unnecessary demonstrations that have been carried on throughout the United States during the past year are generally prompted by the Communist, and it is rather discouraging to see our own Government aiding and abetting in this matter without first thoroughly investigating the source of unrest among the colored race.

It is my sincere hope that the members of your committee will first consider the everlasting injury and blot you will make on the people of your country by passing dictatorial legislation of this nature when every person in this country is certainly getting all the rights he or she is entitled to receive. I think every person is entitled to work themselves into society and to top-level Government positions, also top-level positions in private enterprise; however, they should not be promoted and given preferential treatment just because their color is black.

STATEMENT OF CONGRESSMAN ROBERT T. STAFFORD, OF VERMONT, ON CIVIL RIGHTS LEGISLATION

Mr. Chairman, members of the committee, on June 3, 16 days before the Congress received President Kennedy's special message on civil rights, I introduced H.R. 6742, a bill giving the Attorney General of the United States broad powers to enforce constitutional rights for all Americans. This bill is identical to H.R. 6720 and several others introduced by other Members on the same day.

Basically, this legislation provides for equal access to public accommodations authorized to operate by a State or local subdivision. It also gives the Attorney General powers, now lacking, to bring legal suit against any State or local official who seeks to encourage or require segregation or discrimination or who is depriving or denying individuals' rights to equal protection of the law because of race, creed, color, or national origin.

This legislation is based upon the constitutional rights provided all Americans under the 14th amendment. I strongly believe this is the correct and moral route to follow in attempting to bring an end to discrimination of all types.

The administration has now introduced legislation, intended to achieve the same result, but would base enforcement on the interstate commerce clause of the Federal Constitution. I believe this is a weaker approach. It would require arbitrary designation of what public accommodations come under interstate commerce and, in effect, give silent approval to discrimination when practiced against the people within one's own State.

Let me say for the record, however, that I am prepared to support, through every available means, any legally constituted legislation which will fulfill the obligation we have in America to provide equal rights to all our citizens.

This is not a regional problem. It is national. It is not just a legal problem. It is moral. It is not a political problem. It is American.

We cannot lead the fight for political freedom of the world's peoples, if we do not give human freedom to our own peoples.

Mr. LINDSAY. Mr. Chairman and members of the subcommittee, as you know, four of us on the Judiciary Committee have submitted proposed legislation on the subject of public accommodations.

I wish to place into the record at this point H.R. 6720, which is that bill, covering public accommodations. It also includes a broadened part III.

(H.R. 6720 is as follows:)

[H.R. 6720, 88th Cong., 1st sess.]

A BILL To enforce constitutional rights, and for other purposes

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

PROHIBITION OF SEGREGATED BUSINESS ACTIVITIES

SEC. 101. (a) Whoever, in the conduct of a business, authorized by a State or political subdivision of a State, or the District of Columbia, providing accommodations, amusement, food or services to the public, segregates or otherwise discriminates against customers on account of their race or color, shall be subject to suit by the injured party in an action at law or suit in equity.

(b) Whoever, acting under color of any law, statute, ordinance, regulation, custom, or usage, requires or encourages or attempts to require or encourage the owner or operator of such business to segregate or otherwise discriminate against customers on account of their race or color, shall be subject to suit by the injured party in an action at law or suit in equity.

(c) The Attorney General is authorized, upon receipt of a signed complaint, to institute for or in the name of the United States, a civil action or other proceeding for preventive relief, including an application for injunction or other order, against any person or persons who have engaged in a practice, subject to an action at law or suit in equity, as specified in subsection (a) or (b) of this section.

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

(e) Nothing contained in this section shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General under existing law to institute, maintain, or intervene in any action or proceeding.

RIGHT TO EQUAL PROTECTION OF THE LAWS

SEC. 102. Part III of the Civil Rights Act of 1957 (71 Stat. 637) is amended by adding at the end thereof the following new section:

"SEC. 123. (a) The Attorney General is authorized, upon written complaint on oath or affirmation of any person who is being deprived of or threatened with the loss of his right to equal protection of the laws by reason of race, color, religion, or national origin, and who is unable because of financial inability or threat of physical or economic reprisal effectively to seek legal protection on his own behalf, to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for an injunction or other order, against any individual or individuals who, under color of any statute, ordinance, regulation, custom, or usage, of any State or territory or subdivision or instrumentality thereof, deprives or threatens to deprive any such person of his rights to equal protection of the laws by reason of race, color, religion, or national origin and against any individual or individuals acting in concert with them.

"(b) The Attorney General is authorized to institute for or in the name of the United States a civil action or other proceeding for preventive relief, including an application for injunction or other order, (1) against any person or persons preventing or hindering, or threatening to prevent or hinder, or conspiring to prevent or hinder, any Federal, State, or local official from according any person or group of persons the right to the equal protection of the laws without regard to race, color, religion, or national origin, or (2) against any person or persons preventing or hindering, or threatening to prevent or hinder, or conspiring to prevent or hinder the execution of any court order protecting the right to the equal protection of the laws without regard to race, color, religion, or national origin.

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

"(d) Nothing contained in this section shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General under existing law to institute, maintain, or intervene in any action or proceeding."

Mr. LINDSAY. I think the bill speaks for itself. There has been a great deal of legal discussion about it. There will be more. I will expect to have a series of opinions from various law schools and law professors as to the constitutionality of the bill, how far it goes, and so forth.

To sum up the existing law on this subject, it might be helpful if the record included at this point the opinion of the Supreme Court in the *Lombard* case, handed down May 20, 1963, and alongside of that the concurring opinion of Mr. Justice Douglas. The majority opinion was written by the Chief Justice, and the concurring opinion by Mr. Justice Douglas.

There is contained in both of these opinions, in the body and in footnotes, a good summation and bibliography of the law on the subject of the responsibilities of the innkeeper. The public duty of the innkeeper goes back into British Common Law.

I think that it might be helpful to discussion of this matter later on when the matter comes to the floor of the House, if this opinion were placed in the Record. It is short and the footnotes are not extensive.

The CHAIRMAN. Is that the old case?

Mr. LINDSAY. It is the *Lombard* case, May 20, 1963, which I think is the most erudite in its discussion of the length and breadth of the 14th amendment in the Constitution.

The CHAIRMAN. Is that Judge Lombard?

Mr. LINDSAY. No, it is *Lombard* v. *Louisiana*.

The CHAIRMAN. Oh, I see.

Mr. LINDSAY. Just for example, the members of the committee will be interested in a citation to a very key British case cited under the English Common Law in 1701, Holt, C. J., writing in *Lane* v. *Cotton*, as follows:

Whenever any Subject takes upon himself a public trust for the benefit of the rest of his fellow subjects, he is eo ipso bound to serve the subject in all things that are within the reach and comprehension of such an office, under the pain of action against him. * * * If on the road a shoe fall off my horse and I come to a Smith to have one put on, and the smith refuse to do it, an action will lie against him because he has made profession of a trade which is for the Publick Good and has thereby exposed and vested an interest of himself in all of the King's Subjects that will employ him in the which of his trade. If an Innkeeper refuse to entertain a Guest, when his house is not full, an action will lie against him; and so against a Carrier if his Horses not be loaded, and he refuse to take a Packet proper to be sent by a carrier.

This is very basic common law and, in fact, is common law in this country today, as any good hotel lawyer will tell you.

I cite this as the kind of thing that would be useful in our study of this problem and of the length and breadth of the 14th amendment.

Mr. MEADER. Could I ask a question at this point?

The CHAIRMAN. Would you give me a minute?

I think we ought to place in the record right after that, the old case of old civil rights cases decided in 1883. I want to ask one or two questions about that, but I yield to the gentleman from Michigan at the moment.

Mr. MEADER. Your colleague, Mr. Lindsay, and some of his cosponsors of legislation embodied in H.R. 6720, discussed this matter and the approach of the equal protection clause route as compared to the interstate commerce route on the floor of the House one evening, which was quite a long evening, although the discussion wasn't too long.

I wonder if the gentleman in his remarks would place a reference to that discussion, the page number, and date of the Record, so we could have the benefit of that?

I don't recall that the disadvantages of the interstate commerce route were fully developed during that discussion. Mainly it seemed to me it revolved around the constitutionality of your bill under the equal protection clause of the 14th amendment.

Could you summarize briefly, if you were opposed to the use of the interstate commerce clause, the reasons why, or if you are not opposed to it, why you believe your recommendations in H.R. 6720 are preferable to the interstate commerce clause proposals?

Mr. LINDSAY. I will say to my colleague that, first, as to legality, most lawyers will agree that there is very little doubt as to the constitutionality of the 14th amendment approach when we are talking about inns, hotels and motels.

The doubt enters in when we talk about restaurants. I am absolutely persuaded that when you are talking about public facilities—restaurants—that hold themselves out to the public for profit, that this bill would be sustained. Others may disagree.

Mr. MCCULLOCH. Could I interrupt at that point?

Mr. LINDSAY. Yes.

Mr. MCCULLOCH. Wouldn't that be particularly true where States and other political subdivisions have licensing provisions for restaurants which prevent them from operating until they have been granted the license positively and only permitting them to operate with a license?

Mr. LINDSAY. I think that is correct.

The CHAIRMAN. Do you take the position then when you say yes to the question propounded by the gentleman from Ohio, do you take the position then that if there is a license or permit issued by the State or a subdivision of the State that any action that might be taken will come under the prohibition of the 14th amendment?

Mr. LINDSAY. That is the view of Mr. Justice Douglas in the *Lombard* case. Nobody can say for sure what the full Court would do. There is one case pending in the Court, schedule for reargument, I understand that is pretty close on this point.

What this comes down to is whether or not public places that are privately owned but subject to regulation by the State or subdivision of the State, that regulation establishes the nexus to State involvement that makes the 14th amendment applicable.

My view is that I would like to argue that case in the Supreme Court, and I think I would win it today.

The CHAIRMAN. There was an interesting letter to the editor from the professor of constitutional law of Columbia University. He speaks of the Cooper-Dodd bill, which is the licensing bill:

The Cooper-Dodd bill would forbid racial discrimination in privately owned facilities and public accommodations if, and only if, they are licensed by the State or local government. Congressional power to enact it thus must rest upon the view that the discretionary action of the license owner is in discrimination by the State where only State action is forbidden by the 14th amendment, which the bill undertakes to enforce. You need not be a lawyer to see that the fact that the State requires a lunchroom to obtain a license as means of protecting public health does not make the lunchroom a State agency. Are all private corporations going to be viewed as organs of the State because their corporate existence was conferred by their State charters? * * * In the entire history of the judicial interpretation of the 14th amendment, only Justice Douglas has accorded the position of color as support in an opinion.

That is the opinion you read.

Mr. LINDSAY. I think, in addition to Douglas, you would have to say the first Justice Harlan takes that position too.

Mr. MCCULLOCH. And very persuasively.

Mr. LINDSAY. I am sorry that the writer of that letter did not earmark the case of the inkeeper—in other words, the hotel and motel—the place of accommodation on the road and make some distinction, because I do think that it is pretty clear that a public obligation is imposed on the innkeeper by virtue of existing common law. I think the Supreme Court would clearly uphold the constitutionality of this bill in a case involving those circumstances.

The CHAIRMAN. Suppose it is a store or supermarket?

Mr. LINDSAY. If it is a restaurant I think you have a more difficult problem.

The CHAIRMAN. Wouldn't we be better off to have two strings to our bow and base legislation on the 14th amendment and interstate commerce?

Mr. LINDSAY. Perhaps. I would like to ask the chairman what he would think of an addition to this proposal contained in H.R. 6720 which said simply "the provisions of this section shall apply only to those businesses which are engaged in interstate commerce."

The CHAIRMAN. Without committing myself to any particular wording, I think we might conceivably work something out to cover both provisions of the Constitution. I think that should be done and we would be far more safe.

Mr. MEADER. Mr. Chairman, I had only begun my inquiry——

The CHAIRMAN. I am sorry; go ahead.

Mr. MEADER. On equal protection, the constitutionality problem, would it be your philosophy if you were arguing this case before the Supreme Court that a State, by neglecting or omitting to require its licensees to give equal treatment to all to whom they held out their services, was thereby denying equal protection of the law?

Mr. LINDSAY. I don't think that would be the argument because that wouldn't be the case.

Parenthetically, let me say that I am not, that I think that Senator John Sherman Cooper and Senator Dodd made a contribution in their submission of that licensing bill. I myself prefer to use the word "regulated" by the State, or "authorized," as we have here. Licensing to me doesn't quite cover the problem.

In direct answer to your question, the facts in the *Lombard* case just handed down by the Supreme Court, were as follows: The mayor of a town made a statement saying there are going to be no more sit-ins in this town. There was no local ordinance or statute, just the pronouncement by the constituted authorities of the locality. Following that announcement there was a peaceful sit-in in a restaurant. The persons sitting in were asked to move and they refused. So the owner of the restaurant called the police and the sit-ins were forcibly ejected.

The Court there found a sufficient nexus between the 14th amendment and the State and the case was sustained.

The unanswered question, and this is the one constitutional lawyers are now debating among themselves, the unanswered question is, What happens if there is no statement, oral or written, by constituted authorities at all, and a sit-in occurs? Obviously the sit-in is going to be permitted, unless the police are called to throw somebody out, and the question now that the Court would have to decide maybe in the next term is the mere action by the police coming to throw out some sit-ins, otherwise you don't have a case, because it is moot. The citizens have won their point. If the local police come in and throw out sit-ins, is that sufficient nexus? That is the unanswered question.

I think most people feel under the language of the Court in this most recent case that it would be held to be a 14th amendment obligation. Now, that is how the case would come up. It would not come up in a vacuum.

Mr. MEADER. Let me go back to my original question. What reasons are there against utilizing Federal power of the interstate commerce clause to accomplish this end, either your own reasons or those advanced by others?

Mr. LINDSAY. The argument in principle against the interstate commerce clause, as opposed to the 14th amendment, is that the interstate commerce clause has traditionally in this country been used to relieve States of responsibilities, and to break down State lines, whereas the 14th amendment traditionally is used to insist that States and localities live up to their responsibilities. That is what it comes down to, and that is why many of us would place primary and chief emphasis on the 14th amendment, if not sole emphasis, in this area.

The CHAIRMAN. What difference does it make whether you give or withhold——

Mr. LINDSAY. As a practical matter——

The CHAIRMAN. It is a question of whether we have jurisdiction or not, concerning activity which affects or are in the stream of interstate commerce. Should it make any difference if you grant rather than be against something?

Mr. LINDSAY. It makes quite a bit of difference. In H.R. 6720, what we are saying here is that to the extent that 14th amendment obligations in the area of public accommodations exist, and one must turn to the most recent decisions of the Supreme Court for guidance here, we will enable the Federal Government to invoke the 14th amendment protections on behalf of individuals who cannot do it for themselves, either because they are too frightened, or too poor. That is all this bill does.

Mr. McCULLOCH. On the ther hand, doesn't the interstate commerce approach require the proof that an alleged unlawful activity is an activity in interstate commerce?

Mr. LINDSAY. Yes; of course.

Mr. McCULLOCH. The facts of every case must be determined before that law may be applied. Isn't that a fundamental difference?

Mr. LINDSAY. That is quite right.

The CHAIRMAN. You remember when we passed the National Labor Relations Act, we simply spoke of shops, factories, or establishments affected by interstate commerce. Now, the National Labor Relations Board just passed for housekeeping purposes, for expediency, they set floors below which as to numbers or as to volumes of business the act would not apply, but that was not in the statute. That was as I say a bookkeeping proposition for purposes of expediency, but we went very far in the enactment of the statute, itself.

Now, as I see it—forgive me, George, if I trespass on your time—as I see it, it is going to be very difficult unless we put some sort of floor in connection with this interstate commerce clause in the wording of the bill below which as to volume the act would not apply, and above which it would apply, because there are literally millions of small establishments of one sort or another—large and medium size—and for expediency, just as the National Labor Relations Board felt it was expedient to do so, we might have to do something along those lines.

I admit that there is a vice in that because, first, you wouldn't know where to place the limitation. That is a matter of grave importance.

Secondly, if you place it too high, you know that the Negroes only are able to, because of the limitation in their pocketbooks, go into smaller establishments, and those smaller establishments could continue their discriminatory practices, and only the larger establishments would be within the four squares of the law, so I can see real difficulty with it and how are we going to solve that?

Mr. McCULLOCH. Mr. Chairman, will the gentleman yield for one moment?

What the chairman has just said in effect is that under the proposal in H.R. 7152, before there would be a discrimination, using the language in his bill in several places, there must be a discrimination to a substantial degree as it affects interstate commerce. That appears in four places on page 14. And under the 14th amendment approach you would not have a question of degree involved. It is solely a question whether there is discrimination, so that your proposal is all encompasing and is far more far reaching and affects every activity where the interstate commerce approach would affect lesser activities and the higher you have the floor the less it would affect. Is that a correct statement?

Mr. LINDSAY. Well, I would amend that to this extent: In both of these areas you are going to have a lot of litigation to determine where the lines are. Litigation will be necessary to find what is in interstate commerce. In the 14th amendment approach, H.R. 6720, the fact of the matter is that a reading of these cases that I have just referred to will indicate that the Court in each case will have to find a nexus of some kind with the State.

Mr. McCULLOCH. Let me interrupt there. If you take the restaurant case, and if the Court once decides that the law is constitutional as it affects entrance to the restaurant, thereafter you never have the question of quantity or movement in industry.

Mr. LINDSAY. That is right. There is great value in allowing the courts to be a cushion in this matter—in this day with passions as high as they are, this may be wise. The courts can assist greatly. And the fact is that there is going to be just as much court action in the interstate commerce area.

The CHAIRMAN. The only trouble is we already have a court decision, while it is an old one, that says you can do this under the 14th. Those cases involve a hotel and an inn and transportation. It involved three items. It involved an inn and hotel.

Mr. LINDSAY. Again, I don't have any trouble at all with the hotel problem.

The CHAIRMAN. I know, but we have a case staring us in our face. It is a "bone in the throat" of the country in that sense. You feel, I suppose, because of changing conditions and changing philosophies, that the Court probably might reverse that?

Mr. LINDSAY. Well, on hotels, I am not so sure that even the earlier case—I will have to reread that. I am not sure which facilities were involved there.

The CHAIRMAN. It was transportation and hotel. It was one hotel in New York and one in San Francisco, and transportation in Tennessee. But there is another phase of this——

Mr. LINDSAY. George, I am sorry, go ahead.

Mr. MEADER. I recall seeing a draft of a proposed bill in which this problem of interstate commerce was attempted to be solved by saying that the act should not apply to any motel that had 5 rooms, or fewer, any restaurant that had 20 seats or fewer, or any retail establishment that had gross annual sales of, I think, less than $150,000. I believe that was the figure.

Now, apparently that was the thinking originally of the drafters of the legislation on the part of the administration and that approach was apparently abandoned because apparently the administration didn't want to take the onus of saying it was all right for a motel with five rooms to discriminate when it wasn't all right for one with six rooms, and that as I take it from the discussion that just preceded is one of the reasons that you felt it was better to take the equal protection clause route rather than the interstate commerce clause route because somebody had to take the onus of saying, "It is all right to discriminate if you are little enough."

Mr. LINDSAY. If I can just comment on that: It may well be in order to save H.R. 6720 in the courts, and the Court would try to save it, it would have to limit its application but no more severely than the suggestion that is currently being made with respect to the interstate commerce clause by imposing arbitrary cutoffs.

You may come out in the same area in the end, but with less pain, I think, by the 14th amendment approach because you are not subject to the criticism of making arbitrary cutoffs that may have the effect of not doing as much good as you would like.

Mr. MEADER. I think you have given us two reasons now why you favor the equal protection clause route over the interstate commerce.

Mr. LINDSAY. If I can amplify in one of those by personal reference. The chairman mentioned the National Labor Relations Board rules, arbitrary rules of cutoff that the Board established for itself. Before being elected to Congress I recall one of the cases that I had handled involving just this question. It involved the library of a university and the question of whether that library system came under the NLRB, whether there was Federal jurisdiction.

The litigation and amount of testimony and work that we had to go into to find out whether the library came under the arbitrary interstate volume rule was appalling. We had to count every book in the library and find out where it came from, whether it was shipped across State lines, where the printers were located, how many letters were mailed back and forth between this library and other libraries in other parts of the country.

They had a little cafeteria there. We had to worry about whether or not the hotdogs were sent in from New Jersey into New York in order to establish whether or not the NLRB had jurisdiction or not. It took us a year and a half to do all this.

The CHAIRMAN. There is no doubt the simpler way would be the 14th amendment way, but we cannot get rid of this obstacle, this old case of *1883*. That is the trouble. I think you have gotten rid of it to a great degree, but these recent decisions, and that is why I am putting into the record *Lombard* v. *The State of Louisiana*, which has taken that opinion and cut it in half, is what it has done, so at least we are quite sure about a great body of law in this area, and if we did nothing more than just accomplish a result in that area.

Mr. MEADER. I will ask one more question, and then I will yield the floor, if I can do that.

Either route obviously would be an expansion of the power of the Federal Government through a more elastic interpretation of the equal protection clause or the interstate commerce clause.

Now, do you see any greater danger in the stretching of the interstate clause to cover this purpose than you do in stretching the equal protection clause? Are you concerned about this aggrandizement of power to the Federal Government?

Mr. LINDSAY. I am always concerned about Federal power, and I think you have a greater problem in the interstate commerce clause than in the other route.

Mr. MEADER. I mean might this be a precedent for stretching of the interstate commerce clause which could be done in a wholly different field subsequently if we go this far with this use of the interstate commerce clause?

Mr. LINDSAY. Yes, it could be, and in each case you have to measure the degree and extent of the problem that you are trying to solve, against the dangers that you might create by the remedy. That is, of course, a difficult and troublesome task, bu that is our responsibility to do that. The problem in this area is very grave, indeed, and a remedy is called for.

Mr. MEADER. You mentioned three reasons. Are there any more?

Mr. LINDSAY. No. Just let me complete the answer to the question you asked on new Federal powers. I regard part III type of legislation, title III, if you want to call it that, as an enabling act purely. All this does is enable the Government to invoke Bill of Rights pro-

tections or constitutional protections for individuals instead of them doing it on their own behalf. It is purely an individual protection. Most Federal powers, including interstate commerce clause powers, are directed against some individual. The 14th amendment powers are purely designed to surround the individual with certain protections against constituted authority. That is why the 14th amendment has to be tied in to public usages, public rights and responsibilities, not private rights and responsibilities, unless they are tied up with public rights, and I am not fearful—I have never been afraid of part III legislation, which is what we are talking about here, title III, because I don't feel that that is an enhancement of any other Federal power. I feel it is purely an additional means by which the individual can be surrounded by certain protections.

The CHAIRMAN. There is another interesting angle to this. Mr. Justice Harlan in the dissenting opinion in the *Civil Rights* case, raised another interesting argument. He said the 13th amendment does something more than prohibit slavery as an institution, and then he goes on to say that:

> There are burdens and disabilities—

those in the particular case—

> disabilities which constitute badges of slavery and servitude, and that the power to enforce by appropriate legislation the 13th amendment may be exerted by legislation of a direct and primary character; for the eradication, not simply of the institution, but of its badges and incidents, are propositions which ought to be deemed indisputable. They lie at the foundation of the Civil Rights Act of 1866.

In other words, he takes the restrictions under which a Negro couldn't enter a hotel and railroad coach, and so forth, that they were badges of slavery, and therefore the 13th amendment would apply.

Would you say these burdens under which the Negro suffers today with reference to education, voting, and labor, and so forth, are also in a certain way badges of slavery and, therefore, the 13th amendment might apply?

Mr. LINDSAY. Yes.

The CHAIRMAN. That is a very interesting note there. You think it woud apply?

Mr. LINDSAY. Well, again, I think we all understand that the *1883* case, which the chairman has cited, has been an obstacle, but these recent decisions of the Court handed down in May of this year have cut that decision in half. We are talking about legislation that would have to be sustained under that 50 percent. You are not going to lose more than 50 percent, is what I am trying to say.

I think the other 50 percent would be sustained too, but that is the area where lawyers disagree. I hope to have letter opinions that are quite different from the one the chairman read from Columbia University a moment ago, and say just the opposite.

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

The CHAIRMAN. Surely.

Mr. CRAMER. This 50 percent—do you mean by that the number of establishments that might be affected or the thrust of the decision?

Mr. LINDSAY. The thrust of it.

Mr. CRAMER. Meaning it spells out a common law right to use facilities open to the public. That is the 50 percent you are talking about?

Mr. LINDSAY. That is the 50 percent I am talking about, and to understand it you have to read the *Lombard* case in particular, and maybe also the *Peterson* case.

Mr. CRAMER. I think you made a very lucid, fine discussion of the *Lombard* case, but the question still in my mind is the right of a person to use a facility open to the public. How do you get over the hurdle of the 14th amendment, meaning State action or as the 14th amendment says, "nor shall any State deprive any person of life, liberty, or property without due process of law"?

How does the State action fit into that?

Mr. LINDSAY. Well, of course, the State action or subdivision of the State, or persons acting under color of law are involved. I thought I had covered that point in my discussion of how far the Court had gone in this area.

Mr. CRAMER. The area that is left is still stretching the 14th amendment State action, if your bill were enacted—I mean State licensing.

Mr. LINDSAY. Is it State action if the police come into a public restaurant and throw out into the street a group of citizens who were sitting there peacefully? Is that State action?

Mr. CRAMER. Let's say the owner throws them out.

Mr. LINDSAY. You have a different question, and that probably wouldn't be covered.

Mr. CRAMER. That is what I had in mind. Now, could you describe what you mean in section 101 when you say, "Whenever the conduct of a business authorized by a State or local subdivision"? Would you discuss the other bills introduced in the other body that are limited to license? What did you have in mind in addition to that? I assume you include license. In addition to that, what would be included in "authorized"?

Mr. LINDSAY. I rather like the language used in the concurring opinion in the *Lombard* case. Justice Douglas pointed out that the particular restaurant needed a permit from Louisiana to operate, and during the existence of the license the State has "broad powers of visitation and control." Licensing statutes in States vary. Some of them are voluminous. Some of them are quite narrow. But, generally speaking, what you are talking about is the necessary regulation that a State has over any public place, because it is public. A public place assumes certain responsibilities which the government has to look to, the local government has to look to. I am not wedded to the word "licensing." I prefer either "regulate" or "authorize."

I am coming around to the notion we ought to substitute the word "regulation" instead of "authorize" in H.R. 6720.

The CHAIRMAN. Will you yield a minute?

Mr. CRAMER. Certainly, to the chairman.

The CHAIRMAN. That would mean, of course, all corporations would be embraced under the law, wouldn't it?

Mr. LINDSAY. No; you have to read it within the context of the bill.

The CHAIRMAN. What I mean is you speak of licenses and permits.

Mr. LINDSAY. The executive offices or the rooms in a corporation where they do the accounting are not held open to the public where the public is invited to come in. That is quite a different proposition. I come back to my original point that any discussion of 14th amendment obligation is going to be done in the context of the common law,

which imposes an obligation on places that hold themselves out to the public.

The CHAIRMAN. I meant something different. I mean you imply that if there is a license or permit issued by a State or subdivision of a State, any action of the proprietor of that license is an acquiescence under color of law; is that right?

Mr. LINDSAY. No. That is why I am avoiding the use of the word "licenses." It is regulation more than anything. A license can be part of it.

The CHAIRMAN. You go more than a license?

Mr. LINDSAY. Well, the place we are talking about has to be a public place which holds itself out to the public and caters to the public for profit. That element has to be there.

The CHAIRMAN. What do you mean by "authorized," then?

Mr. LINDSAY. There are certain regulatory powers that the State and community have over public facilities—health, police powers—because they are open to the public. If the powers are purely tax powers, this in itself probably will not be sufficient. The regulation I have in mind will be tied in to its public usage.

The CHAIRMAN. Then you say that the authorization in and of itself is a nexus between an action of the establishment and the 14th amendment because it would be under—it is not State action, but it is under color of the law; isn't it?

Mr. LINDSAY. That and the public nature of the place. You have to have both. And in an actual case the circumstances would make some difference. If, for example, the local police came in and evicted some peaceful sit-ins, that would make a difference. Litigation seldom grows out of abstractions.

Mr. CRAMER. Let us assume there is no relationship between the regulating authority of the State, which is the crutch, so to speak, to bring the 14th amendment into play under your theory, and the expulsions, which are made by the owner, himself.

Mr. LINDSAY. Right, there is no ordinance and no police action.

Mr. CRAMER. That is right. There is no relationship between the regulation itself and the expulsion and no city or State or county authority involved. Now, would your approach affect that situation?

Mr. LINDSAY. I don't think so. If you can't establish a relationship, an involvement of some kind by the State or locality, I am not sure that 14th amendment rights would apply.

Mr. CRAMER. What is your view of some of the regulations that might be involved that would bring it within the 14th amendment in a sit-in situation?

Mr. LINDSAY. Here, again, I am not sure you need any specific regulations in the area of the hotel or the motel. I go back to the common law, and again I think the *1883* case would be adjusted if this were squarely presented. In the area of the restaurant, because of the absence of clear statements in the common law, you have a more difficult legal problem, and here the combination of all circumstances would come into play. In essence, what would happen, I think, would be that if the establishment is clearly identified as a public eating place, on Route 40 for example, and which clearly operates under the authority of the State, I believe you would have an application of rights under the 14th amendment.

Mr. McCULLOCH. Would the gentleman yield?

Do you think there would be more of a relationship to the Constitution if the restaurants had a liquor license and the people who may be served are described by age and condition in the use of the products that are served? There are much broader aspects to licensing of certain accommodations than there are of others, are there not?

Mr. LINDSAY. Absolutely.

The CHAIRMAN. This might help your argument.

Mr. CRAMER. I will be glad to yield to the chairman.

The CHAIRMAN. As I understand it, in the city of New York if you want to open any kind of a business you have to make an application for license from the city. That means every place, every public accommodation privately owned comes under the power of the municipal authorities because you have to file an application and the application must be granted, and a fee must be paid.

Am I correct in that?

Mr. LINDSAY. That is right.

Mr. McCULLOCH. Might I comment, your bill is limited to accommodations, amusement, food, or services to the public. It doesn't apply to manufacturing needles, even though that business would be authorized; it is limited to these public accommodations, isn't it?

Mr. LINDSAY. That is correct. The bill doesn't go into all of these other areas you are thinking about.

Here is some language from the Supreme Court, and this is the concurring opinion again of Douglas:

> An innkeeper or common carrier has always been allowed to exclude drunks, criminals, and diseased persons, but only because the public's interest in protecting his and his guests' health and property outweighs its interest in providing accommodations for this small group of travelers. As a general rule, innkeepers and carriers cannot refuse their services on account of race; though the rule developed in this country that they can provide "separate but equal" facilities.

Then he goes on and develops the growth of the law in this regard in modern times, persuading me by the whole opinion—the majority opinion, and the concurring opinion—that the *1883* case is in part overruled already.

Mr. CRAMER. I would be glad to yield to the gentleman now.

Mr. CORMAN. Would you agree that H.R. 6720 would not cover any activity to serve the public if the State ceased to regulate it in any way?

Mr. LINDSAY. In any way at all?

Mr. CORMAN. That is right. The State would not regulate in any way at all.

Mr. LINDSAY. Again I think if you had a factual situation of the State police taking action in a hotel or motel, especially a motel, and ejected the people that came to the door, then I think you would have a 14th amendment application even without regulation.

Mr. CORMAN. Admittedly, but let's remove the policeman. Let's don't concern ourselves with him. Let's just take a hypothetical case that a State decides that it will not in any way regulate or control hotels and motels.

Mr. LINDSAY. It is so hypothetical it is academic.

Mr. CORMAN. Take a hypothetical case where a government decides to abandon——

Mr. LINDSAY. Why don't you take a hypothetical that has a real possibility, which is the small rooming house.

Mr. CORMAN. What I am inquiring is that there would have to be some State regulation authorization, some specific affirmative act directed to those engaged in the motel business or restaurant business or some other such thing before H.R. 6720 would be applicable, other than the question of the action of a policeman in a sit-in.

Mr. LINDSAY. I don't follow you.

Mr. CORMAN. I don't think it is a hypothetical case. There are some jurisdictions or some States in this land that they will repeal their regulatory laws if they can that way retain segregation in public facilities, and it seems to me under H.R. 6720 that that would be a possibility for them to consider.

Mr. LINDSAY. Yes.

Mr. CRAMER. I will yield to counsel on that point.

Mr. COPENHAVER. Is it not also correct that there are certain activities in the public accommodation or public amusement areas which could not be covered under the interstate commerce clause but could only be covered under the 14th amendment clause?

For example, libraries, parks, swimming pools, and it would be almost impossible or totally impossible to get interstate commerce on a park, for example.

Mr. LINDSAY. Correct.

Mr. COPENHAVER. Isn't there also a gap in the interstate commerce approach?

Mr. LINDSAY. Yes.

Mr. CORMAN. You are talking about a private park.

Mr. COPENHAVER. No; a public park, because as Mr. Lindsay pointed out this is also an enabling statute, and even though the Supreme Court ruled a public park cannot be segregated, there are hundreds of them today that continue to be segregated, so you have to have enabling legislation under the 14th amendment also.

Mr. CORMAN. I would like to say briefly I support H.R. 6720 and I hope it is the bill we finally pass, but I do think there is a big gap in it and there is a gap in the place where the problem is most severe. I am afraid we will leave in the places where the segregation is the most vicious a tool which can be used and I think will be used.

Mr. LINDSAY. Well, maybe we can do a little writing.

Mr. CRAMER. Could I follow up the comment of the minority counsel?

In other words, under the interstate commerce clause approach you would automatically exclude these public entertainment facilities that have no connection with interstate commerce, such as public parks and swimming pools, and therefore the Attorney General would not have the power to bring a suit under the interstate commerce clause in those instances, so there is that gap in the interstate commerce approach, is there not?

Mr. LINDSAY. Yes.

Mr. CRAMER. So you could add that to the reasons the gentleman from Michigan listed.

Mr. LINDSAY. Yes.

Mr. CRAMER. In the answer to another question you suggested that your bill is limited to accommodations and amusement and food and so forth. Your further wording is "services to the public"?

Mr. LINDSAY. Yes.

Mr. CRAMER. Doesn't that substantially broaden it so that any business that renders a service to the public would be covered. By a "service" do you mean the selling of groceries, for instance?

Mr. LINDSAY. No; I wouldn't say so.

Mr. CRAMER. You say a grocery would not be included?

Mr. LINDSAY. I don't think so.

Mr. CRAMER. Would somebody that repairs shoes be considered a service?

Mr. LINDSAY. No; I don't think so.

Mr. CRAMER. Could you indicate what your thoughts are as to what you mean by "services"?

Mr. LINDSAY. I think what we are really talking about here, and I think the law is already the strongest on, so that we have the best case, is the area of hotels and motels, amusement centers, theaters, and restaurants. This is what we are talking about.

Mr. CRAMER. Would you be willing to limit it to that?

Mr. LINDSAY. I would, in order to get a bill.

Mr. CRAMER. It appears "services" is undefined, and it could mean a lot of things you may not have intended.

Mr. LINDSAY. I personally would not object if it were limited to hotels, motels, restaurants, and places of amusement. I'm afraid that if we go beyond this we hurt our chances for a bill.

What you are talking about is the corner barbershop and local cobbler. This isn't really what we are talking about in this legislation.

Mr. CRAMER. It was suggested by the Attorney General's testimony that under the administration's interstate commerce approach in title II there is in section 203 a prohibition against denial of or interference to the right of nondiscrimination which states no person whether acting under color of law or otherwise shall attempt to withhold and deny and so forth, the right of a privilege secured by section 202, meaning the interstate commerce protection.

Now my point with the Attorney General that I would like to ask you is, Doesn't this in effect limit any application of the 14th amendment to the interstate commerce description contained in section 202 where substantial effect and so forth are the criteria? In other words, it really adds nothing to the bill.

Mr. LINDSAY. I think the answer has to be "Yes."

Mr. CRAMER. That is right, because only those covered by 202 interstate commerce in the first place would be covered by 203.

Mr. LINDSAY. That is right.

Mr. CRAMER. So any suggestion that is made by the Attorney General or others that the bill introduced covers both approaches is incorrect as the bill is drafted? That has no relationship to whether your proposal should be added or not?

Mr. LINDSAY. That is correct.

Mr. CRAMER. But I think it is misleading to suggest that the bill as proposed covers both approaches. I just want to know whether the gentleman concurs with that opinion.

Mr. LINDSAY. Well, the bill is 99 percent interstate commerce clause and 1 percent 14th amendment. The 14th amendment in the administration bill is kind of thrown in. The point I tried to make is that the 14th amendment ought to be the real thrust of this whole thing, and possibly some additional language could be worked out between clearheaded lawyers on interstate commerce.

Mr. CRAMER. There is some talk about the dollar limitation or number of transients or otherwise, on the interstate commerce proposal of the administration. I recall the dollar volume approach to minimum wage was up and the House voted it down.

Don't you think there would be great difficulty in working out a formula acceptable to the House on a dollar volume basis?

Mr. LINDSAY. As the chairman pointed out, there is real trouble with cutoffs on dollar volume.

Mr. CRAMER. In other words, this is either interstate commerce or it isn't, and a dollar volume approach is an arbitrary way of declaring it to be interstate.

Mr. LINDSAY. That is right, and it will get shot at by both sides. No one is going to be satisfied.

Mr. CRAMER. Thank you.

I want to congratulate the gentleman, incidentally, on his very helpful testimony. He is certainly one of the fine lawyers of the House, and I think he has been very helpful to the committee.

Mr. LINDSAY. Thank you.

The CHAIRMAN. I agree on that, and thank you very much.

At this point the opinions in the matter of *Lombard* v. *Louisiana*, *Peterson* v. *City of Greenville*, and the *1883* opinions will be made a part of the record.

(The opinions referred to are as follows:)

SUPREME COURT OF THE UNITED STATES

No. 58.—October Term, 1962.

Rudolph Lombard et al., Petitioners, *v.* State of Louisiana.	On Writ of Certiorari to the Supreme Court of the State of Louisiana.

[May 20, 1963.]

Mr. Chief Justice Warren delivered the opinion of the Court.

This case presents for review trespass convictions resulting from an attempt by Negroes to be served in a privately owned restaurant customarily patronized only by whites. However, unlike a number of the cases this day decided, no state statute or city ordinance here forbids desegregation of the races in all restaurant facilities. Nevertheless, we conclude that this case is governed by the principles announced in *Peterson* v. *City of Greenville, ante,* p. —, and that the convictions for this reason must be reversed.

Petitioners are three Negroes and one white, college students. On September 17, 1960, at about 10:30 in the morning they entered the McCrory Five and Ten Cent Store in New Orleans, Louisiana. They sat down at a refreshment counter at the back of the store and requested service which was refused. Although no sign so indicated, the management operated the counter on a segregated basis, serving only white patrons. The counter was designed to accommodate 24 persons. Negroes were welcome to shop in other areas of the store. The restaurant manager, believing that the "unusual circumstance" of Negroes sitting at the counter created an "emergency," asked petitioners to leave and, when they did not do so, ordered that the counter be closed. The restaurant man-

ager then contacted the store manager and called the police. He frankly testified that the petitioners did not cause any disturbance, that they were orderly, and that he asked them to leave because they were Negroes. Presumably he asked the white petitioner to leave because he was in the company of Negroes.

A number of police officers, including a captain and major of police, arrived at the store shortly after they were called. Three of the officers had a conference with the store manager. The store manager then went behind the counter, faced petitioners, and in a loud voice asked them to leave. He also testified that the petitioners were merely sitting quietly at the counter throughout these happenings. When petitioners remained seated, the police major spoke to petitioner Goldfinch, and asked him what they were doing there. Mr. Goldfinch replied that petitioners "were going to sit there until they were going to be served." When petitioners still declined to leave, they were arrested by the police, led out of the store, and taken away in a patrol wagon. They were later tried and convicted for violation of the Louisiana criminal mischief statute.[1] This statute, in its application to this case, has all the elements of the usual trespass statute. Each petitioner was sentenced to serve 60 days in the Parish Prison and to pay a fine of $350. In default of

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[1] La. Rev. Stat., 1950 (Cum. Supp. 1960), § 14:59 (6), provides in pertinent part:

"Criminal mischief is the intentional performance of any of the following acts:

. . . . . .

"(6) Taking temporary possession of any part or parts of a place of business, or remaining in a place of business after the person in charge of such business or portion of such business has ordered such person to leave the premises and to desist from the temporary possession of any part or parts of such business."

payment of the fine each is to serve 60 additional days in prison. On appeal to the Supreme Court of Louisiana the judgments of conviction were affirmed. 241 La. 958, 132 So. 2d 860. Because of the substantial federal questions presented, we granted certiorari. 370 U. S. 935.

Prior to this occurrence New Orleans city officials, characterizing conduct such as petitioners were arrested for as "sit-in demonstrations," had determined that such attempts to secure desegregated service, though orderly and possibly inoffensive to local merchants, would not be permitted.

Exactly one week earlier, on September 10, 1960, a like occurrence had taken place in a Woolworth store in the same city. In immediate reaction thereto the Superintendent of Police issued a highly publicized statement which discussed the incident and stated that "We wish to urge the parents of both white and Negro students who participated in today's sit-in demonstration to urge upon these young people that such actions are not in the community interest. . . . [W]e want everyone to fully understand that the police department and its personnel is ready and able to enforce the laws of the city of New Orleans and the state of Louisiana." [2] On September 13,

[2] The full text of the statement reads:

"The regrettable sit-in activity today at the lunch counter of a Canal st. chain store by several young white and Negro persons causes me to issue this statement to the citizens of New Orleans.

"We urge every adult and juvenile to read this statement carefully, completely and calmly.

"First, it is important that all citizens of our community understand that this sit-in demonstration was initiated by a very small group.

"We firmly believe that they do not reflect the sentiments of the great majority of responsible citizens, both white and Negro, who make up our population.

"We believe it is most important that the mature responsible citizens of both races in this city understand that and that they continue

four days before petitioners' arrest, the Mayor of New Orleans issued an unequivocal statement condemning such conduct and demanding its cessation. This statement was also widely publicized; it read in part:

> "I have today directed the Superintendent of Police that no additional sit-in demonstrations . . . will be permitted . . . regardless of the avowed purpose or intent of the participants. . . .
>
> . . . . .
>
> "It is my determination that the community interest, the public safety, and the economic welfare of this city require that such demonstrations cease and that henceforth they be prohibited by the police department." [3]

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the exercise of sound, individual judgment, goodwill and a sense of personal and community responsibility.

"Members of both the white and Negro groups in New Orleans for the most part are aware of the individual's obligation for good conduct—an obligation both to himself and to his community. With the exercise of continued, responsible law-abiding conduct by all persons, we see no reason for any change whatever in the normal, good race-relations that have traditionally existed in New Orleans.

"At the same time we wish to say to every adult and juvenile in this city that the police department intends to maintain peace and order.

"No one should have any concern or question over either the intent or the ability of this department to keep and preserve peace and order.

"As part of its regular operating program, the New Orleans police department is prepared to take prompt and effective action against any person or group who disturbs the peace or creates disorder on public or private property.

"We wish to urge the parents of both white and Negro students who participated in today's sit-in demonstration to urge upon these young people that such actions are not in the community interest.

"Finally, we want everyone to fully understand that the police department and its personnel is ready and able to enforce the laws of the city of New Orleans and the state of Louisiana."

[3] The full text of the Mayor's statements reads:

"I have today directed the superintendent of police that no additional sit-in demonstrations or so-called peaceful picketing outside

Both statements were publicized in the New Orleans Times-Picayune. The Mayor and the Superintendent of Police both testified that, to their knowledge, no eating establishment in New Orleans operated desegregated eating facilities.

Both the restaurant manager and the store manager asked the petitioners to leave. Petitioners were charged with failing to leave at the request of the store manager. There was evidence to indicate that the restaurant manager asked petitioners to leave in obedience to the directive of the city officials. He told them that "I am not allowed to serve you here. . . . We *have* to sell to you

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retail stores by sit-in demonstrators or their sympathizers will be permitted.

"The police department, in my judgment, has handled the initial sit-in demonstration Friday and the follow-up picketing activity Saturday in an efficient and creditable manner. This is in keeping with the oft-announced policy of the New Orleans city government that peace and order in our city will be preserved.

"I have carefully reviewed the reports of these two initial demonstrations by a small group of misguided white and Negro students, or former students. It is my considered opinion that regardless of the avowed purpose or intent of the participants, the effect of such demonstrations is not in the public interest of this community.

"Act 70 of the 1960 Legislative session redefines disturbing the peace to include 'the commission of any act as would foreseeably disturb or alarm the public.'

"Act 70 also provides that persons who seek to prevent prospective customers from entering private premises to transact business shall be guilty of disorderly conduct and disturbing the peace.

"Act 80—obstructing public passages—provides that 'no person shall wilfully obstruct the free, convenient, and normal use of any public sidewalk, street, highway, road, bridge, alley or other passage way or the entrance, corridor or passage of any public building, structure, water craft or ferry by impeding, hindering, stifling, retarding or restraining traffic or passage thereon or therein.'

"It is my determination that the community interest, the public safety, and the economic welfare of this city require that such demonstrations cease and that henceforth they be prohibited by the police department."

at the rear of the store where we have a colored counter." (Emphasis supplied.) And he called the police "[a]s a matter of routine procedure." The petitioners testified that when they did not leave, the restaurant manager whistled and the employees removed the stools, turned off the lights, and put up a sign saying that the counter was closed. One petitioner stated that "it appeared to be a very efficient thing, everyone knew what to do." The store manager conceded that his decision to operate a segregated facility "conform[ed] to state policy and practice" as well as local custom. When asked whether "in the last 30 days to 60 days [he had] entered into any conference with other department store managers here in New Orleans relative to sit-in problems," the store manager stated: "[w]e have spoken of it." The above evidence all tended to indicate that the store officials' actions were coerced by the city. But the evidence of coercion was not fully developed because the trial judge forbade petitioners to ask questions directed to that very issue.

But we need not pursue this inquiry further. A State, or a city, may act as authoritatively through its executive as through its legislative body. See *Ex parte Virginia*, 100 U. S. 339, 347. As we interpret the New Orleans city officials' statements, they here determined that the city would not permit Negroes to seek desegregated service in restaurants. Consequently, the city must be treated exactly as if it had an ordinance prohibiting such conduct. We have just held in *Peterson* v. *City of Greenville*, *ante*, p. ——, that where an ordinance makes it unlawful for owners or managers of restaurants to seat whites and Negroes together, a conviction under the State's criminal processes employed in a way which enforces the discrimination mandated by that ordinance cannot stand. Equally the State cannot achieve the same result by an

official command which has at least as much coercive effect as an ordinance. The official command here was to direct continuance of segregated service in restaurants, and to prohibit any conduct directed toward its discontinuance; it was not restricted solely to preserve the public peace in a nondiscriminatory fashion in a situation where violence was present or imminent by reason of public demonstrations. Therefore here, as in *Peterson,* these convictions, commanded as they were by the voice of the State directing segregated service at the restaurant, cannot stand. *Turner* v. *City of Memphis,* 369 U. S. 350.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 58.—October Term, 1962.

Rudolph Lombard et al., Petitioners, *v.* State of Louisiana.	On Writ of Certiorari to the Supreme Court of the State of Louisiana.

[May 20, 1963.]

Mr. Justice Douglas, concurring.

While I join the opinion of the Court, I have concluded it necessary to state with more particularity why Louisiana has become involved to a "significant extent" (*Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 722) in denying equal protection of the laws to petitioners.

I.

The court below based its affirmance of these convictions on the ground that the decision to segregate this restaurant was a private choice, uninfluenced by the officers of the State. *State* v. *Goldfinch*, 241 La. 958, 132 So. 2d 860. If this were an intrusion of a man's home or yard or farm or garden, the property owner could seek and obtain the aid of the State against the intruder. For the Bill of Rights, as applied to the States through the Due Process Clause of the Fourteenth Amendment, casts its weight on the side of the privacy of homes. The Third Amendment with its ban on the quartering of soldiers in private homes radiates that philosophy. The Fourth Amendment, while concerned with official invasions of privacy through searches and seizures, is eloquent testimony of the sanctity of private premises. For even when the police enter private precincts 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.

But a restaurant, like the other departments of this retail store where Negroes were served, though private property within the protection of the Fifth Amendment, has no aura of constitutionally protected privacy about it. Access by the public is the very reason for its existence.

> "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it." *Marsh* v. *Alabama,* 326 U. S. 501, 506.

The line between a private business and a public one has been long and hotly contested. *New State Ice Co.* v. *Liebmann,* 285 U. S. 262, is one of the latest cases in a long chain. The Court, over the dissent of Mr. Justice Brandeis and Mr. Justice Stone, held unconstitutional an Oklahoma statute requiring those manufacturing ice for sale and distribution to obtain a license from the State. Mr. Justice Brandeis' dissent was in the tradition of an ancient doctrine perhaps best illustrated [1] by *German Alliance Ins. Co.* v. *Kansas,* 233 U. S. 389, which upheld a Kansas statute that regulated fire insurance rates. Mr. Justice McKenna, writing for the Court, said, "It is the business that is the fundamental thing; property is but its instrument, the means of rendering the service which has become a public interest." *Id.,* 408. Cf. *Ferguson* v. *Skrupa,* 372 U. S. 726.

Some of the cases reflect creative attempts by judges to make innkeepers, common carriers, and the like per-

[1] See Hamilton, Affectation with Public Interest, 39 Yale L. J. 1089, 1098–1099.

form the public function of taking care of all travelers.[2] Others involve the power of the legislature to impose various kinds of restraints or conditions on business. As a result of the conjunction of various forces, judicial and legislative, it came to pass that "A large province of industrial activity is under the joint control of the market and the state." [3]

The present case would be on all fours with the earlier ones holding that a business may be regulated when it renders a service which "has become a public interest" (*German Alliance Ins. Co.* v. *Kansas, supra,* 408) if Louisiana had declared, as do some States,[4] that a business may not refuse service to a customer on account of race and the proprietor of the restaurant were charged with violating this statute. We should not await legislative action before declaring that state courts cannot enforce this type of segregation. Common-law judges fashioned the rules governing innkeepers and carriers.[5]

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[2] See Jeremy, The Law of Carriers, Innkeepers, etc. (1815), 4–5, 144–147; Tidswell, The Innkeeper's Legal Guide (1864), c. 1; Schouler, Law of Bailments (2d ed. 1887), §§ 274–329, 330–341; Beale, Innkeepers and Hotels (1906), *passim;* 1 Wyman, Public Service Corporations (1911), §§ 1–5; Burdick, The Origin of the Peculiar Duties of Public Service Companies, 11 Col. L. Rev. 514, 616; Arterburn, The Origin and First Test of Public Callings, 75 U. of Pa. L. Rev. 411.

[3] Hamilton, *supra,* note 1, p. 1110.

[4] See, *e. g.,* McKinney's Cons. N. Y. Laws, Vol. 8, Art. 4; *id.,* Vol. 18, Art. 15; N. J. Stat. Ann., Tit. 10; *id.,* Tit. 18, c. 25; Cal. Civ. Code § 51. Cf. Cal. Health and Safety Code, §§ 35700 (1962 Supp.) *et seq.; Burks* v. *Poppy Constr. Co.,* 20 Cal. Rptr. 609; *Martin* v. *New York,* 201 N. Y. S. 2d 111. See generally, Greenberg, Race Relations and American Law 101–114 (1959); 7 St. Louis U. L. J. 88 (1962).

[5] See Schouler, *op. cit., supra,* note 2, §§ 274, 335; Wyman, *op. cit., supra,* note 2, § 1; Arterburn, *supra,* note 2.

As stated by Holt, C. J., in *Lane* v. *Cotton,* 12 Mod. 472, 484 (1701):

> "[W]herever any Subject takes upon himself a Publick Trust for the Benefit of the rest of his fellow Subjects, he is *eo ipso* bound to serve the Subject in all the Things that are within the Reach and Comprehension of such an Office, under Pain of an Action against him. . . . If on the road a Shoe fall off my Horse, and I come to a Smith to have one put on, and the Smith refuse to do it, an Action will lie against him, because he has made Profession of a Trade which is for the Publick Good, and has thereby exposed and vested an interest of himself in all the King's Subjects that will employ him in the Way of his Trade. If an Inn-keeper refuse to entertain a Guest, when his House is not full, an Action will lie against him; and so against a Carrier, if his Horses be not loaded, and he refuse to take a Packet proper to be sent by a Carrier." [6]

Judges who fashioned those rules had no written constitution as a guide. There were, to be sure, criminal statutes that regulated the common callings.[7] But the civil remedies were judge-made. We live under a constitution that proclaims equal protection of the laws. That standard is our guide. See *Griffin* v. *Illinois,* 351 U. S. 12; *Douglas* v. *California,* 372 U. S. 353. And under that standard business serving the public cannot seek the aid

[6] See also, *White's Case* (1558), 2 Dyer 158b; *Warbrooke* v. *Griffin* (1609), 2 Brownl. 254; *Bennett* v. *Mellor* (1793), 5 Term Rep. 273; *Thompson* v. *Lacy* (1820), 3 B. & Ald. 283.

For criminal prosecutions see, *e. g., Rex.* v. *Ivens* (1835), 7 C. & P. 213; *Regina* v. *Sprague* (1899), 63 J. P. 233.

For a collection of the English cases see 21 Halsbury's Laws of England (3d ed. 1957) 441 *et seq.;* 10 Mews Dig. Eng. Cas. L. to 1924, pp. 1463 *et seq.*

[7] Arterburn, *supra,* note 2.

of the state police or the state courts or the state legislatures to foist racial segregation in public places under its ownership and control. The constitutional protection extends only to "state" action, not to personal action. But we have "state" action here, wholly apart from the activity of the Mayor and police, for Louisiana has interceded with its judiciary to put criminal sanctions behind racial discrimination in public places. She may not do so consistently with the Equal Protection Clause of the Fourteenth Amendment.

The criminal penalty (60 days in jail and a $350 fine) was imposed on these petitioners by Louisiana's judiciary. That action of the judiciary was state action. Such are the holdings in *Shelley* v. *Kraemer*, 334 U. S. 1, and *Barrows* v. *Jackson*, 346 U. S. 249.[8] Those cases involved restrictive covenants. *Shelley* v. *Kraemer* was a civil suit to enjoin violation of a restrictive covenant by a Negro purchaser. *Barrows* v. *Jackson* was a suit to collect damages for violating a restrictive covenant by selling residential property to a Negro. Those cases, like the present one, were "property" cases. In those cases, as in the present one, the line was drawn at dealing with Negroes. There, as here, no state legislature was involved, only the state judiciary. The Court said in *Shelley* v. *Kraemer:*

> "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court." 334 U. S., at 14.

The list of instances where action of the state judiciary is state action within the meaning of the Fourteenth Amendment is a long one. Many were noted in *Shelley*

[8] See also, *Abstract Investment Co.* v. *Hutchinson*, 22 Cal. Reptr. 309, 317; 10 U. C. L. A. L. Rev. 401.

v. *Kraemer*, 334 U. S., pp. 14–18. Most state convictions in violation of the First, Fourth, or Fifth Amendment, as incorporated in the Due Process Clause of the Fourteenth Amendment, have indeed implicated not the state legislature but the state judiciary, or the state judiciary and the state prosecutor and the state police. *Shelley* v. *Kraemer*—and later *Barrows* v. *Jackson*—held that the state judiciary, acting alone to enforce private discrimination against Negroes who desired to buy private property in residential areas, violated the Equal Protection Clause of the Fourteenth Amendment.

Places of public accommodation such as retail stores, restaurants, and the like render a "service which has become a public interest" (*German Alliance Ins. Co.* v. *Kansas, supra*, 408) in the manner of the innkeepers and common carriers of old. The substance of the old common-law rules has no direct bearing on the decision required in this case. Restaurateurs and owners of other places of amusement and resort have never been subjected to the same duties as innkeepers and common carriers.[9] But, what is important is that this whole body of law was a response to the felt needs of the times that spawned it.[10] In our time the interdependence of people has greatly increased; the days of *laissez faire* have largely disappeared; men are more and more dependent on their neighbors for services as well as for housing and the other necessities of life. By enforcing this criminal mischief statute, invoked in the manner now before us, the Louisiana courts are denying some people access to the mainstream of our highly interdependent life solely

[9] See *Marrone* v. *Washington Jockey Club*, 227 U. S. 633; *Madden* v. *Queens County Jockey Club*, 296 N. Y. 249; *Alpaugh* v. *Wolverton*, 36 S. E. 2d 906; *Nance* v. *Mayflower Tavern*, 150 P. 2d 773.

[10] Wyman, *op. cit., supra*, note 2, §§ 1, 2–16, 330; Schouler, *op. cit., supra*, note 2, §§ 274, 335; Beale, *op. cit., supra*, note 2, c. I; Arterburn, *supra*, note 2, 420–426.

because of their race. Yet, "If there is any one purpose of the Fourteenth Amendment that is wholly outside the realm of doubt, it is that the Amendment was designed to bar States from denying to some groups, on account of their race or color, any rights, privileges, and opportunities accorded to other groups." *Oyama* v. *California*, 332 U. S. 633, 649 (concurring opinion).

An innkeeper or common carrier has always been allowed to exclude drunks, criminals and diseased persons, but only because the public's interest in protecting his and his guests' health and property outweighs its interest in providing accommodations for this small group of travelers.[11] As a general rule, innkeepers and carriers cannot refuse their services on account of race; though the rule developed in this country that they can provide "separate but equal" facilities.[12] And for a period of our history even this court upheld state laws giving sanction to such a rule. Compare *Plessy* v. *Ferguson*, 163 U. S. 537, with *Gayle* v. *Browder*, 352 U. S. 903, affirming, 142 F. Supp. 707. But surely *Shelley* v. *Kraemer*, *supra*, and *Barrows* v. *Jackson*, *supra*, show that the day has passed when an innkeeper, carrier, housing developer, or retailer can draw a racial line, refuse service to some on account of color, and obtain the aid of a State in enforcing his personal bias by sending outlawed customers to prison or exacting fines from them.

Business, such as this restaurant, is still private property. Yet there is hardly any private enterprise that does not feel the pinch of some public regulation—from price control, to health and fire inspection, to zoning, to safety measures, to minimum wages and working con-

[11] Wyman, *op. cit.*, *supra*, note 2, c. 18; Schouler, *op. cit.*, *supra*, note 2, §§ 320, 322.

[12] Compare, *e. g.*, *Constantine* v. *Imperial Hotels* (1944), 1 K. B. 693; Wyman, *op. cit.*, *supra*, note 2, §§ 361, 565, 566, with *State* v. *Steele*, 106 N. C. 766, 782, 11 S. E. 478, 484.

ditions, to unemployment insurance. When the doors of a business are open to the public, they must be open to all regardless of race if *apartheid* is not to become engrained in our public places. It cannot by reason of the Equal Protection Clause become so engrained with the aid of state courts, state legislatures, or state police.[13]

II.

There is even greater reason to bar a State through its judiciary from throwing its weight on the side of racial discrimination in the present case, because we deal here with a place of public accommodation under license from the State. This is the idea I expressed in *Garner* v. *Louisiana, supra,* where another owner of a restaurant refused service to a customer because he was a Negro. That view is not novel; it stems from the dissent of the first Mr. Justice Harlan in the *Civil Rights Cases,* 109 U. S. 3, 58–59:

> "In every material sense applicable to the practical enforcement of the Fourteenth Amendment, railroad corporations, keepers of inns, and managers of places of public amusement are agents or instrumentalities of the State, because they are charged with duties to the public, and are amenable, in respect of their duties and functions, to governmental regulation. It seems to me that, within the principle settled in *Ex parte Virginia,* a denial, by these instrumentalities of the State, to the citizen, because of his race, of that equality of civil rights secured to him by law, is a denial by the State, within the meaning of the Fourteenth Amendment. If it be not, then that race

[13] See generally, Pollit, Dime Store Demonstrations: Events and Legal Problems of First Sixty Days, 1960 Duke L. J. 315, 350–365; Henkin, *Shelley* v. *Kraemer:* Notes for a Revised Opinion, 110 U. of Pa. L. Rev. 473.

is left, in respect of the civil rights in question, practically at the mercy of corporations and individuals wielding power under the States."

The nexus between the State and the private enterprise may be control, as in the case of a state agency. *Pennsylvania* v. *Board of Trusts,* 353 U. S. 230. Or the nexus may be one of numerous other devices. "State support of segregated schools through any arrangement, management, funds, or property cannot be squared" with the Equal Protection Clause. *Cooper* v. *Aaron,* 358 U. S. 1, 19. Cf. *Ghiotto* v. *Hampton,* 304 F. 2d 320. A state-assisted enterprise serving the public does not escape its constitutional duty to serve all customers irrespective of race, even though its actual operation is in the hands of a lessee. *Burton* v. *Wilmington Parking Authority,* 365 U. S. 715. Cf. *Boynton* v. *Virginia,* 364 U. S. 454. State licensing and surveillance of a business serving the public also brings its service into the public domain. This restaurant needs a permit from Louisiana to operate; [14] and during the existence of the license the State has broad powers of visitation and control.[15] This restaurant is

[14] Under the provisions of Article 7.02 of the Sanitary Code, promulgated by the State Board of Health pursuant to La. Rev. Stat. § 40:11, no person shall operate a public eating place of any kind in the State of Louisiana unless he has been issued a permit to operate by the local health officer; and permits shall be issued only to persons whose establishments comply with the requirements of the Sanitary Code.

[15] Under La. Rev. Stat. § 40:11, 12, 15, 16, 52, and 69, state and local health officials closely police the provisions of the Sanitary Code. They may "enter, examine, and inspect all grounds, structures, public buildings, and public places in execution of a warrant issued in accordance with the constitution and laws of Louisiana," and "arrest . . . all persons violating any rule or regulation of the board or any article or provision of the sanitary code . . . ." Penalties are provided for code violations. See also New Orleans City Code, 1956, §§ 29–55, 56, and 58; Home Rule Charter of the City of New Orleans, § 4–1202 (2).

thus an instrumentality of the State since the State charges it with duties to the public and supervises its performance. The State's interest in and activity with regard to its restaurants extends far beyond any mere income-producing licensing requirement.

There is no constitutional way, as I see it, in which a State can license and supervise a business serving the public and endow it with the authority to manage that business on the basis of *apartheid* which is foreign to our Constitution.

SUPREME COURT OF THE UNITED STATES

No. 71.—October Term, 1962.

James Richard Peterson, et al., Petitioners, *v.* City of Greenville.	On Writ of Certiorari to the Supreme Court of South Carolina.

[May 20, 1963.]

Mr. Chief Justice Warren delivered the opinion of the Court.

The petitioners were convicted in the Recorder's Court of the City of Greenville, South Carolina, for violating the trespass statute of that State.* Each was sentenced to pay a fine of $100 or in lieu thereof to serve 30 days in jail. An appeal to the Greenville County Court was dismissed, and the Supreme Court of South Carolina affirmed. 239 S. C. 298, 122 S. E. 2d 826. We granted certiorari to consider the substantial federal questions presented by the record. 370 U. S. 935.

The 10 petitioners are Negro boys and girls who, on August 9, 1960, entered the S. H. Kress store in Greenville and seated themselves at the lunch counter for the

*S. C. Code, 1952 (Cum. Supp. 1960), § 16-388:

"Entering premises after warned not to do so or failing to leave after requested.

"Any person:

"(1) Who without legal cause or good excuse enters into the dwelling house, place of business or on the premises of another person, after having been warned, within six months preceding, not to do so or

"(2) Who, having entered into the dwelling house, place of business or on the premises of another person without having been warned within six months not to do so, and fails and refuses, without good cause or excuse, to leave immediately upon being ordered or requested to do so by the person in possession, or his agent or representative,

Shall, on conviction, be fined not more than one hundred dollars, or be imprisoned for not more than thirty days."

purpose, as they testified, of being served. When the Kress manager observed the petitioners sitting at the counter, he "had one of [his] . . . employees call the Police Department and turn off the lights and state the lunch counter was closed." A captain of police and two other officers responded by proceeding to the store in a patrol car where they were met by other policemen and two state agents who had preceded them there. In the presence of the police and the state agents, the manager "announced that the lunch counter was being closed and would everyone leave" the area. The petitioners, who had been sitting at the counter for five minutes, remained seated and were promptly arrested. The boys were searched, and both boys and girls were taken to police headquarters.

The manager of the store did not request the police to arrest petitioners; he asked them to leave because integrated service was "contrary to local customs" of segregation at lunch counters and in violation of the following Greenville City ordinance requiring separation of the races in restaurants:

> "It shall be unlawful for any person owning, managing or controlling any hotel, restaurant, cafe, eating house, boarding house or similar establishment to furnish meals to white persons and colored persons in the same room, or at the same table, or at the same counter; provided, however, that meals may be served to white persons and colored persons in the same room where separate facilities are furnished. Separate facilities shall be interpreted to mean:
>
> "(a) Separate eating utensils and separate dishes for the serving of food, all of which shall be distinctly marked by some appropriate color scheme or otherwise;

"(b) Separate tables, counters or booths;

"(c) A distance of at least thirty-five feet shall be maintained between the area where white and colored persons are served;

"(d) The area referred to in subsection (c) above shall not be vacant but shall be occupied by the usual display counters and merchandise found in a business concern of a similar nature;

"(e) A separate facility shall be maintained and used for the cleaning of eating utensils and dishes furnished the two races." Code of Greenville, 1953, as amended in 1958, § 31–8.

The manager and the police conceded that the petitioners were clean, well dressed, unoffensive in conduct, and that they sat quietly at the counter which was designed to accommodate 59 persons. The manager described his establishment as a national chain store of 15 or 20 departments, selling over 10,000 items. He stated that the general public was invited to do business at the store and that the patronage of Negroes was solicited in all departments of the store other than the lunch counter.

Petitioners maintain that South Carolina has denied them rights of free speech, both because their activity was protected by the First and Fourteenth Amendments and because the trespass statute did not require a showing that the Kress manager gave them notice of his authority when he asked them to leave. Petitioners also assert that they have been deprived of the equal protection of the laws secured to them against state action by the Fourteenth Amendment. We need decide only the last of the questions thus raised.

The evidence in this case establishes beyond doubt that the Kress management's decision to exclude petitioners from the lunch counter was made because they were Negroes. It cannot be disputed that under our decisions

PETERSON *v.* CITY OF GREENVILLE.

"Private conduct abridging individual rights does no violence to the Equal Protection Clause unless to some significant extent the state in any of its manifestations has been found to have become involved in it." *Burton* v. *Wilmington Parking Authority,* 365 U. S. 715, 722; *Turner* v. *City of Memphis,* 369 U. S. 350.

It cannot be denied that here the City of Greenville, an agency of the State, has provided by its ordinance that the decision as to whether a restaurant facility is to be operated on a desegregated basis is to be reserved to it. When the State has commanded a particular result it has saved to itself the power to determine that result and thereby "to a significant extent" has "become involved" in, and in fact, has removed that decision from the sphere of private choice. It has thus effectively determined that a person owning, managing or controlling an eating place is left with no choice of his own but must segregate his white and Negro patrons. The Kress management, in deciding to exclude Negroes, did precisely what the city law required.

Consequently these convictions cannot stand, even assuming, as respondent contends, that the manager would have acted as he did independently of the existence of the ordinance. The State will not be heard to make this contention in support of the convictions. For the convictions had the effect, which the State cannot deny, of enforcing the ordinance passed by the City of Greenville, the agency of the State. When a state agency passes a law compelling persons to discriminate against other persons because of race, and the State's criminal processes are employed in a way which enforces the discrimination mandated by that law, such a palpable violation of the Fourteenth Amendment cannot be saved by attempting to separate the mental urges of the discriminators.

Reversed.

SUPREME COURT OF THE UNITED STATES

Nos. 71, 58, 66, 11 AND 67.—OCTOBER TERM, 1962.

71	James Richard Peterson, et al., Petitioners, *v.* City of Greenville.	On Writ of Certiorari to the Supreme Court of South Carolina.
58	Rudolph Lombard et al., Petitioners, *v.* State of Louisiana.	On Writ of Certiorari to the Supreme Court of the State of Louisiana.
66	James Gober et al., Petitioners, *v.* City of Birmingham.	On Writ of Certiorari to the Court of Appeals of the State of Alabama.
11	John Thomas Avent et al., Petitioners, *v.* State of North Carolina.	On Writ of Certiorari to the Supreme Court of the State of North Carolina.
67	F. L. Shuttlesworth and C. Billups, Petitioners, *v.* City of Birmingham.	On Writ of Certiorari to the Court of Appeals of the State of Alabama.

[May 20, 1963.]

MR. JUSTICE HARLAN, concurring in the result in No. 71, and dissenting in whole or in part in Nos. 58, 66, 11, and 67.

These five racial discrimination cases, and No. 68, *Wright* v. *Georgia* (*ante*, p. ——) in which I join the opinion of the Court, were argued together. Four of them arise out of "sit-in" demonstrations in the South and in-

volve convictions of Negro students[1] for violations of criminal trespass laws, or similar statutes, in South Carolina (*Peterson, ante,* p. ——), Louisiana (*Lombard, ante,* p. ——), Alabama (*Gober, ante,* p. ——), and North Carolina (*Avent, ante,* p. ——) respectively. Each of these convictions rests on state court findings, which in my opinion are supported by evidence, that the several petitioners had refused to move from "white" lunch counters situated on the premises of privately owned department stores after having been duly requested to do so by the management. The other case involves the conviction of two Negro ministers for inciting, aiding, or abetting criminal trespasses in Alabama (*Shuttlesworth, ante,* p. ——).

In deciding these cases the Court does not question the long-established rule that the Fourteenth Amendment reaches only state action. *Civil Rights Cases,* 109 U. S. 3. And it does not suggest that such action, denying equal protection, may be found in the mere enforcement of trespass laws in relation to private business establishments from which the management, of its own free will, has chosen to exclude persons of the Negro race.[2] Judicial enforcement is of course state action, but this is not the end of the inquiry. The ultimate substantive question is whether there has been "State action of a particular character" (*Civil Rights Cases, supra,* at 11)—whether the character of the State's involvement in an arbitrary discrimination is such that it should be held *responsible* for the discrimination.

This limitation on the scope of the prohibitions of the Fourteenth Amendment serves several vital functions in

[1] Except for one white student who participated in a demonstration. *Lombard, ante,* p. ——.

[2] It is not nor could it well be suggested that general admission of Negroes to the stores prevented the management from excluding them from service at the white lunch counters.

our system. Underlying the cases involving an alleged denial of equal protection by ostensibly private action is a clash of competing 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 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.

My differences with the Court relate primarily to its treatment of the state action issue and to the broad strides with which it has proceeded in setting aside the convictions in all of these cases. In my opinion the cases call for discrete treatment and results.

I.

The Peterson Case (No. 71).

In this case, involving the S. H. Kress store in Greenville, South Carolina, the Court finds state action in violation of the Fourteenth Amendment in the circumstance that Greenville still has on its books an ordinance (*ante,* p. ——) requiring segregated facilities for colored and white persons in public eating places. It holds that the *mere existence* of the ordinance rendered the State's enforcement of its trespass laws unconstitutional, quite irrespective of whether the Kress decision to exclude these petitioners from the white lunch counter was actually influenced by the ordinance. The rationale is that the

State, having compelled restaurateurs to segregate their establishments through this city ordinance, cannot be heard to say, in enforcing its trespass statute, that Kress' decision to segregate was in fact but the product of its own untramelled choice. This is said to follow because the ordinance removes the operation of segregated or desegregated eating facilities "from the sphere of private choice" and because "the State's criminal processes are employed in a way which enforces" the ordinance. *Ante*, p. —.

This is an alluring but, in my view, a fallacious proposition. Clearly Kress might have preferred for reasons entirely of its own not to serve meals to Negroes along with whites, and the dispositive question on the issue of state action thus becomes whether such was the case, or whether the ordinance played some part in the Kress decision to segregate. That is a question of fact.

Preliminarily, I do not understand the Court to suggest that the ordinance's removal of the right to operate a segregated restaurant "from the sphere of private choice" renders the private restaurant owner the agent of the State, such that his operation of a segregated facility *ipso facto* becomes the act of the State. Such a theory might well carry the consequence that a private person so operating his restaurant would be subject to a Civil Rights Act suit on the part of an excluded Negro for unconstitutional action taken under color of state law (cf. *Monroe* v. *Pape*, 365 U. S. 167)—an incongruous result which I would be loath to infer that the Court intends. Kress is of course a purely private enterprise. It is in no sense "the repository of state power," *Home Tel. & Tel. Co.* v. *Los Angeles*, 227 U. S. 278, 286, and this segregation ordinance no more makes Kress the agent or delegate of the State than would any other prohibitory measure affecting the conduct of its business. The Court does not intimate anything to the contrary.

The majority's approach to the state action issue is in my opinion quite untenable. Although the right of a private restaurateur to operate, if he pleases, on a segregated basis is ostensibly left untouched, the Court in truth effectually deprives him of that right in any State where a law like this Greenville ordinance continues to exist. For a choice that can be enforced only by resort to "self-help" has certainly become a greatly diluted right, if it has not indeed been totally destroyed.

An individual's right to restrict the use of his property, however unregenerate a particular exercise of that right may be thought, lies beyond the reach of the Fourteenth Amendment. The dilution or virtual elimination of that right cannot well be justified either on the premise that it will hasten formal repeal of outworn segregation laws or on the ground that it will facilitate proof of state action in cases of this kind. Those laws have already found their just constitutional deserts in the decisions of this Court, and in many communities in which racial discrimination is no longer a universal or widespread practice such laws may have a purely formal existence and may indeed be totally unknown. Of course this is not to say that their existence on the books may never play a significant and even decisive role in private decision-making. But the question in each case, if the right of the individual to make his own decisions is to remain viable, must be: was the discriminatory exclusion in fact influenced by the law? Cf. *Truax* v. *Raich,* 239 U. S. 33.[3] The inexorable rule

[3] In *Truax* the Court, in finding state action in violation of the Fourteenth Amendment, relied on the evidence showing that an alien employee had been discharged by his employer solely because of the latter's fear of criminal penalties for noncompliance with a state statute prohibiting the employment of more than a certain number of aliens. The Court stressed the importance of "the freedom of the employer to exercise his judgment without illegal interference or *compulsion* . . . ." *Id.,* at 38. (Emphasis added.)

action rule a step further. Neither Louisiana nor New Orleans has any statute or ordinance requiring segregated eating facilities. In this instance state action is found in the public announcements of the Superintendent of Police and the Mayor of New Orleans, set forth in the Court's opinion (*ante*, p. ——), which were issued shortly after "sit-in" demonstrations had first begun in the city. Treating these announcements as the equivalent of a city ordinance, the Court holds that they served to make the State's employment of its "trespass" statute against these petitioners unconstitutional, again without regard to whether or not their exclusion by McCrory was in fact influenced in any way by these announcements.

In addition to what has already been said in criticism of the *Peterson* ruling, there are two further factors that make the Court's theory even more untenable in this case.

1. The announcements of the Police Superintendent and the Mayor cannot well be compared with a city ordinance commanding segregated eating facilities. Neither announcement was addressed to restaurateurs in particular, but to the citizenry generally. They did not press private proprietors to segregate eating facilities; rather they in effect simply urged Negroes and whites not to insist on nonsegregated service in places where segregated service obtained. In short, so far as this record shows, had the McCrory store chosen to serve these petitioners along with whites it could have done so free of any sanctions or official constraint.

2. The Court seems to take the two announcements as an attempt on the part of the Police Superintendent and the Mayor to perpetuate segregation in New Orleans. I think they are more properly read as an effort by these two officials to preserve the peace in what they might reasonably have regarded as a highly charged atmosphere. That seems to me the fair tenor of their exhortations.

If there were nothing more to this case, I would vote to affirm these convictions for want of a sufficient showing of state action denying equal protection. There is, however, some evidence in the record which might indicate advance collaboration between the police and McCrory with respect to these episodes. The trial judge refused to permit defense counsel to pursue inquiry along this line, although counsel had made it perfectly clear that his purpose was to establish official participation in the exclusion of his clients by the McCrory store. I think the shutting off of this line of inquiry was prejudicial error.

For this reason I would vacate the judgment of the state court and remand the case for a new trial so that the issue of state action may be properly explored.

III.

The Gober Case (No. 66).

This case concerns "sit-ins" at five different department stores in Birmingham, Alabama. Birmingham has an ordinance requiring segregated facilities in public eating places.[4]

It is first necessary to consider whether this ordinance is properly before us, a question not dealt with in this Court's *per curiam* reversal. The Alabama Court of Appeals refused to consider the effect of the ordinance on petitioners' claim of denial of equal protection, stating

[4] General City Code of Birmingham (1944), § 369: "It shall be unlawful to conduct a restaurant or other place for the serving of food in the city, at which white and colored people are served in the same room, unless such white and colored persons are effectually separated by a solid partition extending from the floor upward to a distance of seven feet or higher, and unless a separate entrance from the street is provided for each compartment."

that "there is no question presented in the record before us, by the pleading, of any statute or ordinance requiring the separation of the races in restaurants. The prosecution was for a criminal trespass on private property." 133 So. 2d, at 701.

This, on the one hand, could be taken to mean that the Birmingham ordinance was not properly before the Court of Appeals because it had not been specially pleaded as a defense. We would then be faced with the necessity of deciding whether such a state ground is adequate to preclude our consideration of the significance of the ordinance. In support of the view that such a ground exists respondent refers us to Alabama Code (1958), Tit. 7, § 225, requiring matters of defense to be pleaded specially in a civil case,[5] and to the statement of the Court of Appeals that "[t]his being an appeal from a conviction for violating a city ordinance, it is quasi criminal in nature, and subject to rules governing civil appeals," 133 So. 2d, at 699.

On the other hand, in view of the last sentence in the Court of Appeals' statement—"The prosecution was for a criminal trespass on private property"—it may be that the court simply shared the apparent misapprehension of the trial judge as to the materiality of the segregation ordinance in a prosecution laid only under the trespass statute.[6] This view of the matter is lent some color by the circumstance that, although Alabama Code (1958), Tit. 7, § 429 (1), rendered the ordinance judicially noticeable, the Court of Appeals' opinion does not address itself at all to the question whether the ordinance, bearing as it did on the vital issue of state action in this trespass prose-

[5] "The defendant may plead more pleas than one without unnecessary repetition; and, if he does not rely solely on a denial of the plaintiff's cause of action, must plead specially the matter of defense."

[6] See the printed record in this Court, pp. 24–26.

cution, was in truth a "matter of defense" within the meaning of § 225.[7]

In this muddy posture of things it is impossible to say whether or not these judgments are supportable on an adequate and independent state ground. Because of this, and in light of the views I have expressed in the *Peterson* case (*supra*, pp. 3–6), two things are called for. *First*, the parties should be afforded an opportunity to obtain from the Alabama Court of Appeals a clarification of its procedural holding respecting the Birmingham segregation ordinance. If the Court of Appeals holds that it is procedurally foreclosed from considering the ordinance, the adequacy of such a state ground would then of course be a question for this Court. *Second*, if the Court of Appeals holds that it is not foreclosed from considering the ordinance, there should then be a new trial so that the bearing of the ordinance on the issue of state action may be fully explored. To these ends I would vacate the judgments below and remand the case to the Alabama Court of Appeals.

IV.

The Avent Case (No. 11).

In this case it turns out that the City of Durham, North Carolina, where these "sit-ins" took place, also had a restaurant segregation ordinance.[8] In affirming

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[7] In this connection it is not at all clear that the state rules relating to civil actions apply to *all* phases of this prosecution. The Court of Appeals referred only to their application to *appeals* in this type of case, and it may be that the special pleading rule of § 225 does not apply in a trespass prosecution. The Alabama cases cited by the Court of Appeals, see 133 So. 2d, at 699, shed no light on this question, and respondent has not referred to any other relevant authority.

[8] Code of Durham (1947), c. 13, § 42: "In all licensed restaurants, public eating places and 'weenie shops' where persons of the white

these convictions the North Carolina Supreme Court evidently proceeded, however, on the erroneous assumption that no such ordinance existed. 118 S. E. 2d 47.

In these circumstances I agree with the Court that the case should be returned to the State Supreme Court for further consideration. See *Patterson* v. *Alabama,* 294 U. S. 600. But disagreeing as I do with the premises on which the case will go back under the majority's opinion in *Peterson,* I must to that extent dissent from the opinion and judgment of the Court.

V.

The Shuttlesworth Case (No. 67).

This last of these cases concerns the Alabama convictions of two Negro clergymen, Shuttlesworth and Billups, for inciting, aiding, or abetting alleged violations of the criminal trespass ordinance of the City of Birmingham.

On the premise that these two petitioners were charged with inciting, aiding, or abetting only the "sit-ins" involved in the *Gober* case (*ante,* p. ——), the Court, relying on the unassailable proposition that "there can be no conviction for aiding and abetting someone to do an innocent act" (*ante,* p. ——), holds that these convictions must fall in consequence of its reversal of those in the *Gober* case. The difficulty with this holding is that it is based on an erroneous premise. Shuttlesworth and Billups were not charged *merely* with inciting the *Gober*

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and colored races are permitted to be served with, and eat food, and are allowed to congregate, there shall be provided separate rooms for the separate accommodation of each race. The partition between such rooms shall be constructed of wood, plaster or brick or like material, and shall reach from floor to the ceiling. Any person violating this section shall, upon conviction, pay a fine of ten dollars and each day's violation thereof shall constitute a separate and distinct offense."

"sit-ins" but *generally* with inciting violations of the Birmingham trespass ordinance. And I do not think it can be said that the record lacks evidence of incitement of "sit-ins" other than those involved in *Gober*.[9] Hence the Court's reversal in *Gober* cannot well serve as the ground for reversal here.

There are, however, other reasons why, in my opinion, these convictions cannot stand. As to Billups, the record shows that he brought one of the students to Shuttlesworth's home and remained there while Shuttlesworth talked. But there is nothing to indicate Billups' purpose in bringing the student, what he said to him, or even whether he approved or disapproved of what Shuttlesworth urged the students to do. A conviction so lacking in evidence to support the offense charged must fall under the Fourteenth Amendment. *Thompson* v. *Louisville*, 362 U. S. 199.

On this score the situation is different with respect to Shuttlesworth. Given (1) the then current prevalence of

[9] At the trial testimony was introduced showing that Gober and Davis (two of the 10 defendants in the *Gober* case), as well as "other persons" who "were present . . . in the Court room" when the defendants in the *Gober* case were tried for trespass, attended the meeting at Shuttlesworth's house. There was also testimony that "other boys who attended the meeting" participated in "sit-ins" in Birmingham on the same day that the *Gober* "sit-ins" occurred. The record does not reveal whether the *Gober* defendants were the *only* persons who participated in the "sit-ins," nor whether there were others who were incited by Shuttlesworth but who did not thereafter take part in "sit-in" demonstrations. The trial court's statement that "you have here the ten students and the Court thinks they were misused and misled into a violation of a City Ordinance" was made in the course of sentencing the *Gober* defendants, not Shuttlesworth or Billups (the trials of both of these groups of defendants having been conducted *seriatim* by the same judge, who reserved sentencing until all trials had been completed). It was in no sense a finding of fact with respect to the crimes with which Shuttlesworth and Billups had been charged.

"sit-in" demonstrations throughout the South,[10] (2) the commonly understood use of the phrase "sit-in" or "sit-down" to designate a form of protest which typically resulted in arrest and conviction for criminal trespass or other similar offense, and (3) the evidence as to Shuttlesworth's calling for "sit-down" volunteers and his statement that he would get any who volunteered "out of jail," I cannot say that it was constitutionally impermissible for the State to find that Shuttlesworth had urged the volunteers to demonstrate on privately owned premises despite any objections by their owners, and thus to engage in criminal trespass.

Nevertheless this does not end the matter. The trespasses which Shuttlesworth was convicted of inciting may or may not have involved denials of equal protection, depending on the event of the "state action" issue. Certainly one may not be convicted for inciting conduct which is not itself constitutionally punishable. And dealing as we are in the realm of expression, I do not think a State may punish incitement of activity in circumstances where there is a substantial likelihood that such activity may be constitutionally protected. Cf. *Garner* v. *Louisiana*, 368 U. S. 157, 196–207 (concurring opinion of this writer). To ignore that factor would unduly inhibit freedom of expression, even though criminal liability for incitement does not ordinarily depend upon the event of the conduct incited.[11]

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[10] See Pollitt, Dime Store Demonstrations: Events and Legal Problems of First Sixty Days, Duke L. J. 315, 317–337 (1960). Apparently the state courts took judicial notice of such demonstrations in Alabama, which they evidently had the right to do. See, *e. g.*, *Green* v. *Mutual Benefit Health & Accident Assn.*, 267 Ala. 56, 99 So. 2d 694.

[11] See Wechsler, Jones and Korn, The Treatment of Inchoate Crimes in the Model Penal Code of the American Law Institute: Attempt, Solicitation, and Conspiracy, 61 Col. L. Rev. 571, 621–628 (1961).

Were I able to agree with the Court that the existence of the Birmingham segregation ordinance without more rendered all incited trespasses in Birmingham immune from prosecution, I think outright reversal of Shuttlesworth's conviction would be called for. But because of my different views as to the significance of such ordinances (*supra*, pp. 4–6), I believe that the bearing of this Birmingham ordinance on the issue of "substantiality" in Shuttlesworth's case, no less than its bearing on "state action" in the *Gober* case, involves questions of fact which must first be determined by the state courts. I would therefore vacate the judgment as to Shuttlesworth and remand his case for a new trial.

These then are the results in these cases which in my view sound legal principles require.

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In *Munn* v. *Illinois*, 94 U. S. 113, the following propositions were affirmed:

"Under the powers inherent in every sovereignty, a government may regulate the conduct of its citizens toward each other, and, when necessary for the public good, the manner in which each shall use his own property."

"It has, in the exercise of these powers, been customary in England from time immemorial, and in this country from its first colonization, to regulate ferries, common carriers, hackmen, bakers, millers, wharfingers, innkeepers, etc."

"When the owner of property devotes it to a use in which the public has an interest, he in effect grants to the public an interest in such use, and must, to the extent of that interest, submit to be controlled by the public, for the common good, as long as he maintains the use."

Undoubtedly, if Congress could legislate on the subject at all, its legislation by the act of 1st March, 1875, was within the principles thus announced.

The penalty denounced by the statute is incurred by denying to any citizen "the full enjoyment of any of the accommodations, advantages, facilities, or privileges" enumerated in the first section, and it is wholly immaterial whether the citizen whose rights are denied him belongs to one race or class or another, or is of one complexion or another. And again, the penalty follows every denial of the full enjoyment of any of the accommodations, advantages, facilities or privileges, except and unless the denial was "*for reasons by law* applicable to citizens of every race and color, and regardless of any previous condition of servitude."

Mr. William Y. C. Humes and *Mr. David Posten* for the Memphis and Charleston Railroad Co., defendants in error.

Mr. Justice Bradley delivered the opinion of the court. After stating the facts in the above language he continued:

It is obvious that the primary and important question in all

the cases is the constitutionality of the law: for if the law is unconstitutional none of the prosecutions can stand.

The sections of the law referred to provide as follows:

"SEC. 1. That all persons within the jurisdiction of the United States shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances on land or water, theatres, and other places of public amusement: subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude.

"SEC. 2. That any person who shall violate the foregoing section by denying to any citizen, except for reasons by law applicable to citizens of every race and color, and regardless of any previous condition of servitude, the full enjoyment of any of the accommodations, advantages, facilities, or privileges in said section enumerated, or by aiding or inciting such denial, shall for every such offence forfeit and pay the sum of five hundred dollars to the person aggrieved thereby, to be recovered in an action of debt, with full costs; and shall also, for every such offence, be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred nor more than one thousand dollars, or shall be imprisoned not less than thirty days nor more than one year: *Provided*, That all persons may elect to sue for the penalty aforesaid, or to proceed under their rights at common law and by State statutes; and having so elected to proceed in the one mode or the other, their right to proceed in the other jurisdiction shall be barred. But this provision shall not apply to criminal proceedings, either under this act or the criminal law of any State: *And provided further*, That a judgment for the penalty in favor of the party aggrieved, or a judgment upon an indictment, shall be a bar to either prosecution respectively."

Are these sections constitutional? The first section, which is the principal one, cannot be fairly understood without attending to the last clause, which qualifies the preceding part.

The essence of the law is, not to declare broadly that all persons shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns,

public conveyances, and theatres; but that such enjoyment shall not be subject to any conditions applicable only to citizens of a particular race or color, or who had been in a previous condition of servitude. In other words, it is the purpose of the law to declare that, in the enjoyment of the accommodations and privileges of inns, public conveyances, theatres, and other places of public amusement, no distinction shall be made between citizens of different race or color, or between those who have, and those who have not, been slaves. Its effect is to declare, that in all inns, public conveyances, and places of amusement, colored citizens, whether formerly slaves or not, and citizens of other races, shall have the same accommodations and privileges in all inns, public conveyances, and places of amusement as are enjoyed by white citizens; and *vice versa*. The second section makes it a penal offence in any person to deny to any citizen of any race or color, regardless of previous servitude, any of the accommodations or privileges mentioned in the first section.

Has Congress constitutional power to make such a law? Of course, no one will contend that the power to pass it was contained in the Constitution before the adoption of the last three amendments. The power is sought, first, in the Fourteenth Amendment, and the views and arguments of distinguished Senators, advanced whilst the law was under consideration, claiming authority to pass it by virtue of that amendment, are the principal arguments adduced in favor of the power. We have carefully considered those arguments, as was due to the eminent ability of those who put them forward, and have felt, in all its force, the weight of authority which always invests a law that Congress deems itself competent to pass. But the responsibility of an independent judgment is now thrown upon this court; and we are bound to exercise it according to the best lights we have.

The first section of the Fourteenth Amendment (which is the one relied on), after declaring who shall be citizens of the United States, and of the several States, is prohibitory in its character, and prohibitory upon the States. It declares that:

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"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

It is State action of a particular character that is prohibited. Individual invasion of individual rights is not the subject-matter of the amendment. It has a deeper and broader scope. It nullifies and makes void all State legislation, and State action of every kind, which impairs the privileges and immunities of citizens of the United States, or which injures them in life, liberty or property without due process of law, or which denies to any of them the equal protection of the laws. It not only does this, but, in order that the national will, thus declared, may not be a mere *brutum fulmen*, the last section of the amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. To adopt appropriate legislation for correcting the effects of such prohibited State laws and State acts, and thus to render them effectually null, void, and innocuous. This is the legislative power conferred upon Congress, and this is the whole of it. It does not invest Congress with power to legislate upon subjects which are within the domain of State legislation; but to provide modes of relief against State legislation, or State action, of the kind referred to. It does not authorize Congress to create a code of municipal law for the regulation of private rights; but to provide modes of redress against the operation of State laws, and the action of State officers executive or judicial, when these are subversive of the fundamental rights specified in the amendment. Positive rights and privileges are undoubtedly secured by the Fourteenth Amendment; but they are secured by way of prohibition against State laws and State proceedings affecting those rights and privileges, and by power given to Congress to legislate for the purpose of carrying such prohibition into effect: and such legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correc-

tion of their operation and effect. A quite full discussion of this aspect of the amendment may be found in *United States* v. *Cruikshank*, 92 U. S. 542; *Virginia* v. *Rives*, 100 U. S. 313; and *Ex parte Virginia*, 100 U. S. 339.

An apt illustration of this distinction may be found in some of the provisions of the original Constitution. Take the subject of contracts, for example. The Constitution prohibited the States from passing any law impairing the obligation of contracts. This did not give to Congress power to provide laws for the general enforcement of contracts; nor power to invest the courts of the United States with jurisdiction over contracts, so as to enable parties to sue upon them in those courts. It did, however, give the power to provide remedies by which the impairment of contracts by State legislation might be counteracted and corrected: and this power was exercised. The remedy which Congress actually provided was that contained in the 25th section of the Judiciary Act of 1789, 1 Stat. 85, giving to the Supreme Court of the United States jurisdiction by writ of error to review the final decisions of State courts whenever they should sustain the validity of a State statute or authority alleged to be repugnant to the Constitution or laws of the United States. By this means, if a State law was passed impairing the obligation of a contract, and the State tribunals sustained the validity of the law, the mischief could be corrected in this court. The legislation of Congress, and the proceedings provided for under it, were corrective in their character. No attempt was made to draw into the United States courts the litigation of contracts generally; and no such attempt would have been sustained. We do not say that the remedy provided was the only one that might have been provided in that case. Probably Congress had power to pass a law giving to the courts of the United States direct jurisdiction over contracts alleged to be impaired by a State law; and under the broad provisions of the act of March 3d, 1875, ch. 137, 18 Stat. 470, giving to the circuit courts jurisdiction of all cases arising under the Constitution and laws of the United States, it is possible that such jurisdiction now exists. But under that, or any other law, it must appear as

well by allegation, as proof at the trial, that the Constitution had been violated by the action of the State legislature. Some obnoxious State law passed, or that might be passed, is necessary to be assumed in order to lay the foundation of any federal remedy in the case; and for the very sufficient reason, that the constitutional prohibition is against *State laws* impairing the obligation of contracts.

And so in the present case, until some State law has been passed, or some State action through its officers or agents has been taken, adverse to the rights of citizens sought to be protected by the Fourteenth Amendment, no legislation of the United States under said amendment, nor any proceeding under such legislation, can be called into activity: for the prohibitions of the amendment are against State laws and acts done under State authority. Of course, legislation may, and should be, provided in advance to meet the exigency when it arises; but it should be adapted to the mischief and wrong which the amendment was intended to provide against; and that is, State laws, or State action of some kind, adverse to the rights of the citizen secured by the amendment. Such legislation cannot properly cover the whole domain of rights appertaining to life, liberty and property, defining them and providing for their vindication. That would be to establish a code of municipal law regulative of all private rights between man and man in society. It would be to make Congress take the place of the State legislatures and to supersede them. It is absurd to affirm that, because the rights of life, liberty and property (which include all civil rights that men have), are by the amendment sought to be protected against invasion on the part of the State without due process of law, Congress may therefore provide due process of law for their vindication in every case; and that, because the denial by a State to any persons, of the equal protection of the laws, is prohibited by the amendment, therefore Congress may establish laws for their equal protection. In fine, the legislation which Congress is authorized to adopt in this behalf is not general legislation upon the rights of the citizen, but corrective legislation, that is, such as may be necessary and proper for counteracting such laws as the States may

adopt or ...ce, and which, by the amendment, they are prohibited ... making or enforcing, or such acts and proceedings as the States may commit or take, and which, by the amendment, they are prohibited from committing or taking. It is not necessary for us to state, if we could, what legislation would be proper for Congress to adopt. It is sufficient for us to examine whether the law in question is of that character.

An inspection of the law shows that it makes no reference whatever to any supposed or apprehended violation of the Fourteenth Amendment on the part of the States. It is not predicated on any such view. It proceeds *ex directo* to declare that certain acts committed by individuals shall be deemed offences, and shall be prosecuted and punished by proceedings in the courts of the United States. It does not profess to be corrective of any constitutional wrong committed by the States; it does not make its operation to depend upon any such wrong committed. It applies equally to cases arising in States which have the justest laws respecting the personal rights of citizens, and whose authorities are ever ready to enforce such laws, as to those which arise in States that may have violated the prohibition of the amendment. In other words, it steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society towards each other, and imposes sanctions for the enforcement of those rules, without referring in any manner to any supposed action of the State or its authorities.

If this legislation is appropriate for enforcing the prohibitions of the amendment, it is difficult to see where it is to stop. Why may not Congress with equal show of authority enact a code of laws for the enforcement and vindication of all rights of life, liberty, and property? If it is supposable that the States may deprive persons of life, liberty, and property without due process of law (and the amendment itself does suppose this), why should not Congress proceed at once to prescribe due process of law for the protection of every one of these fundamental rights, in every possible case, as well as to prescribe equal privileges in inns, public conveyances, and theatres? The truth is, that the implication of a power to legislate in this manner is based

upon the assumption that if the States are forbidden to legislate or act in a particular way on a particular subject, and power is conferred upon Congress to enforce the prohibition, this gives Congress power to legislate generally upon that subject, and not merely power to provide modes of redress against such State legislation or action. The assumption is certainly unsound. It is repugnant to the Tenth Amendment of the Constitution, which declares that powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

We have not overlooked the fact that the fourth section of the act now under consideration has been held by this court to be constitutional. That section declares "that no citizen, possessing all other qualifications which are or may be prescribed by law, shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account of race, color, or previous condition of servitude; and any officer or other person charged with any duty in the selection or summoning of jurors who shall exclude or fail to summon any citizen for the cause aforesaid, shall, on conviction thereof, be deemed guilty of a misdemeanor, and be fined not more than five thousand dollars." In Ex parte *Virginia*, 100 U. S. 339, it was held that an indictment against a State officer under this section for excluding persons of color from the jury list is sustainable. But a moment's attention to its terms will show that the section is entirely corrective in its character. Disqualifications for service on juries are only created by the law, and the first part of the section is aimed at certain disqualifying laws, namely, those which make mere race or color a disqualification; and the second clause is directed against those who, assuming to use the authority of the State government, carry into effect such a rule of disqualification. In the Virginia case, the State, through its officer, enforced a rule of disqualification which the law was intended to abrogate and counteract. Whether the statute book of the State actually laid down any such rule of disqualification, or not, the State, through its officer, enforced such a rule: and it is against such State action, through its officers and agents, that the last clause of the section is directed.

This aspect of the law was deemed sufficient to divest it of any unconstitutional character, and makes it differ widely from the first and second sections of the same act which we are now considering.

These sections, in the objectionable features before referred to, are different also from the law ordinarily called the "Civil Rights Bill," originally passed April 9th, 1866, 14 Stat. 27, ch. 31, and re-enacted with some modifications in sections 16, 17, 18, of the Enforcement Act, passed May 31st, 1870, 16 Stat. 140, ch. 114. That law, as re-enacted, after declaring that all persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses and exactions of every kind, and none other, any law, statute, ordinance, regulation or custom to the contrary notwithstanding, proceeds to enact, that any person who, under color of any law, statute, ordinance, regulation or custom, shall subject, or cause to be subjected, any inhabitant of any State or Territory to the deprivation of any rights secured or protected by the preceding section (above quoted), or to different punishment, pains, or penalties, on account of such person being an alien, or by reason of his color or race, than is prescribed for the punishment of citizens, shall be deemed guilty of a misdemeanor, and subject to fine and imprisonment as specified in the act. This law is clearly corrective in its character, intended to counteract and furnish redress against State laws and proceedings, and customs having the force of law, which sanction the wrongful acts specified. In the Revised Statutes, it is true, a very important clause, to wit, the words "any law, statute, ordinance, regulation or custom to the contrary notwithstanding," which gave the declaratory section its point and effect, are omitted; but the penal part, by which the declaration is enforced, and which is really the effective part of the law, retains the reference to State laws, by making the penalty apply only to those who should subject

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parties to a deprivation of their rights under color of any statute, ordinance, custom, etc., of any State or Territory: thus preserving the corrective character of the legislation. Rev. St. §§ 1977, 1978, 1979, 5510. The Civil Rights Bill here referred to is analogous in its character to what a law would have been under the original Constitution, declaring that the validity of contracts should not be impaired, and that if any person bound by a contract should refuse to comply with it, under color or pretence that it had been rendered void or invalid by a State law, he should be liable to an action upon it in the courts of the United States, with the addition of a penalty for setting up such an unjust and unconstitutional defence.

In this connection it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation; but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress. An individual cannot deprive a man of his right to vote, to hold property, to buy and sell, to sue in the courts, or to be a witness or a juror; he may, by force or fraud, interfere with the enjoyment of the right in a particular case; he may commit an assault against the person, or commit murder, or use ruffian violence at the polls, or slander the good name of a fellow citizen; but, unless protected in these wrongful acts by some shield of State law or State authority, he cannot destroy or injure the right; he will only render himself amenable to satisfaction or punishment; and amenable therefor to the laws of the State where the wrongful acts are committed. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offences, but abrogation and

denial of rights, which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or wrong actually committed rests upon some State law or State authority for its excuse and perpetration.

Of course, these remarks do not apply to those cases in which Congress is clothed with direct and plenary powers of legislation over the whole subject, accompanied with an express or implied denial of such power to the States, as in the regulation of commerce with foreign nations, among the several States, and with the Indian tribes, the coining of money, the establishment of post offices and post roads, the declaring of war, etc. In these cases Congress has power to pass laws for regulating the subjects specified in every detail, and the conduct and transactions of individuals in respect thereof. But where a subject is not submitted to the general legislative power of Congress, but is only submitted thereto for the purpose of rendering effective some prohibition against particular State legislation or State action in reference to that subject, the power given is limited by its object, and any legislation by Congress in the matter must necessarily be corrective in its character, adapted to counteract and redress the operation of such prohibited State laws or proceedings of State officers.

If the principles of interpretation which we have laid down are correct, as we deem them to be (and they are in accord with the principles laid down in the cases before referred to, as well as in the recent case of *United States* v. *Harris*, 106 U. S. 629), it is clear that the law in question cannot be sustained by any grant of legislative power made to Congress by the Fourteenth Amendment. That amendment prohibits the States from denying to any person the equal protection of the laws, and declares that Congress shall have power to enforce, by appropriate legislation, the provisions of the amendment. The law in question, without any reference to adverse State legislation on the sub-

ject, declares that all persons shall be entitled to equal accommodations and privileges of inns, public conveyances, and places of public amusement, and imposes a penalty upon any individual who shall deny to any citizen such equal accommodations and privileges. This is not corrective legislation; it is primary and direct; it takes immediate and absolute possession of the subject of the right of admission to inns, public conveyances, and places of amusement. It supersedes and displaces State legislation on the same subject, or only allows it permissive force. It ignores such legislation, and assumes that the matter is one that belongs to the domain of national regulation. Whether it would not have been a more effective protection of the rights of citizens to have clothed Congress with plenary power over the whole subject, is not now the question. What we have to decide is, whether such plenary power has been conferred upon Congress by the Fourteenth Amendment; and, in our judgment, it has not.

We have discussed the question presented by the law on the assumption that a right to enjoy equal accommodation and privileges in all inns, public conveyances, and places of public amusement, is one of the essential rights of the citizen which no State can abridge or interfere with. Whether it is such a right, or not, is a different question which, in the view we have taken of the validity of the law on the ground already stated, it is not necessary to examine.

We have also discussed the validity of the law in reference to cases arising in the States only; and not in reference to cases arising in the Territories or the District of Columbia, which are subject to the plenary legislation of Congress in every branch of municipal regulation. Whether the law would be a valid one as applied to the Territories and the District is not a question for consideration in the cases before us: they all being cases arising within the limits of States. And whether Congress, in the exercise of its power to regulate commerce amongst the several States, might or might not pass a law regulating rights in public conveyances passing from one State to another, is also a question which is not now before us, as the sections in question are not conceived in any such view.

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But the power of Congress to adopt direct and primary, as distinguished from corrective legislation, on the subject in hand, is sought, in the second place, from the Thirteenth Amendment, which abolishes slavery. This amendment declares "that neither slavery, nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction;" and it gives Congress power to enforce the amendment by appropriate legislation.

This amendment, as well as the Fourteenth, is undoubtedly self-executing without any ancillary legislation, so far as its terms are applicable to any existing state of circumstances. By its own unaided force and effect it abolished slavery, and established universal freedom. Still, legislation may be necessary and proper to meet all the various cases and circumstances to be affected by it, and to prescribe proper modes of redress for its violation in letter or spirit. And such legislation may be primary and direct in its character; for the amendment is not a mere prohibition of State laws establishing or upholding slavery, but an absolute declaration that slavery or involuntary servitude shall not exist in any part of the United States.

It is true, that slavery cannot exist without law, any more than property in lands and goods can exist without law: and, therefore, the Thirteenth Amendment may be regarded as nullifying all State laws which establish or uphold slavery. But it has a reflex character also, establishing and decreeing universal civil and political freedom throughout the United States; and it is assumed, that the power vested in Congress to enforce the article by appropriate legislation, clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States: and upon this assumption it is claimed, that this is sufficient authority for declaring by law that all persons shall have equal accommodations and privileges in all inns, public conveyances, and places of amusement; the argument being, that the denial of such equal accommodations and privileges is, in itself, a subjection to a species of servitude within the meaning of the amendment. Conceding the major proposition to be true, that

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Congress has a right to enact all necessary and proper laws for the obliteration and prevention of slavery with all its badges and incidents, is the minor proposition also true, that the denial to any person of admission to the accommodations and privileges of an inn, a public conveyance, or a theatre, does subject that person to any form of servitude, or tend to fasten upon him any badge of slavery? If it does not, then power to pass the law is not found in the Thirteenth Amendment.

In a very able and learned presentation of the cognate question as to the extent of the rights, privileges and immunities of citizens which cannot rightfully be abridged by state laws under the Fourteenth Amendment, made in a former case, a long list of burdens and disabilities of a servile character, incident to feudal vassalage in France, and which were abolished by the decrees of the National Assembly, was presented for the purpose of showing that all inequalities and observances exacted by one man from another were servitudes, or badges of slavery, which a great nation, in its effort to establish universal liberty, made haste to wipe out and destroy. But these were servitudes imposed by the old law, or by long custom, which had the force of law, and exacted by one man from another without the latter's consent. Should any such servitudes be imposed by a state law, there can be no doubt that the law would be repugnant to the Fourteenth, no less than to the Thirteenth Amendment; nor any greater doubt that Congress has adequate power to forbid any such servitude from being exacted.

But is there any similarity between such servitudes and a denial by the owner of an inn, a public conveyance, or a theatre, of its accommodations and privileges to an individual, even though the denial be founded on the race or color of that individual? Where does any slavery or servitude, or badge of either, arise from such an act of denial? Whether it might not be a denial of a right which, if sanctioned by the state law, would be obnoxious to the prohibitions of the Fourteenth Amendment, is another question. But what has it to do with the question of slavery?

It may be that by the Black Code (as it was called), in the times when slavery prevailed, the proprietors of inns and public

conveyances were forbidden to receive persons of the African race, because it might assist slaves to escape from the control of their masters. This was merely a means of preventing such escapes, and was no part of the servitude itself. A law of that kind could not have any such object now, however justly it might be deemed an invasion of the party's legal right as a citizen, and amenable to the prohibitions of the Fourteenth Amendment.

The long existence of African slavery in this country gave us very distinct notions of what it was, and what were its necessary incidents. Compulsory service of the slave for the benefit of the master, restraint of his movements except by the master's will, disability to hold property, to make contracts, to have a standing in court, to be a witness against a white person, and such like burdens and incapacities, were the inseparable incidents of the institution. Severer punishments for crimes were imposed on the slave than on free persons guilty of the same offences. Congress, as we have seen, by the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment, before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens. Whether this legislation was fully authorized by the Thirteenth Amendment alone, without the support which it afterward received from the Fourteenth Amendment, after the adoption of which it was re-enacted with some additions, it is not necessary to inquire. It is referred to for the purpose of showing that at that time (in 1866) Congress did not assume, under the authority given by the Thirteenth Amendment, to adjust what may be called the social rights of men and races in the community; but only to declare and vindicate those fundamental rights which appertain to the essence of citizenship, and the enjoyment or deprivation of which constitutes the essential distinction between freedom and slavery.

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We must not forget that the province and scope of the Thirteenth and Fourteenth amendments are different; the former simply abolished slavery: the latter prohibited the States from abridging the privileges or immunities of citizens of the United States; from depriving them of life, liberty, or property without due process of law, and from denying to any the equal protection of the laws. The amendments are different, and the powers of Congress under them are different. What Congress has power to do under one, it may not have power to do under the other. Under the Thirteenth Amendment, it has only to do with slavery and its incidents. Under the Fourteenth Amendment, it has power to counteract and render nugatory all State laws and proceedings which have the effect to abridge any of the privileges or immunities of citizens of the United States, or to deprive them of life, liberty or property without due process of law, or to deny to any of them the equal protection of the laws. Under the Thirteenth Amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not; under the Fourteenth, as we have already shown, it must necessarily be, and can only be, corrective in its character, addressed to counteract and afford relief against State regulations or proceedings.

The only question under the present head, therefore, is, whether the refusal to any persons of the accommodations of an inn, or a public conveyance, or a place of public amusement, by an individual, and without any sanction or support from any State law or regulation, does inflict upon such persons any manner of servitude, or form of slavery, as those terms are understood in this country? Many wrongs may be obnoxious to the prohibitions of the Fourteenth Amendment which are not, in any just sense, incidents or elements of slavery. Such, for example, would be the taking of private property without due process of law; or allowing persons who have committed certain crimes (horse stealing, for example) to be seized and hung by the *posse comitatus* without regular trial; or denying to any person, or class of persons, the right to pursue any peaceful

avocations allowed to others. What is called class legislation would belong to this category, and would be obnoxious to the prohibitions of the Fourteenth Amendment, but would not necessarily be so to the Thirteenth, when not involving the idea of any subjection of one man to another. The Thirteenth Amendment has respect, not to distinctions of race, or class, or color, but to slavery. The Fourteenth Amendment extends its protection to races and classes, and prohibits any State legislation which has the effect of denying to any race or class, or to any individual, the equal protection of the laws.

Now, conceding, for the sake of the argument, that the admission to an inn, a public conveyance, or a place of public amusement, on equal terms with all other citizens, is the right of every man and all classes of men, is it any more than one of those rights which the states by the Fourteenth Amendment are forbidden to deny to any person? And is the Constitution violated until the denial of the right has some State sanction or authority? Can the act of a mere individual, the owner of the inn, the public conveyance or place of amusement, refusing the accommodation, be justly regarded as imposing any badge of slavery or servitude upon the applicant, or only as inflicting an ordinary civil injury, properly cognizable by the laws of the State, and presumably subject to redress by those laws until the contrary appears?

After giving to these questions all the consideration which their importance demands, we are forced to the conclusion that such an act of refusal has nothing to do with slavery or involuntary servitude, and that if it is violative of any right of the party, his redress is to be sought under the laws of the State; or if those laws are adverse to his rights and do not protect him, his remedy will be found in the corrective legislation which Congress has adopted, or may adopt, for counteracting the effect of State laws, or State action, prohibited by the Fourteenth Amendment. It would be running the slavery argument into the ground to make it apply to every act of discrimination which a person may see fit to make as to the guests he will entertain, or as to the people he will take into his coach or cab or car, or admit to his concert or theatre, or deal with in

other matters of intercourse or business. Innkeepers and public carriers, by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them. If the laws themselves make any unjust discrimination, amenable to the prohibitions of the Fourteenth Amendment, Congress has full power to afford a remedy under that amendment and in accordance with it.

When a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. There were thousands of free colored people in this country before the abolition of slavery, enjoying all the essential rights of life, liberty and property the same as white citizens; yet no one, at that time, thought that it was any invasion of his personal status as a freeman because he was not admitted to all the privileges enjoyed by white citizens, or because he was subjected to discriminations in the enjoyment of accommodations in inns, public conveyances and places of amusement. Mere discriminations on account of race or color were not regarded as badges of slavery. If, since that time, the enjoyment of equal rights in all these respects has become established by constitutional enactment, it is not by force of the Thirteenth Amendment (which merely abolishes slavery), but by force of the Thirteenth and Fifteenth Amendments.

On the whole we are of opinion, that no countenance of authority for the passage of the law in question can be found in either the Thirteenth or Fourteenth Amendment of the Constitution; and no other ground of authority for its passage being suggested, it must necessarily be declared void, at least so far as its operation in the several States is concerned.

This conclusion disposes of the cases now under consideration. In the cases of the *United States* v. *Michael Ryan*, and of *Richard A. Robinson and Wife* v. *The Memphis & Charles-*

ton Railroad Company, the judgments must be affirmed. In the other cases, the answer to be given will be that the first and second sections of the act of Congress of March 1st, 1875, entitled "An Act to protect all citizens in their civil and legal rights," are unconstitutional and void, and that judgment should be rendered upon the several indictments in those cases accordingly. *And it is so ordered.*

MR. JUSTICE HARLAN dissenting.

The opinion in these cases proceeds, it seems to me, upon grounds entirely too narrow and artificial. I cannot resist the conclusion that the substance and spirit of the recent amendments of the Constitution have been sacrificed by a subtle and ingenious verbal criticism. "It is not the words of the law but the internal sense of it that makes the law: the letter of the law is the body; the sense and reason of the law is the soul." Constitutional provisions, adopted in the interest of liberty, and for the purpose of securing, through national legislation, if need be, rights inhering in a state of freedom, and belonging to American citizenship, have been so construed as to defeat the ends the people desired to accomplish, which they attempted to accomplish, and which they supposed they had accomplished by changes in their fundamental law. By this I do not mean that the determination of these cases should have been materially controlled by considerations of mere expediency or policy. I mean only, in this form, to express an earnest conviction that the court has departed from the familiar rule requiring, in the interpretation of constitutional provisions, that full effect be given to the intent with which they were adopted.

The purpose of the first section of the act of Congress of March 1, 1875, was to prevent *race* discrimination in respect of the accommodations and facilities of inns, public conveyances, and places of public amusement. It does not assume to define the general conditions and limitations under which inns, public conveyances, and places of public amusement may be conducted, but only declares that such conditions and limitations, whatever they may be, shall not be applied so as to work a

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discrimination solely because of race, color, or previous condition of servitude. The second section provides a penalty against any one denying, or aiding or inciting the denial, to any citizen, of that equality of right given by the first section, except for reasons by law applicable to citizens of every race or color and regardless of any previous condition of servitude.

There seems to be no substantial difference between my brethren and myself as to the purpose of Congress; for, they say that the essence of the law is, not to declare broadly that all persons shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, and theatres; but that such enjoyment shall not be subject to conditions applicable only to citizens of a particular race or color, or who had been in a previous condition of servitude. The effect of the statute, the court says, is, that colored citizens, whether formerly slaves or not, and citizens of other races, shall have the same accommodations and privileges in all inns, public conveyances, and places of amusement as are enjoyed by white persons; and *vice versa*.

The court adjudges, I think erroneously, that Congress is without power, under either the Thirteenth or Fourteenth Amendment, to establish such regulations, and that the first and second sections of the statute are, in all their parts, unconstitutional and void.

Whether the legislative department of the government has transcended the limits of its constitutional powers, "is at all times," said this court in *Fletcher* v. *Peck*, 6 Cr. 128, "a question of much delicacy, which ought seldom, if ever, to be decided in the affirmative, in a doubtful case. . . . . The opposition between the Constitution and the law should be such that the judge feels a clear and strong conviction of their incompatibility with each other." More recently in *Sinking Fund Cases*, 99 U. S., 718, we said: "It is our duty when required in the regular course of judicial proceedings, to declare an act of Congress void if not within the legislative power of the United States, but this declaration should never be made except in a clear case. Every possible presumption is

in favor of the validity of a statute, and this continues until the contrary is shown beyond a rational doubt. One branch of the government cannot encroach on the domain of another without danger. The safety of our institutions depends in no small degree on a strict observance of this salutary rule."

Before considering the language and scope of these amendments it will be proper to recall the relations subsisting, prior to their adoption, between the national government and the institution of slavery, as indicated by the provisions of the Constitution, the legislation of Congress, and the decisions of this court. In this mode we may obtain keys with which to open the mind of the people, and discover the thought intended to be expressed.

In section 2 of article IV. of the Constitution it was provided that "no person held to service or labor in one State, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due." Under the authority of this clause Congress passed the Fugitive Slave Law of 1793, establishing a mode for the recovery of fugitive slaves, and prescribing a penalty against any person who should knowingly and willingly obstruct or hinder the master, his agent, or attorney, in seizing, arresting, and recovering the fugitive, or who should rescue the fugitive from him, or who should harbor or conceal the slave after notice that he was a fugitive.

In *Prigg* v. *Commonwealth of Pennsylvania*, 16 Pet. 539, this court had occasion to define the powers and duties of Congress in reference to fugitives from labor. Speaking by MR. JUSTICE STORY it laid down these propositions:

That a clause of the Constitution conferring a right should not be so construed as to make it shadowy, or unsubstantial, or leave the citizen without a remedial power adequate for its protection, when another construction equally accordant with the words and the sense in which they were used, would enforce and protect the right granted;

That Congress is not restricted to legislation for the execu-

tion of its expressly granted powers; but, for the protection of rights guaranteed by the Constitution, may employ such means, not prohibited, as are necessary and proper, or such as are appropriate, to attain the ends proposed;

That the Constitution recognized the master's right of property in his fugitive slave, and, as incidental thereto, the right of seizing and recovering him, regardless of any State law, or regulation, or local custom whatsoever; and,

That the right of the master to have his slave, thus escaping, delivered up on claim, being guaranteed by the Constitution, the fair implication was that the national government was clothed with appropriate authority and functions to enforce it.

The court said: "The fundamental principle, applicable to all cases of this sort, would seem to be that when the end is required the means are given, and when the duty is enjoined the ability to perform it is contemplated to exist on the part of the functionary to whom it is entrusted." Again: "It would be a strange anomaly and forced construction to suppose that the national government meant to rely for the due fulfilment of its own proper duties, and the rights which it intended to secure, upon State legislation, and not upon that of the Union. *A fortiori*, it would be more objectionable to suppose that a power which was to be the same throughout the Union, should be confided to State sovereignty which could not rightfully act beyond its own territorial limits."

The act of 1793 was, upon these grounds, adjudged to be a constitutional exercise of the powers of Congress.

It is to be observed from the report of Priggs' case that Pennsylvania, by her attorney-general, pressed the argument that the obligation to surrender fugitive slaves was on the States and for the States, subject to the restriction that they should not pass laws or establish regulations liberating such fugitives; that the Constitution did not take from the States the right to determine the status of all persons within their respective jurisdictions; that it was for the State in which the alleged fugitive was found to determine, through her courts or in such modes as she prescribed, whether the person arrested was, in fact, a freeman or a fugitive slave; that the sole power

of the general government in the premises was, by judicial instrumentality, to restrain and correct, not to forbid and prevent in the absence of hostile State action; and that, for the general government to assume primary authority to legislate on the subject of fugitive slaves, to the exclusion of the States, would be a dangerous encroachment on State sovereignty. But to such suggestions this court turned a deaf ear, and adjudged that primary legislation by Congress to enforce the master's right was authorized by the Constitution.

We next come to the Fugitive Slave Act of 1850, the constitutionality of which rested, as did that of 1793, solely upon the implied power of Congress to enforce the master's rights. The provisions of that act were far in advance of previous legislation. They placed at the disposal of the master seeking to recover his fugitive slave, substantially the whole power of the nation. It invested commissioners, appointed under the act, with power to summon the *posse comitatus* for the enforcement of its provisions, and commanded all good citizens to assist in its prompt and efficient execution whenever their services were required as part of the *posse comitatus*. Without going into the details of that act, it is sufficient to say that Congress omitted from it nothing which the utmost ingenuity could suggest as essential to the successful enforcement of the master's claim to recover his fugitive slave. And this court, in *Ableman* v. *Booth*, 21 How. 506, adjudged it to be "in all of its provisions fully authorized by the Constitution of the United States."

The only other case, prior to the adoption of the recent amendments, to which reference will be made, is that of *Dred Scott* v. *Sanford*, 19 How. 399. That case was instituted in a circuit court of the United States by Dred Scott, claiming to be a citizen of Missouri, the defendant being a citizen of another State. Its object was to assert the title of himself and family to freedom. The defendant pleaded in abatement that Scott—being of African descent, whose ancestors, of pure African blood, were brought into this country and sold as slaves—was not a *citizen*. The only matter in issue, said the court, was whether the descendants of slaves thus imported

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and sold, when they should be emancipated, or who were born of parents who had become free before their birth, are citizens of a State in the sense in which the word "citizen" is used in the Constitution of the United States.

In determining that question the court instituted an inquiry as to who were citizens of the several States at the adoption of the Constitution, and who, at that time, were recognized as the people whose rights and liberties had been violated by the British government. The result was a declaration, by this court, speaking by Chief Justice Taney, that the legislation and histories of the times, and the language used in the Declaration of Independence, showed "that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that instrument;" that "they had for more than a century before been regarded as beings of an inferior race, and altogether unfit to associate with the white race, either in social or political relations, and so far inferior that they had no rights which the white man was bound to respect, and that the negro might justly and lawfully be reduced to slavery for his benefit;" that he was "bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it;" and, that "this opinion was at that time fixed and universal in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which no one thought of disputing, or supposed to be open to dispute; and men in every grade and position in society daily and habitually acted upon it in their private pursuits, as well as in matters of public concern, without for a moment doubting the correctness of this opinion."

The judgment of the court was that the words "people of the United States" and "citizens" meant the same thing, both describing "the political body who, according to our republican institutions, form the sovereignty and hold the power and conduct the government through their representatives;" that "they are what we familiarly call the 'sovereign people,' and

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every citizen is one of this people and a constituent member of this sovereignty;" but, that the class of persons described in the plea in abatement did not compose a portion of this people, were not "included, and were not intended to be included, under the word 'citizens' in the Constitution;" that, therefore, they could "claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States;" that, "on the contrary, they were at that time considered as a subordinate and inferior class of beings, who had been subjugated by the dominant race, and, whether emancipated or not, yet remained subject to their authority, and had no rights or privileges but such as those who held the power and the government might choose to grant them."

Such were the relations which formerly existed between the government, whether national or state, and the descendants, whether free or in bondage, of those of African blood, who had been imported into this country and sold as slaves.

The first section of the Thirteenth Amendment provides that "neither slavery nor involuntary servitude, except as a punishment for crime, whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction." Its second section declares that "Congress shall have power to enforce this article by appropriate legislation." This amendment was followed by the Civil Rights Act of April 9, 1866, which, among other things, provided that "all persons born in the United States, and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States." 14 Stat. 27. The power of Congress, in this mode, to elevate the enfranchised race to national citizenship, was maintained by the supporters of the act of 1866 to be as full and complete as its power, by general statute, to make the children, being of full age, of persons naturalized in this country, citizens of the United States without going through the process of naturalization. The act of 1866, in this respect, was also likened to that of 1843, in which Congress declared "that the Stockbridge tribe of Indians, and each and every one of them, shall be deemed to be and are hereby declared to be, citizens of the United States to

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all intents and purposes, and shall be entitled to all the rights, privileges, and immunities of such citizens, and shall in all respects be subject to the laws of the United States." If the act of 1866 was valid in conferring national citizenship upon all embraced by its terms, then the colored race, enfranchised by the Thirteenth Amendment, became citizens of the United States prior to the adoption of the Fourteenth Amendment. But, in the view which I take of the present case, it is not necessary to examine this question.

The terms of the Thirteenth Amendment are absolute and universal. They embrace every race which then was, or might thereafter be, within the United States. No race, as such, can be excluded from the benefits or rights thereby conferred. Yet, it is historically true that that amendment was suggested by the condition, in this country, of that race which had been declared, by this court, to have had—according to the opinion entertained by the most civilized portion of the white race, at the time of the adoption of the Constitution—"no rights which the white man was bound to respect," none of the privileges or immunities secured by that instrument to citizens of the United States. It had reference, in a peculiar sense, to a people which (although the larger part of them were in slavery) had been invited by an act of Congress to aid in saving from overthrow a government which, theretofore, by all of its departments, had treated them as an inferior race, with no legal rights or privileges except such as the white race might choose to grant them.

These are the circumstances under which the Thirteenth Amendment was proposed for adoption. They are now recalled only that we may better understand what was in the minds of the people when that amendment was considered, and what were the mischiefs to be remedied and the grievances to be redressed by its adoption.

We have seen that the power of Congress, by legislation, to enforce the master's right to have his slave delivered up on claim was *implied* from the recognition of that right in the national Constitution. But the power conferred by the Thirteenth Amendment does not rest upon implication or

inference. Those who framed it were not ignorant of the discussion, covering many years of our country's history, as to the constitutional power of Congress to enact the Fugitive Slave Laws of 1793 and 1850. When, therefore, it was determined, by a change in the fundamental law, to uproot the institution of slavery wherever it existed in the land, and to establish universal freedom, there was a fixed purpose to place the authority of Congress in the premises beyond the possibility of a doubt. Therefore, *ex industria*, power to enforce the Thirteenth Amendment, by appropriate legislation, was expressly granted. Legislation for that purpose, my brethren concede, may be direct and primary. But to what specific ends may it be directed? This court has uniformly held that the national government has the power, whether expressly given or not, to secure and protect rights conferred or guaranteed by the Constitution. *United States* v. *Reese*, 92 U. S. 214; *Strauder* v. *West Virginia*, 100 U. S. 303. That doctrine ought not now to be abandoned when the inquiry is not as to an implied power to protect the master's rights, but what may Congress, under powers expressly granted, do for the protection of freedom and the rights necessarily inhering in a state of freedom.

The Thirteenth Amendment, it is conceded, did something more than to prohibit slavery as an *institution*, resting upon distinctions of race, and upheld by positive law. My brethren admit that it established and decreed universal *civil freedom* throughout the United States. But did the freedom thus established involve nothing more than exemption from actual slavery? Was nothing more intended than to forbid one man from owning another as property? Was it the purpose of the nation simply to destroy the institution, and then remit the race, theretofore held in bondage, to the several States for such protection, in their civil rights, necessarily growing out of freedom, as those States, in their discretion, might choose to provide? Were the States against whose protest the institution was destroyed, to be left free, so far as national interference was concerned, to make or allow discriminations against that race, as such, in the enjoyment of those fundamental rights which by universal concession, inhere in a state of freedom?

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Had the Thirteenth Amendment stopped with the sweeping declaration, in its first section, against the existence of slavery and involuntary servitude, except for crime, Congress would have had the power, by implication, according to the doctrines of *Prigg* v. *Commonwealth of Pennsylvania*, repeated in *Strauder* v. *West Virginia*, to protect the freedom established, and consequently, to secure the enjoyment of such civil rights as were fundamental in freedom. That it can exert its authority to that extent is made clear, and was intended to be made clear, by the express grant of power contained in the second section of the Amendment.

That there are burdens and disabilities which constitute badges of slavery and servitude, and that the power to enforce by appropriate legislation the Thirteenth Amendment may be exerted by legislation of a direct and primary character, for the eradication, not simply of the institution, but of its badges and incidents, are propositions which ought to be deemed indisputable. They lie at the foundation of the Civil Rights Act of 1866. Whether that act was authorized by the Thirteenth Amendment alone, without the support which it subsequently received from the Fourteenth Amendment, after the adoption of which it was re-enacted with some additions, my brethren do not consider it necessary to inquire. But I submit, with all respect to them, that its constitutionality is conclusively shown by their opinion. They admit, as I have said, that the Thirteenth Amendment established freedom; that there are burdens and disabilities, the necessary incidents of slavery, which constitute its substance and visible form; that Congress, by the act of 1866, passed in view of the Thirteenth Amendment, before the Fourteenth was adopted, undertook to remove certain burdens and disabilities, the necessary incidents of slavery, and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell, and convey property as is enjoyed by white citizens; that under the Thirteenth Amendment, Congress has to do with slavery and

its incidents; and that legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by State legislation or not. These propositions being conceded, it is impossible, as it seems to me, to question the constitutional validity of the Civil Rights Act of 1866. I do not contend that the Thirteenth Amendment invests Congress with authority, by legislation, to define and regulate the entire body of the civil rights which citizens enjoy, or may enjoy, in the several States. But I hold that since slavery, as the court has repeatedly declared, *Slaughter-house Cases*, 16 Wall. 36; *Strauder* v. *West Virginia*, 100 U. S. 303, was the moving or principal cause of the adoption of that amendment, and since that institution rested wholly upon the inferiority, as a race, of those held in bondage, their freedom necessarily involved immunity from, and protection against, all discrimination against them, because of their race, in respect of such civil rights as belong to freemen of other races. Congress, therefore, under its express power to enforce that amendment, by appropriate legislation, may enact laws to protect that people against the deprivation, *because of their race*, of any civil rights granted to other freemen in the same State; and such legislation may be of a direct and primary character, operating upon States, their officers and agents, and, also, upon, at least, such individuals and corporations as exercise public functions and wield power and authority under the State.

To test the correctness of this position, let us suppose that, prior to the adoption of the Fourteenth Amendment, a State had passed a statute denying to freemen of African descent, resident within its limits, the same right which was accorded to white persons, of making and enforcing contracts, and of inheriting, purchasing, leasing, selling and conveying property; or a statute subjecting colored people to severer punishment for particular offences than was prescribed for white persons, or excluding that race from the benefit of the laws exempting homesteads from execution. Recall the legislation of 1865–6 in some of the States, of which this court, in the *Slaughter-*

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House Cases, said, that it imposed upon the colored race onerous disabilities and burdens; curtailed their rights in the pursuit of life, liberty and property to such an extent that their freedom was of little value; forbade them to appear in the towns in any other character than menial servants; required them to reside on and cultivate the soil, without the right to purchase or own it; excluded them from many occupations of gain; and denied them the privilege of giving testimony in the courts where a white man was a party. 16 Wall. 57. Can there be any doubt that all such enactments might have been reached by direct legislation upon the part of Congress under its express power to enforce the Thirteenth Amendment? Would any court have hesitated to declare that such legislation imposed badges of servitude in conflict with the civil freedom ordained by that amendment? That it would have been also in conflict with the Fourteenth Amendment, because inconsistent with the fundamental rights of American citizenship, does not prove that it would have been consistent with the Thirteenth Amendment.

What has been said is sufficient to show that the power of Congress under the Thirteenth Amendment is not necessarily restricted to legislation against slavery as an institution upheld by positive law, but may be exerted to the extent, at least, of protecting the liberated race against discrimination, in respect of legal rights belonging to freemen, where such discrimination is based upon race.

It remains now to inquire what are the legal rights of colored persons in respect of the accommodations, privileges and facilities of public conveyances, inns and places of public amusement?

First, as to public conveyances on land and water. In *New Jersey Steam Navigation Co.* v. *Merchants' Bank*, 6 How. 344, this court, speaking by Mr. Justice Nelson, said that a common carrier is "in the exercise of a sort of public office, and has public duties to perform, from which he should not be permitted to exonerate himself without the assent of the parties concerned." To the same effect is *Munn* v. *Illinois*, 94 U. S. 113. In *Olcott* v. *Supervisors*, 16 Wall. 678, it was ruled that

railroads are public highways, established by authority of the State for the public use; that they are none the less public highways, because controlled and owned by private corporations; that it is a part of the function of government to make and maintain highways for the convenience of the public; that no matter who is the agent, or what is the agency, the function performed is *that of the State;* that although the owners may be private companies, they may be compelled to permit the public to use these works in the manner in which they can be used; that, upon these grounds alone, have the courts sustained the investiture of railroad corporations with the State's right of eminent domain, or the right of municipal corporations, under legislative authority, to assess, levy and collect taxes to aid in the construction of railroads. So in *Township of Queensbury* v. *Culver*, 19 Wall. 83, it was said that a municipal subscription of railroad stock was in aid of the construction and maintenance of a public highway, and for the promotion of a public use. Again, in *Township of Pine Grove* v. *Talcott*, 19 Wall. 666: "Though the corporation [railroad] was private, its work was public, as much so as if it were to be constructed by the State." To the like effect are numerous adjudications in this and the State courts with which the profession is familiar. The Supreme Judicial Court of Massachusetts in *Inhabitants of Worcester* v. *The Western R. R. Corporation*, 4 Met. 564, said in reference to a railroad:

"The establishment of that great thoroughfare is regarded as a public work, established by public authority, intended for the public use and benefit, the use of which is secured to the whole community, and constitutes, therefore, like a canal, turnpike, or highway, a public easement. . . . It is true that the real and personal property, necessary to the establishment and management of the railroad, is vested in the corporation; but it is in trust for the public." In *Erie, Etc., R. R. Co.* v. *Casey*, 26 Penn. St. 287, the court, referring to an act repealing the charter of a railroad, and under which the State took possession of the road, said: "It is a public highway, solemnly devoted to public use. When the lands were taken it was for such use, or they could not have been taken at all. . . . Railroads es-

tablished upon land taken by the right of eminent domain by authority of the commonwealth, created by her laws as thoroughfares for commerce, are her highways. No corporation has property in them, though it may have franchises annexed to and exercisable within them."

In many courts it has been held that because of the public interest in such a corporation the land of a railroad company cannot be levied on and sold under execution by a creditor. The sum of the adjudged cases is that a railroad corporation is a governmental agency, created primarily for public purposes, and subject to be controlled for the public benefit. Upon this ground the State, when unfettered by contract, may regulate, in its discretion, the rates of fares of passengers and freight. And upon this ground, too, the State may regulate the entire management of railroads in all matters affecting the convenience and safety of the public; as, for example, by regulating speed, compelling stops of prescribed length at stations, and prohibiting discriminations and favoritism. If the corporation neglect or refuse to discharge its duties to the public, it may be coerced to do so by appropriate proceedings in the name or in behalf of the State.

Such being the relations these corporations hold to the public, it would seem that the right of a colored person to use an improved public highway, upon the terms accorded to freemen of other races, is as fundamental, in the state of freedom established in this country, as are any of the rights which my brethren concede to be so far fundamental as to be deemed the essence of civil freedom. "Personal liberty consists," says Blackstone, "in the power of locomotion, of changing situation, or removing one's person to whatever places one's own inclination may direct, without restraint, unless by due course of law." But of what value is this right of locomotion, if it may be clogged by such burdens as Congress intended by the act of 1875 to remove? They are burdens which lay at the very foundation of the institution of slavery as it once existed. They are not to be sustained, except upon the assumption that there is, in this land of universal liberty, a class which may still be discriminated against, even in respect of rights of a character

so necessary and supreme, that, deprived of their enjoyment in common with others, a freeman is not only branded as one inferior and infected, but, in the competitions of life, is robbed of some of the most essential means of existence; and all this solely because they belong to a particular race which the nation has liberated. The Thirteenth Amendment alone obliterated the race line, so far as all rights fundamental in a state of freedom are concerned.

Second, as to inns. The same general observations which have been made as to railroads are applicable to inns. The word 'inn' has a technical legal signification. It means, in the act of 1875, just what it meant at common law. A mere private boarding-house is not an inn, nor is its keeper subject to the responsibilities, or entitled to the privileges of a common innkeeper. "To constitute one an innkeeper, within the legal force of that term, he must keep a house of entertainment or lodging for all travellers or wayfarers who might choose to accept the same, being of good character or conduct." Redfield on Carriers, etc., § 575. Says Judge Story:

"An innkeeper may be defined to be the keeper of a common inn for the lodging and entertainment of travellers and passengers, their horses and attendants. An innkeeper is bound to take in all travellers and wayfaring persons, and to entertain them, if he can accommodate them, for a reasonable compensation; and he must guard their goods with proper diligence. . . . If an innkeeper improperly refuses to receive or provide for a guest, he is liable to be indicted therefor. . . . They (carriers of passengers) are no more at liberty to refuse a passenger, if they have sufficient room and accommodations, than an innkeeper is to refuse suitable room and accommodations to a guest." Story on Bailments, §§ 475–6.

In *Rex* v. *Ivens*, 7 Carrington & Payne, 213, 32 E. C. L. 495, the court, speaking by Mr. Justice Coleridge, said:

"An indictment lies against an innkeeper who refuses to receive a guest, he having at the time room in his house; and either the price of the guest's entertainment being tendered to him, or such circumstances occurring as will dispense with that

tender. This law is founded in good sense. The innkeeper is not to select his guests. He has no right to say to one, you shall come to my inn, and to another you shall not, as every one coming and conducting himself in a proper manner has a right to be received; and for this purpose innkeepers are a sort of public servants, they having in return a kind of privilege of entertaining travellers and supplying them with what they want."

These authorities are sufficient to show that a keeper of an inn is in the exercise of a quasi public employment. The law gives him special privileges and he is charged with certain duties and responsibilities to the public. The public nature of his employment forbids him from discriminating against any person asking admission as a guest on account of the race or color of that person.

Third. As to places of public amusement. It may be argued that the managers of such places have no duties to perform with which the public are, in any legal sense, concerned, or with which the public have any right to interfere; and, that the exclusion of a black man from a place of public amusement, on account of his race, or the denial to him, on that ground, of equal accommodations at such places, violates no legal right for the vindication of which he may invoke the aid of the courts. My answer is, that places of public amusement, within the meaning of the act of 1875, are such as are established and maintained under direct license of the law. The authority to establish and maintain them comes from the public. The colored race is a part of that public. The local government granting the license represents them as well as all other races within its jurisdiction. A license from the public to establish a place of public amusement, imports, in law, equality of right, at such places, among all the members of that public. This must be so, unless it be—which I deny—that the common municipal government of all the people may, in the exertion of its powers, conferred for the benefit of all, discriminate or authorize discrimination against a particular race, solely because of its former condition of servitude.

I also submit, whether it can be said—in view of the doctrines of this court as announced in *Munn* v. *State of Illinois*,

94 U. S. 113, and reaffirmed in *Peik* v. *Chicago & N. W. Railway Co.*, 94 U. S. 164—that the management of places of public amusement is a purely private matter, with which government has no rightful concern? In the Munn case the question was whether the State of Illinois could fix, by law, the maximum of charges for the storage of grain in certain warehouses in that State—the *private property of individual citizens*. After quoting a remark attributed to Lord Chief Justice Hale, to the effect that when private property is "affected with a public interest it ceases to be *juris privati* only," the court says:

"Property does become clothed with a public interest when used in a manner to make it of public consequence and affect the community at large. When, therefore, one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created. He may withdraw his grant by discontinuing the use, but, so long as he maintains the use, he must submit to the control."

The doctrines of *Munn* v. *Illinois* have never been modified by this court, and I am justified, upon the authority of that case, in saying that places of public amusement, conducted under the authority of the law, are clothed with a public interest, because used in a manner to make them of public consequence and to affect the community at large. The law may therefore regulate, to some extent, the mode in which they shall be conducted, and, consequently, the public have rights in respect of such places, which may be vindicated by the law. It is consequently not a matter purely of private concern.

Congress has not, in these matters, entered the domain of State control and supervision. It does not, as I have said, assume to prescribe the general conditions and limitations under which inns, public conveyances, and places of public amusement, shall be conducted or managed. It simply declares, in effect, that since the nation has established universal freedom in this country, for all time, there shall be no discrimination, based merely upon race or color, in respect of the accommodations

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and advantages of public conveyances, inns, and places of public amusement.

I am of the opinion that such discrimination practised by corporations and individuals in the exercise of their public or quasi-public functions is a badge of servitude the imposition of which Congress may prevent under its power, by appropriate legislation, to enforce the Thirteenth Amendment; and, consequently, without reference to its enlarged power under the Fourteenth Amendment, the act of March 1, 1875, is not, in my judgment, repugnant to the Constitution.

It remains now to consider these cases with reference to the power Congress has possessed since the adoption of the Fourteenth Amendment. Much that has been said as to the power of Congress under the Thirteenth Amendment is applicable to this branch of the discussion, and will not be repeated.

Before the adoption of the recent amendments, it had become, as we have seen, the established doctrine of this court that negroes, whose ancestors had been imported and sold as slaves, could not become citizens of a State, or even of the United States, with the rights and privileges guaranteed to citizens by the national Constitution; further, that one might have all the rights and privileges of a citizen of a State without being a citizen in the sense in which that word was used in the national Constitution, and without being entitled to the privileges and immunities of citizens of the several States. Still, further, between the adoption of the Thirteenth Amendment and the proposal by Congress of the Fourteenth Amendment, on June 16, 1866, the statute books of several of the States, as we have seen, had become loaded down with enactments which, under the guise of Apprentice, Vagrant, and Contract regulations, sought to keep the colored race in a condition, practically, of servitude. It was openly announced that whatever might be the rights which persons of that race had, as freemen, under the guarantees of the national Constitution, they could not become citizens of a State, with the privileges belonging to citizens, except by the consent of such State; consequently, that their civil rights, as citizens of the State, depended entirely upon State legislation. To meet this new peril to the black race, that the

purposes of the nation might not be doubted or defeated, and by way of further enlargement of the power of Congress, the Fourteenth Amendment was proposed for adoption.

Remembering that this court, in the *Slaughter-House Cases*, declared that the one pervading purpose found in all the recent amendments, lying at the foundation of each, and without which none of them would have been suggested—was "the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly-made freeman and citizen from the oppression of those who had formerly exercised unlimited dominion over him"—that each amendment was addressed primarily to the grievances of that race—let us proceed to consider the language of the Fourteenth Amendment.

Its first and fifth sections are in these words:

"SEC. 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * * *

"SEC. 5. That Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

It was adjudged in *Strauder* v. *West Virginia*, 100 U. S. 303, and *Ex parte Virginia*, 100 U. S. 339, and my brethren concede, that positive rights and privileges were intended to be secured, and are in fact secured, by the Fourteenth Amendment.

But when, under what circumstances, and to what extent, may Congress, by means of legislation, exert its power to enforce the provisions of this amendment? The theory of the opinion of the majority of the court—the foundation upon which their reasoning seems to rest—is, that the general government cannot, in advance of hostile State laws or hostile State

proceedings, actively interfere for the protection of any of the rights, privileges, and immunities secured by the Fourteenth Amendment. It is said that such rights, privileges, and immunities are secured by way of *prohibition* against State laws and State proceedings affecting such rights and privileges, and by power given to Congress to legislate for the purpose of carrying *such prohibition* into effect; also, that congressional legislation must necessarily be predicated upon such supposed State laws or State proceedings, and be directed to the correction of their operation and effect.

In illustration of its position, the court refers to the clause of the Constitution forbidding the passage by a State of any law impairing the obligation of contracts. That clause does not, I submit, furnish a proper illustration of the scope and effect of the fifth section of the Fourteenth Amendment. No express power is given Congress to enforce, by primary direct legislation, the prohibition upon State laws impairing the obligation of contracts. Authority is, indeed, conferred to enact all necessary and proper laws for carrying into execution the enumerated powers of Congress and all other powers vested by the Constitution in the government of the United States or in any department or officer thereof. And, as heretofore shown, there is also, by necessary implication, power in Congress, by legislation, to protect a right derived from the national Constitution. But a prohibition upon a State is not a *power* in *Congress* or *in the national government.* It is simply a *denial* of *power* to the *State.* And the only mode in which the inhibition upon State laws impairing the obligation of contracts can be enforced, is, indirectly, through the courts, in suits where the parties raise some question as to the constitutional validity of such laws. The judicial power of the United States extends to such suits for the reason that they are suits arising under the Constitution. The Fourteenth Amendment presents the first instance in our history of the investiture of Congress with affirmative power, by *legislation*, to *enforce* an express prohibition upon the States. It is not said that the *judicial* power of the nation may be exerted for the enforcement of that amendment. No enlargement of the judicial power was required, for it is clear

that had the fifth section of the Fourteenth Amendment been entirely omitted, the judiciary could have stricken down all State laws and nullified all State proceedings in hostility to rights and privileges secured or recognized by that amendment. The power given is, in terms, by congressional *legislation*, to enforce the provisions of the amendment.

The assumption that this amendment consists wholly of prohibitions upon State laws and State proceedings in hostility to its provisions, is unauthorized by its language. The first clause of the first section—"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside"—is of a distinctly affirmative character. In its application to the colored race, previously liberated, it created and granted, as well citizenship of the United States, as citizenship of the State in which they respectively resided. It introduced all of that race, whose ancestors had been imported and sold as slaves, at once, into the political community known as the "People of the United States." They became, instantly, citizens of the United States, *and* of their respective States. Further, they were brought, by this supreme act of the nation, within the direct operation of that provision of the Constitution which declares that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." Art. 4, § 2.

The citizenship thus acquired, by that race, in virtue of an affirmative grant from the nation, may be protected, not alone by the judicial branch of the government, but by congressional legislation of a primary direct character; this, because the power of Congress is not restricted to the enforcement of prohibitions upon State laws or State action. It is, in terms distinct and positive, to enforce "the *provisions* of *this article*" of amendment; not simply those of a prohibitive character, but the provisions—*all* of the provisions—affirmative and prohibitive, of the amendment. It is, therefore, a grave misconception to suppose that the fifth section of the amendment has reference exclusively to express prohibitions upon State laws or State action. If any right was created by that amendment, the

grant of power, through appropriate legislation, to enforce its provisions, authorizes Congress, by means of legislation, operating throughout the entire Union, to guard, secure, and protect that right.

It is, therefore, an essential inquiry what, if any, right, privilege or immunity was given, by the nation, to colored persons, when they were made citizens of the State in which they reside? Did the constitutional grant of State citizenship to that race, of its own force, invest them with any rights, privileges and immunities whatever? That they became entitled, upon the adoption of the Fourteenth Amendment, "to all privileges and immunities of citizens in the several States," within the meaning of section 2 of article 4 of the Constitution, no one, I suppose, will for a moment question. What are the privileges and immunities to which, by that clause of the Constitution, they became entitled? To this it may be answered, generally, upon the authority of the adjudged cases, that they are those which are fundamental in citizenship in a free republican government, such as are "common to the citizens in the latter States under their constitutions and laws by virtue of their being citizens." Of that provision it has been said, with the approval of this court, that no other one in the Constitution has tended so strongly to constitute the citizens of the United States one people. *Ward* v. *Maryland*, 12 Wall. 418; *Corfield* v. *Coryell*, 4 Wash. C. C. 371; *Paul* v. *Virginia*, 8 Wall. 168; *Slaughter-house Cases*, 16 id. 36.

Although this court has wisely forborne any attempt, by a comprehensive definition, to indicate all of the privileges and immunities to which the citizen of a State is entitled, of right, when within the jurisdiction of other States, I hazard nothing, in view of former adjudications, in saying that no State can sustain her denial to colored citizens of other States, while within her limits, of privileges or immunities, fundamental in republican citizenship, upon the ground that she accords such privileges and immunities only to her white citizens and withholds them from her colored citizens. The colored citizens of other States, within the jurisdiction of that State, could claim, in virtue of section 2 of article 4 of the Constitution, every privilege and immunity

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which that State secures to her white citizens. Otherwise, it would be in the power of any State, by discriminating class legislation against its own citizens of a particular race or color, to withhold from citizens of other States, belonging to that proscribed race, when within her limits, privileges and immunities of the character regarded by all courts as fundamental in citizenship; and that, too, when the constitutional guaranty is that the citizens of each State shall be entitled to "all privileges and immunities of citizens of the several States." No State may, by discrimination against a portion of its own citizens of a particular race, in respect of privileges and immunities fundamental in citizenship, impair the constitutional right of citizens of other States, of whatever race, to enjoy in that State all such privileges and immunities as are there accorded to her most favored citizens. A colored citizen of Ohio or Indiana, while in the jurisdiction of Tennessee, is entitled to enjoy any privilege or immunity, fundamental in citizenship, which is given to citizens of the white race in the latter State. It is not to be supposed that any one will controvert this proposition.

But what was secured to colored citizens of the United States —as between them and their respective States—by the national grant to them of State citizenship? With what rights, privileges, or immunities did this grant invest them? There is one, if there be no other—exemption from race discrimination in respect of any civil right belonging to citizens of the white race in the same State. That, surely, is their constitutional privilege when within the jurisdiction of other States. And such must be their constitutional right, in their own State, unless the recent amendments be splendid baubles, thrown out to delude those who deserved fair and generous treatment at the hands of the nation. Citizenship in this country necessarily imports at least equality of civil rights among citizens of every race in the same State. It is fundamental in American citizenship that, in respect of such rights, there shall be no discrimination by the State, or its officers, or by individuals or corporations exercising public functions or authority, against any citizen because of his race or previous condition of servitude. In *United States* v. *Cruikshank*, 92 U. S. 542, it was said at page 555, that the

rights of life and personal liberty are natural rights of man, and that "the equality of the rights of citizens is a principle of republicanism." And in *Ex parte Virginia*, 100 U. S. 334, the emphatic language of this court is that "one great purpose of these amendments was to raise the colored race from that condition of inferiority and servitude in which most of them had previously stood, into perfect equality of civil rights with all other persons within the jurisdiction of the States." So, in *Strauder* v. *West Virginia*, 100 U. S. 306, the court, alluding to the Fourteenth Amendment, said: "This is one of a series of constitutional provisions having a common purpose, namely, securing to a race recently emancipated, a race that through many generations had been held in slavery, all the civil rights that the superior race enjoy." Again, in *Neal* v. *Delaware*, 103 U. S. 386, it was ruled that this amendment was designed, primarily, "to secure to the colored race, thereby invested with the rights, privileges, and responsibilities of citizenship, the enjoyment of all the civil rights that, under the law, are enjoyed by white persons."

The language of this court with reference to the Fifteenth Amendment, adds to the force of this view. In *United States* v. *Cruikshank*, it was said: "In *United States* v. *Reese*, 92 U. S. 214, we held that the Fifteenth Amendment has invested the citizens of the United States with a new constitutional right, which is exemption from discrimination in the exercise of the elective franchise, on account of race, color, or previous condition of servitude. From this it appears that the right of suffrage is not a necessary attribute of national citizenship, but that exemption from discrimination in the exercise of that right on account of race, &c., is. The right to vote in the States comes from the States; but the right of exemption from the prohibited discrimination comes from the United States. The first has not been granted or secured by the Constitution of the United States, but the last has been."

Here, in language at once clear and forcible, is stated the principle for which I contend. It can scarcely be claimed that exemption from race discrimination, in respect of civil rights, against those to whom State citizenship was granted by the

nation, is any less, for the colored race, a new constitutional right, derived from and secured by the national Constitution, than is exemption from such discrimination in the exercise of the elective franchise. It cannot be that the latter is an attribute of national citizenship, while the other is not essential in national citizenship, or fundamental in State citizenship.

If, then, exemption from discrimination, in respect of civil rights, is a new constitutional right, secured by the grant of State citizenship to colored citizens of the United States—and I do not see how this can now be questioned—why may not the nation, by means of its own legislation of a primary direct character, guard, protect and enforce that right? It is a right and privilege which the nation conferred. It did not come from the States in which those colored citizens reside. It has been the established doctrine of this court during all its history, accepted as essential to the national supremacy, that Congress, in the absence of a positive delegation of power to the State legislatures, may, by its own legislation, enforce and protect any right derived from or created by the national Constitution. It was so declared in *Prigg* v. *Commonwealth of Pennsylvania*. It was reiterated in *United States* v. *Reese*, 92 U. S. 214, where the court said that "rights and immunities created by and dependent upon the Constitution of the United States can be protected by Congress. The form and manner of the protection may be such as Congress, in the legitimate exercise of its discretion, shall provide. These may be varied to meet the necessities of the particular right to be protected." It was distinctly reaffirmed in *Strauder* v. *West Virginia*, 100 U. S. 310, where we said that "a right or immunity created by the Constitution or only guaranteed by it, even without any express delegation of power, may be protected by Congress." How then can it be claimed in view of the declarations of this court in former cases, that exemption of colored citizens, within their States, from race discrimination, in respect of the civil rights of citizens, is not an immunity created or derived from the national Constitution?

This court has always given a broad and liberal construction to the Constitution, so as to enable Congress, by legislation, to

enforce rights secured by that instrument. The legislation which Congress may enact, in execution of its power to enforce the provisions of this amendment, is such as may be appropriate to protect the right granted. The word appropriate was undoubtedly used with reference to its meaning, as established by repeated decisions of this court. Under given circumstances, that which the court characterizes as corrective legislation might be deemed by Congress appropriate and entirely sufficient. Under other circumstances primary direct legislation may be required. But it is for Congress, not the judiciary, to say that legislation is appropriate—that is—best adapted to the end to be attained. The judiciary may not, with safety to our institutions, enter the domain of legislative discretion, and dictate the means which Congress shall employ in the exercise of its granted powers. That would be sheer usurpation of the functions of a co-ordinate department, which, if often repeated, and permanently acquiesced in, would work a radical change in our system of government. In *United States* v. *Fisher*, 2 Cr. 358, the court said that "Congress must possess the choice of means, and must be empowered to use any means which are in fact conducive to the exercise of a power granted by the Constitution." "The sound construction of the Constitution," said Chief Justice Marshall, "must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional." *McCulloch* v. *Maryland*, 4 Wh. 421.

Must these rules of construction be now abandoned? Are the powers of the national legislature to be restrained in proportion as the rights and privileges, derived from the nation, are valuable? Are constitutional provisions, enacted to secure the dearest rights of freemen and citizens, to be subjected to that rule of construction, applicable to private instruments,

which requires that the words to be interpreted must be taken most strongly against those who employ them? Or, shall it be remembered that "a constitution of government, founded by the people for themselves and their posterity, and for objects of the most momentous nature—for perpetual union, for the establishment of justice, for the general welfare, and for a perpetuation of the blessings of liberty—necessarily requires that every interpretation of its powers should have a constant reference to these objects? No interpretation of the words in which those powers are granted can be a sound one, which narrows down their ordinary import so as to defeat those objects." 1 Story Const. § 422.

The opinion of the court, as I have said, proceeds upon the ground that the power of Congress to legislate for the protection of the rights and privileges secured by the Fourteenth Amendment cannot be brought into activity except with the view, and as it may become necessary, to correct and annul State laws and State proceedings in hostility to such rights and privileges. In the absence of State laws or State action adverse to such rights and privileges, the nation may not actively interfere for their protection and security, even against corporations and individuals exercising public or quasi public functions. Such I understand to be the position of my brethren. If the grant to colored citizens of the United States of citizenship in their respective States, imports exemption from race discrimination, in their States, in respect of such civil rights as belong to citizenship, then, to hold that the amendment remits that right to the States for their protection, primarily, and stays the hands of the nation, until it is assailed by State laws or State proceedings, is to adjudge that the amendment, so far from enlarging the powers of Congress—as we have heretofore said it did—not only curtails them, but reverses the policy which the general government has pursued from its very organization. Such an interpretation of the amendment is a denial to Congress of the power, by appropriate legislation, to enforce one of its provisions. In view of the circumstances under which the recent amendments were incorporated into the Constitution, and especially in view of the peculiar character of the new

rights they created and secured, it ought not to be presumed that the general government has abdicated its authority, by national legislation, direct and primary in its character, to guard and protect privileges and immunities secured by that instrument. Such an interpretation of the Constitution ought not to be accepted if it be possible to avoid it. Its acceptance would lead to this anomalous result: that whereas, prior to the amendments, Congress, with the sanction of this court, passed the most stringent laws—operating directly and primarily upon States and their officers and agents, as well as upon individuals—in vindication of slavery and the right of the master, it may not now, by legislation of a like primary and direct character, guard, protect, and secure the freedom established, and the most essential right of the citizenship granted, by the constitutional amendments. With all respect for the opinion of others, I insist that the national legislature may, without transcending the limits of the Constitution, do for human liberty and the fundamental rights of American citizenship, what it did, with the sanction of this court, for the protection of slavery and the rights of the masters of fugitive slaves. If fugitive slave laws, providing modes and prescribing penalties, whereby the master could seize and recover his fugitive slave, were legitimate exercises of an implied power to protect and enforce a right recognized by the Constitution, why shall the hands of Congress be tied, so that—under an express power, by appropriate legislation, to enforce a constitutional provision granting citizenship—it may not, by means of direct legislation, bring the whole power of this nation to bear upon States and their officers, and upon such individuals and corporations exercising public functions as assume to abridge, impair, or deny rights confessedly secured by the supreme law of the land?

It does not seem to me that the fact that, by the second clause of the first section of the Fourteenth Amendment, the States are expressly prohibited from making or enforcing laws abridging the privileges and immunities of citizens of the United States, furnishes any sufficient reason for holding or maintaining that the amendment was intended to deny Congress the power, by general, primary, and direct legislation, of

protecting citizens of the several States, being also citizens of the United States, against all discrimination, in respect of their rights as citizens, which is founded on race, color, or previous condition of servitude.

Such an interpretation of the amendment is plainly repugnant to its fifth section, conferring upon Congress power, by appropriate legislation, to enforce not merely the provisions containing prohibitions upon the States, but all of the provisions of the amendment, including the provisions, express and implied, in the first clause of the first section of the article granting citizenship. This alone is sufficient for holding that Congress is not restricted to the enactment of laws adapted to counteract and redress the operation of State legislation, or the action of State officers, of the character prohibited by the amendment. It was perfectly well known that the great danger to the equal enjoyment by citizens of their rights, as citizens, was to be apprehended not altogether from unfriendly State legislation, but from the hostile action of corporations and individuals in the States. And it is to be presumed that it was intended, by that section, to clothe Congress with power and authority to meet that danger. If the rights intended to be secured by the act of 1875 are such as belong to the citizen, in common or equally with other citizens in the same State, then it is not to be denied that such legislation is peculiarly appropriate to the end which Congress is authorized to accomplish, viz., to protect the citizen, in respect of such rights, against discrimination on account of his race. Recurring to the specific prohibition in the Fourteenth Amendment upon the making or enforcing of State laws abridging the privileges of citizens of the United States, I remark that if, as held in the *Slaughter-House Cases*, the privileges here referred to were those which belonged to citizenship of the United States, as distinguished from those belonging to State citizenship, it was impossible for any State prior to the adoption of that amendment to have enforced laws of that character. The judiciary could have annulled all such legislation under the provision that the Constitution shall be the supreme law of the land, anything in the constitution or laws of any State to the contrary notwithstanding. The States were

already under an implied prohibition not to abridge any privilege or immunity belonging to citizens of the United States as such. Consequently, the prohibition upon State laws in hostility to rights belonging to citizens of the United States, was intended—in view of the introduction into the body of citizens of a race formerly denied the essential rights of citizenship—only as an express limitation on the powers of the States, and was not intended to diminish, in the slightest degree, the authority which the nation has always exercised, of protecting, by means of its own direct legislation, rights created or secured by the Constitution. Any purpose to diminish the national authority in respect of privileges derived from the nation is distinctly negatived by the express grant of power, by legislation, to enforce every provision of the amendment, including that which, by the grant of citizenship in the State, secures exemption from race discrimination in respect of the civil rights of citizens.

It is said that any interpretation of the Fourteenth Amendment different from that adopted by the majority of the court, would imply that Congress had authority to enact a municipal code for all the States, covering every matter affecting the life, liberty, and property of the citizens of the several States. Not so. Prior to the adoption of that amendment the constitutions of the several States, without perhaps an exception, secured all *persons* against deprivation of life, liberty, or property, otherwise than by due process of law, and, in some form, recognized the right of all *persons* to the equal protection of the laws. Those rights, therefore, existed before that amendment was proposed or adopted, and were not created by it. If, by reason of that fact, it be assumed that protection in these rights of persons still rests primarily with the States, and that Congress may not interfere except to enforce, by means of corrective legislation, the prohibitions upon State laws or State proceedings inconsistent with those rights, it does not at all follow, that privileges which have been *granted by the nation*, may not be protected by primary legislation upon the part of Congress. The personal rights and immunities recognized in the prohibitive clauses of the amendment were, prior to its adoption,

under the protection, primarily, of the States, while rights, created by or derived from the United States, have always been, and, in the nature of things, should always be, primarily, under the protection of the general government. Exemption from race discrimination in respect of the civil rights which are fundamental in *citizenship* in a republican government, is, as we have seen, a new right, created by the nation, with express power in Congress, by legislation, to enforce the constitutional provision from which it is derived. If, in some sense, such race discrimination is, within the letter of the last clause of the first section, a denial of that equal protection of the laws which is secured against State denial to all persons, whether citizens or not, it cannot be possible that a mere prohibition upon such State denial, or a prohibition upon State laws abridging the privileges and immunities of citizens of the United States, takes from the nation the power which it has uniformly exercised of protecting, by direct primary legislation, those privileges and immunities which existed under the Constitution before the adoption of the Fourteenth Amendment, or have been created by that amendment in behalf of those thereby made *citizens* of their respective States.

This construction does not in any degree intrench upon the just rights of the States in the control of their domestic affairs. It simply recognizes the enlarged powers conferred by the recent amendments upon the general government. In the view which I take of those amendments, the States possess the same authority which they have always had to define and regulate the civil rights which their own people, in virtue of State citizenship, may enjoy within their respective limits; except that its exercise is now subject to the expressly granted power of Congress, by legislation, to enforce the provisions of such amendments—a power which necessarily carries with it authority, by national legislation, to protect and secure the privileges and immunities which are created by or are derived from those amendments. That exemption of citizens from discrimination based on race or color, in respect of civil rights, is one of those privileges or immunities, can no longer be deemed an open question in this court.

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It was said of the case of *Dred Scott* v. *Sandford*, that this court, there overruled the action of two generations, virtually inserted a new clause in the Constitution, changed its character, and made a new departure in the workings of the federal government. I may be permitted to say that if the recent amendments are so construed that Congress may not, in its own discretion, and independently of the action or non-action of the States, provide, by legislation of a direct character, for the security of rights created by the national Constitution; if it be adjudged that the obligation to protect the fundamental privileges and immunities granted by the Fourteenth Amendment to citizens residing in the several States, rests primarily, not on the nation, but on the States; if it be further adjudged that individuals and corporations, exercising public functions, or wielding power under public authority, may, without liability to direct primary legislation on the part of Congress, make the race of citizens the ground for denying them that equality of civil rights which the Constitution ordains as a principle of republican citizenship; then, not only the foundations upon which the national supremacy has always securely rested will be materially disturbed, but we shall enter upon an era of constitutional law, when the rights of freedom and American citizenship cannot receive from the nation that efficient protection which heretofore was unhesitatingly accorded to slavery and the rights of the master.

But if it were conceded that the power of Congress could not be brought into activity until the rights specified in the act of 1875 had been abridged or denied by some State law or State action, I maintain that the decision of the court is erroneous. There has been adverse State action within the Fourteenth Amendment as heretofore interpreted by this court. I allude to *Ex parte Virginia*, *supra*. It appears, in that case, that one Cole, judge of a county court, was charged with the duty, by the laws of Virginia, of selecting grand and petit jurors. The law of the State did not authorize or permit him, in making such selections, to discriminate against colored citizens because of their race. But he was indicted in the federal court, under the act of 1875, for making such discriminations.

The attorney-general of Virginia contended before us, that the State had done its duty, and had not authorized or directed that county judge to do what he was charged with having done; that the State had not denied to the colored race the equal protection of the laws; and that consequently the act of Cole must be deemed his individual act, in contravention of the will of the State. Plausible as this argument was, it failed to convince this court, and after saying that the Fourteenth Amendment had reference to the political body denominated a State, "by whatever instruments or in whatever modes that action may be taken," and that a State acts by its legislative, executive, and judicial authorities, and can act in no other way, we proceeded:

"The constitutional provision, therefore, must mean that no agency of the State, or of the officers or agents by whom its powers are exerted, shall deny to any person within its jurisdiction the equal protection of the laws. Whoever, by virtue of public position under a State government, deprives another of property, life, or liberty without due process of law, or denies or takes away the equal protection of the laws, violates the constitutional inhibition; and, as he acts under the name and for the State, and is clothed with the State's power, his act is that of the State. This must be so, or the constitutional prohibition has no meaning. Then the State has clothed one of its agents with power to annul or evade it. But the constitutional amendment was ordained for a purpose. It was to secure equal rights to all persons, and, to insure to all persons the enjoyment of such rights, power was given to Congress to enforce its provisions by appropriate legislation. Such legislation must act upon persons, not upon the abstract thing denominated a State, but upon the persons who are the agents of the State, in the denial of the rights which were intended to be secured." *Ex parte Virginia*, 100 U. S. 346–7.

In every material sense applicable to the practical enforcement of the Fourteenth Amendment, railroad corporations, keepers of inns, and managers of places of public amusement are agents or instrumentalities of the State, because they are charged with

duties to the public, and are amenable, in respect of their duties and functions, to governmental regulation. It seems to me that, within the principle settled in *Ex parte Virginia*, a denial, by these instrumentalities of the State, to the citizen, because of his race, of that equality of civil rights secured to him by law, is a denial by the State, within the meaning of the Fourteenth Amendment. If it be not, then that race is left, in respect of the civil rights in question, practically at the mercy of corporations and individuals wielding power under the States.

But the court says that Congress did not, in the act of 1866, assume, under the authority given by the Thirteenth Amendment, to adjust what may be called the social rights of men and races in the community. I agree that government has nothing to do with social, as distinguished from technically legal, rights of individuals. No government ever has brought, or ever can bring, its people into social intercourse against their wishes. Whether one person will permit or maintain social relations with another is a matter with which government has no concern. I agree that if one citizen chooses not to hold social intercourse with another, he is not and cannot be made amenable to the law for his conduct in that regard; for even upon grounds of race, no legal right of a citizen is violated by the refusal of others to maintain merely social relations with him. What I affirm is that no State, nor the officers of any State, nor any corporation or individual wielding power under State authority for the public benefit or the public convenience, can, consistently either with the freedom established by the fundamental law, or with that equality of civil rights which now belongs to every citizen, discriminate against freemen or citizens, in those rights, because of their race, or because they once labored under the disabilities of slavery imposed upon them as a race. The rights which Congress, by the act of 1875, endeavored to secure and protect are legal, not social rights. The right, for instance, of a colored citizen to use the accommodations of a public highway, upon the same terms as are permitted to white citizens, is no more a social right than his right, under the law, to use the public streets of a city or a town, or a turnpike road, or a public market, or a post office, or his right to sit

in a public building with others, of whatever race, for the purpose of hearing the political questions of the day discussed. Scarcely a day passes without our seeing in this court-room citizens of the white and black races sitting side by side, watching the progress of our business. It would never occur to any one that the presence of a colored citizen in a court-house, or court-room, was an invasion of the social rights of white persons who may frequent such places. And yet, such a suggestion would be quite as sound in law—I say it with all respect—as is the suggestion that the claim of a colored citizen to use, upon the same terms as is permitted to white citizens, the accommodations of public highways, or public inns, or places of public amusement, established under the license of the law, is an invasion of the social rights of the white race.

The court, in its opinion, reserves the question whether Congress, in the exercise of its power to regulate commerce amongst the several States, might or might not pass a law regulating rights in public conveyances passing from one State to another. I beg to suggest that that precise question was substantially presented here in the only one of these cases relating to railroads—*Robinson and Wife* v. *Memphis & Charleston Railroad Company*. In that case it appears that Mrs. Robinson, a citizen of Mississippi, purchased a railroad ticket entitling her to be carried from Grand Junction, Tennessee, to Lynchburg, Virginia. Might not the act of 1875 be maintained in that case, as applicable at least to commerce between the States, notwithstanding it does not, upon its face, profess to have been passed in pursuance of the power of Congress to regulate commerce? Has it ever been held that the judiciary should overturn a statute, because the legislative department did not accurately recite therein the particular provision of the Constitution authorizing its enactment? We have often enforced municipal bonds in aid of railroad subscriptions, where they failed to recite the statute authorizing their issue, but recited one which did not sustain their validity. The inquiry in such cases has been, was there, in any statute, authority for the execution of the bonds? Upon this branch of the case, it may be remarked that the State of Louisiana, in 1869, passed a statute

giving to passengers, without regard to race or color, equality of right in the accommodations of railroad and street cars, steamboats or other water crafts, stage coaches, omnibuses, or other vehicles. But in *Hall* v. *De Cuir*, 95 U. S. 487, that act was pronounced unconstitutional so far as it related to commerce between the States, this court saying that "if the public good requires such legislation it must come from Congress, and not from the States." I suggest, that it may become a pertinent inquiry whether Congress may, in the exertion of its power to regulate commerce among the States, enforce among passengers on public conveyances, equality of right, without regard to race, color or previous condition of servitude, if it be true—which I do not admit—that such legislation would be an interference by government with the social rights of the people.

My brethren say, that when a man has emerged from slavery, and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rank of a mere citizen, and ceases to be the special favorite of the laws, and when his rights as a citizen, or a man, are to be protected in the ordinary modes by which other men's rights are protected. It is, I submit, scarcely just to say that the colored race has been the special favorite of the laws. The statute of 1875, now adjudged to be unconstitutional, is for the benefit of citizens of every race and color. What the nation, through Congress, has sought to accomplish in reference to that race, is—what had already been done in every State of the Union for the white race—to secure and protect rights belonging to them as freemen and citizens; nothing more. It was not deemed enough "to help the feeble up, but to support him after." The one underlying purpose of congressional legislation has been to enable the black race to take the rank of mere citizens. The difficulty has been to compel a recognition of the legal right of the black race to take the rank of citizens, and to secure the enjoyment of privileges belonging, under the law, to them as a component part of the people for whose welfare and happiness government is ordained.

At every step, in this direction, the nation has been confronted with class tyranny, which a contemporary English historian says is, of all tyrannies, the most intolerable, "for it is ubiquitous in its operation, and weighs, perhaps, most heavily on those whose obscurity or distance would withdraw them from the notice of a single despot." To-day, it is the colored race which is denied, by corporations and individuals wielding public authority, rights fundamental in their freedom and citizenship. At some future time, it may be that some other race will fall under the ban of race discrimination. If the constitutional amendments be enforced, according to the intent with which, as I conceive, they were adopted, there cannot be, in this republic, any class of human beings in practical subjection to another class, with power in the latter to dole out to the former just such privileges as they may choose to grant. The supreme law of the land has decreed that no authority shall be exercised in this country upon the basis of discrimination, in respect of civil rights, against freemen and citizens because of their race, color, or previous condition of servitude. To that decree—for the due enforcement of which, by appropriate legislation, Congress has been invested with express power—every one must bow, whatever may have been, or whatever now are, his individual views as to the wisdom or policy, either of the recent changes in the fundamental law, or of the legislation which has been enacted to give them effect.

For the reasons stated I feel constrained to withhold my assent to the opinion of the court.

The CHAIRMAN. The hearing will now be adjourned until 10 o'clock tomorrow morning.

(Whereupon, at 12:40 p.m., the subcommittee was adjourned, to be reconvened at 10 a.m., Friday, July 12, 1963.)

CIVIL RIGHTS

FRIDAY, JULY 12, 1963

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

The subcommittee met at 10 a.m., pursuant to adjournment, in room 346, Cannon Building, the Honorable Byron G. Rogers, presiding.

Present: Congressmen Rogers, Rodino, Donohue, Brooks, Toll, Kastenmeier, Corman, McCulloch, Miller, Cramer, and Meader.

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

Mr. ROGERS. The committee will come to order. Our first witness this morning is the Honorable Albert W. Watson, Member from South Carolina.

Come forward, Mr. Watson.

Mr. WATSON. Fine. Mr. Chairman, I am going to follow pretty well the text of the prepared statement that I have because I should like to make sure that we bring all of these factors out into the open, and then at the conclusion I will be very happy to try to answer any questions that you or any member of the committee might propound to me.

Mr. ROGERS. Proceed in your own manner.

STATEMENT OF HON. ALBERT W. WATSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF SOUTH CAROLINA

Mr. WATSON. Mr. Chairman and members of the committee, I am here today to speak against this bill as one who lived his entire life in the South and knows the southern people. It is the southern people who understand this problem, for we have lived with it for generations. While the South was bravely recovering from the wreckage of war and reconstruction, the rest of this country abdicated all responsibility for almost a century. The progress that was made during that period—and there was substantial progress—was almost completely of southern origin.

The President has said the racial dilemma which confronts us is not confined solely to the South—indeed, in recent months, demonstrations, and, often violence, have occurred in almost every area where there is a sizable Negro population. Notwithstanding this, I think you will all agree that the problem in the South is qualitatively different, and that it is the people of the South, both white and Negro,

who will feel the effects of this bill, if passed, most acutely. Born of a distinctive history and nurtured on a syndrome of distinctive characteristics, the South today is an intangible whole, separated from the rest of this Nation by important cultural and economic differences.

I urge you, with all the sincerity and hope I can muster, to recall this constantly: The racial problem is preeminently a southern problem; in the South it can only be solved by the southern people, both white and Negro. Legislation by an only slightly familiar Federal Government can only inflame an already very difficult situation. It can only drive further the wedge, so well hammered in recent years, which separates the races in the South. Within the binder which enclosed this civil rights bill there lies a vast reservoir of potential discord, anger, and uncertainty yet untapped. This bill augurs only ill for the future, and, while denying to the people of this country their constitutional rights of private enterprise it promises only votes for some and no meaningful solution for the problem.

Let's look at the South today:

The States below the Mason-Dixon line have, for some time, now, been undergoing a far-reaching process of social and economic change. I would like to cite some statistics concerning South Carolina, believing my State to be representative in this respect. Between 1951 and 1961 the total value of new industry plus the expansion in old industry in South Carolina was $1.4 billion. This created 89,000 new jobs and $250 million in new payrolls.

Also, let us look at some other facts:

Subject and period	*Percent increase*
1. Per capital income, 1950–62:	
(*a*) South Carolina	73.0
(*b*) United States	58.0
2. Number of commercial and industrial establishments, 1950–60:	
(*a*) South Carolina	20.0
(*b*) United States	0.8
3. Production of electrical energy, 1950–60:	
(*a*) South Carolina	250.0
(*b*) United States	120.0
4. Farm employment, 1949–59:	
(*a*) South Carolina	—78.0
(*b*) United States	—35.0

These figures, showing increased industrialization and wealth, point to a real solution to the racial problem—better job opportunities for all citizens including Negroes. Modern industry under the pressures of competition, employs and promotes, and rightly so, on the basis of merit, not race. Increasing affluence means more and better education for all southerners.

Social and economic change is always a perplexing process for those experiencing it. This is true the world over, and, as the new nations of the world demand their freedom, so also the South insists on freedom of choice and discretion in dealing with its problems and its future—a future which holds great promise.

I might inject here just recently in the State of North Carolina a Negro member of the State senate there made the statement in a commencement address to a college in that State that the greatest opportunity for the Negro lies in the South. All people, but, in particular, the white people of the South, dislike to be told or ordered to conduct their affairs in "such and such a way." The vast majority of

southerners that I am acquainted with absolutely refuse to have their social and, perhaps, moral life dictated by the Federal Government. If the strong reaction of most southerners to this bill is added to the increased incentive to demonstrate, which this measure will give, it is obvious that both sides will become more intransigent and problems will multiply. Violence will inevitably follow. Let us stop living in the realm of fantasy, believing that this problem will be soved with the wave of the magical legislative wand. The fate of the 18th amendment should remind us of the futility of such laws—the absurdity of forced associations and forced "morals."

But some of you, perhaps victims of the present mass hysteria by irresponsible agitators, feel that something must be done and now. Let me assure you that a great deal is being done. Unnoticed and unreported, apparently because of the absolute refusal on the part of many national commentators and journalists to do anything but fan the flames of racial unrest and vilify the southerner, the South has nevertheless achieved real and meaningful progress.

The Attorney General, in his statement before this committee on June 26, 1963, said that "in a great number of cities," thanks to Federal mediation and advice, "voluntary action has been taken to end discrimination in hotels theaters and eating places" (p. 7). Thus, the Attorney General has claimed credit for all progress in racial relations. Of course, this is absurd. The truth is that Federal "mediation," that is, intervention, has actually slowed real progress and increased difficulties.

But what is this progress to which I have been referring? The Justice Department has released statistics showing that about 40 percent of all southern communities of 10,000 population and above have achieved some degree of desegregation. I hasten to remind you that this survey includes communities of comparatively small population.

Also, I would like to cite the following statistics relating to Negro progress in Columbia, S.C., my home city, and the capital of the State. Mind you, these outstanding accomplishments in bettering opportunities for all are the result of local leadership and mutual understanding rather than legislative coercion.

Some facts about employment of Negroes by the city of Columbia:

1. Police employment of Negroes:

(*a*) All employment is by civil service examination.

(*b*) A total of 35 Negroes have made application for police employment through civil service over the past 10 years.

(*c*) A total of 11 of these have been employed during this period.

(*d*) There are eight Negroes now on the police force. Four are regular police officers and four are school crossing guards.

And I might add here that the percentages run true with the white applicants, as well.

So far as fire employment:

(*a*) All employment is by civil service examination.

(*b*) A total of 37 applications from Negroes have been received over the past 10 years.

(*c*) A total of nine Negro firemen have been employed.

3. Recreation department employment of Negroes:

(*a*) All applications are by individual qualifications.

(*b*) The total number of recreation employees is 163. Of this total, 66 are Negroes.

(c) Forty-three percent of all recreation department employees are Negroes.

(d) Of the total of 66 Negroes on the recreation department payroll, 39, or 59 percent, are in supervisory positions.

(e) There are a total of 84 recreation leaders, and of this number 26, or 31 percent, are Negroes.

I point out these things because we have rather lost all of these things without being specific so far as the particular accomplishments that have been made in solving this problem.

4. Water construction department employment of Negroes:

(a) All applications are by individual qualifications.

(b) Out of a total of 41 employees in this department, 24 or 58 percent, are Negroes.

(c) Out of this 24, 10, or 41 percent, are equipment operators or skilled workers.

5. Percentage of city employment now filled by Negroes:

(a) The total number of city employes, exclusive of police and fire, are 527. Of this number, 215, or 41 percent, are Negroes.

(b) The total population of the city of Columbia, interestingly enough, according to the official 1960 census, is 97,433. Of this number, 29,488, or 30 percent are Negroes.

I again remind you we have more than 31 percent of the total employees that are Negroes.

Mr. McCULLOCH. Mr. Chairman, at that place I would like to ask our colleague one question.

Does the same approximate percentage hold true for employment in the police and fire departments?

Mr. WATSON. So far as the number in the police and fire departments, and it is still through the civil service system, and they have only had 35 applicants in the police department and 37 in the fire department.

Mr. McCULLOCH. How about the percentage with respect to the population as a whole and in other city departments?

Mr. WATSON. Of course, so far as the police and fire departments are concerned, it would not be as great because we have not had as many applicants.

Mr. McCULLOCH. I understand, but could you tell us, however, the approximate percentage there is in the police department, first, and then in the fire department?

Mr. WATSON. That I do not know. I do not know the total number in either of those departments.

Mr. McCULLOCH. Would you get that figure for the record?

Mr. WATSON. I will be happy to do it, but, again, I want you to bear in mind that we must look at the number of applicants for these particular departments, and of the number of applicants, 11 of the 35 that applied were employed in the police department, and 9 of the 37 who applied were employed in the fire department.

Mr. McCULLOCH. Yes, I noted that statement earlier in your statement, and it is a friendly question to get the real facts of the case.

I am agreeably surprised at this general record that you cite on page 4 of your statement.

Mr. WATSON. Thank you, sir. I am sure that the question is one of trying to elicit information.

Then we look further at some of the advances in the city of Columbia, and I am familiar with the city because it is my home.

1. Unrestricted use of city buses.
2. Unrestricted use of public library.
3. Employment of Negro firemen.
4. Employment of Negro policemen.
5. Employment of Negro recreational leaders.
6. Unrestricted use of Columbia Art Museum.
7. Unrestricted use of science museum and planetarium.
8. Appointment of Negro members to various boards and commissions:
   (*a*) Planning commission;
   (*b*) Decent literature commission;
   (*c*) Cleaner Columbia committee;
   (*d*) City board of health;
   (*e*) Urban rehabilitation advisory board;
   (*f*) Citizens advisory committee on minority housing problems;
   (*g*) Girl Scout board, and the list could be expanded.
9. Employment of Negro health nurse.
10. Unrestricted use of restroom and eating facilities at municipal airport.

These are hard, cold facts; facts, which in my opinion, make this legislation totally unnecessary; facts which represent local people coming to grips with the problem confronting them.

Additionally, I should like to point out that even passage of State laws are ineffectual in coping with this problem. Today, there are 30 States which have on their statute books laws prohibiting discrimination in privately owned public accommodations; 25 in private employment. Nevertheless, these same States are at this moment plagued with demonstrations and violence protesting those very things which they have laws presumably to protect.

Again, I would like to refer to the Attorney General's statement. I quote:

> The events that have occurred since the President's first message—in Birmingham, in Jackson, in nearby Cambridge, in Philadelphia, and in many other cities—make it clear that the attack on these problems must be accelerated. (P. 3.)

This statement is a clear admission on the part of Mr. Kennedy that the administration has capitulated to the wishes of Negro pressure groups—pressure groups which have so obviously showed their adolescence in recent months. This bill, the administration's vote-seeking answer to these groups, will only speed up demonstrations and will not materially improve the lot of the Negro.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt again to ask our colleague if he has had a full opportunity to study H.R. 3139, which I introduced on January 31, 1963, and was joined by some 40 other Members of the House?

Mr. WATSON. I have not, Mr. McCulloch.

Mr. McCULLOCH. I would be very happy if you would look at that legislation. We think it is a proposal which is wide in scope, yet moderate in operation. It has been so described by people, who are

not emotional and who take a calm view of this problem which faces us.

I repeat, I would be very happy if you would find time to study that legislation.

Mr. WATSON. I will certainly do that, Mr. McCulloch.

I might state here, though, that I am concerned about any legislation regardless of its moderation or the temper of it on this particular question because, as I am going to try to point out throughout this statement, I believe that this problem will only be solved by local people through local understanding and good will. As a consequence, regardless of how moderate or temperate it might be, and I am sure, sir, you would have that in mind in your bill; but, again, I fear that any legislation dealing with this particular thing, trying to make it of a compulsive nature, regardless of how you might try to temper it down, would aggravate more than it would eliminate this particular problem.

Let us look at a few of these racial "events" which the Attorney General feels necessitates this legislation:

(*a*) Denver, Colo., a few days ago had demonstrations in protest of discrimination in public and private employment and in housing. Yet the State of Colorado has had for some years now laws outlawing discrimination in housing and employment.

(*b*) More than 40 people were injured in a series of melees during demonstrations around a school construction site in Philadelphia between May 27 and May 31, 1963. Negroes representing the NAACP were protesting an alleged bias against Negroes in skilled construction jobs. Yet, Pennsylvania has had a law forbidding discrimination in private employment since 1955.

(*c*) Negroes demonstrated in Cleveland throughout the month of June 1963, protesting discriminatory hiring practices at the airport, a hamburger stand, and the Cleveland Clinic. The city has experienced bomb threats, fistfights, rock fights, and rape in recent weeks, all in connection with racial flareups. Yet Ohio has antidiscrimination laws relating to privately owned public accommodations and private employment.

Mr. MCCULLOCH. Mr. Chairman, I would like to interrupt again. Such unlawful demonstrations, and I particularly speak of my own State, Ohio, are indeed regrettable. I think it is high time that authority from the highest to the lowest level speak out against unlawful demonstrations.

Yesterday, when one of your very able colleagues from South Carolina was testifying, I noted that press dispatches from Columbus, Ohio, indicated that there were improper, if not unlawful, sitins in Ohio House of Representatives, and that those sitins, after being appealed to leave so that the business of the Legislature of the State of Ohio could be carried forward, did not heed the request, and it was necessary to forcibly remove them.

I repeat, that kind of unlawful and improper demonstration should be condemned from every source in Government.

Mr. WATSON. I certainly share your sentiments there. I agree with it wholeheartedly.

Your State isn't the only one that has had that problem, as you are well aware of. Rhode Island, I believe just recently, had another

demonstration in their legislature concerning fair housing, and there it was quite a scene.

This is something we see is going to be continually agitated unless someone, as you say, or, rather, everyone from the top to the bottom, says, we are going to have a government of laws rather than mob rule and that this legislation will not be considered under the threat of violence, which invariably is going to accompany these mass demonstrations.

Mr. McCULLOCH. Again, Mr. Chairman, I wish the record to show that my statement is not to be taken either directly or indirectly in any sense that I think there should be any question of any rights to properly, peacefully, assemble, and to call upon legislators and to petition the Government from the high to the low for any redress of grievances which might be had.

Mr. WATSON. As an example of the potential danger in these demonstrations, although originally they were designed for peaceful demonstration of their interest in particular legislation or particular rights, we read this morning where the American Nazi Party headed by Rockwell or someone has asked permission, or has indicated that it would ask permission for the privilege of demonstrating on the same day as this proposed mass demonstration in Washington. So you can very well imagine what might be precipitated by such as that. The people might determine that they are going to control these demonstrations, but when you get 100,000 or even 5,000 people together, you lose control of them. You are just unable to control them because of emotions that might spread out through the crowd. Now, back to my prepared statement.

In each of these three cases, these State laws are enforced and administered by a State civil rights commission.

This list could be expanded greatly. We are left with one of two conclusions: Either the administration is asserting that these States have been negligent about or are incapable of enforcing laws on their books, or laws such as those proposed here are ineffectual in dealing with this very personal problem. These events also should remind us that the passage of this bill will not stop demonstrations. You can only have one of two conclusions, that the laws are ineffective, or else the administration are saying that these local States are not enforcing their laws.

Mr. ROGERS. May I interrupt there?

You don't mean to imply that to the State of Colorado?

Mr. WATSON. Sir?

Mr. ROGERS. You don't mean to say that the State of Colorado is incapable of enforcing its laws as relates to the segregation or nonsegregation.

Mr. WATSON. Mr. Chairman, I believe that the States are completely capable of enforcing their laws. My point is that from the position taken by the administration you could either conclude one of two things, that the local laws have not been enforced, or, secondly, laws on this subject are ineffectual. Now, that is the point I am trying to make.

Mr. ROGERS. That is the point I am raising. In the first instance, you mention Denver, Colo., and you point out that Colorado has for a number of years outlawed discrimination in housing and employment.

Now, I ask you whether or not you now contend that the State of Colorado is not enforcing its own laws?

Mr. WATSON. Mr. Chairman, my position is the latter of the two alternatives that I presented here, that is that the laws are ineffectual even on a State basis. I believe that the State of Colorado is enforcing these laws, but still she is confronted with demonstrations.

Mr. ROGERS. You mean that the State of Colorado should be the ones to enforce them?

Mr. WATSON. Absolutely.

Mr. ROGERS. And not that the State of Colorado does not now enforce them?

Mr. WATSON. The point I am trying to make additionally is that notwithstanding the presence of these laws on the statute books of Colorado, and the enforcement of these particular laws, Mr. Chairman, still you have had demonstrations.

Mr. ROGERS. Are you familiar with what took place in the Denver, Colo., situation?

Mr. WATSON. I am sure you are more familiar with it than I am.

Mr. ROGERS. That is the reason I asked the question because at Denver there was a gathering led by a member of the city council—at least he participated in it—who is a Negro. They gathered at a church about 2 miles away from the city hall and marched at night down to the city hall to the city council chambers, and there discussed their problems, and then they disappeared and went home.

Now, that is all there was to it. Now, the State of Colorado, from the time of its adoption of its constitution in 1876, prohibited discrimination. In fact, we have a statute which says that anybody who has public accommodations and refuses to serve because of color can be sued for $200 and he has no defense to it if they prove that that was the discrimination, and, in addition to that, we have the public laws as it relates to the commission to see that if there are discriminations that they may make complaints.

Naturally, they do receive complaints, but the fact that they receive complaints doesn't mean they are not enforcing the law.

That was the reason I wanted to make sure as to what your claim was that relates to our enforcement in the State of Colorado of those laws.

Mr. WATSON. Yes, sir. I agree with you and I don't want to infer for a moment that Colorado is not enforcing your law. Also, I share your happiness in Colorado in the fact that this particular demonstration did not result in violence.

Again, there is the innate danger of violence in every demonstration. I believe you would agree with me on that particular proposition, but I share your happiness that you did not experience such violence in Colorado.

Mr. MCCULLOCH. Mr. Chairman, I take it that the witness is talking about unlawful demonstrations, not peaceful, lawful demonstrations.

Mr. WATSON. Mr. McCulloch, I would not for a moment deny anyone the right of protest. That is a constitutional right, there is no question about it, but so far as this particular problem is concerned, demonstrations do not necessarily end as originally planned. We have seen just last night in Cambridge, as we saw yesterday in Savannah,

Ga., and the day before yesterday in New York, that these things might start out with the most peaceful of purposes, peaceful all of the way along, but I think it is the height of wishful thinking that a group can expect to get together 100,000 or even 5,000 people and figure there would be absolute assurance of nonviolence, although they originally got together for a peaceful purpose.

Mr. ROGERS. May I ask if there is anything in any of these proposals, that is the administration's bill and the others, that would put an end to those demonstrations?

Mr. WATSON. That is the thing, Mr. Chairman. I do not believe that they will put an end to these demonstrations. On the other hand, I believe that they will aggravate and accentuate the matter of demonstrations. Now, back to my prepared statements.

Then we look at public accommodations, title II, which is the most discussed and most abominable section. As the Attorney General has indicated (Senate Commerce Committee hearings on S. 1732, July 2, 1963), we are not concerned here with a man's constitutional right to service, but, rather, with a matter of public policy. The constitutionality of this title is said to rest on the commerce clause, and the Attorney General has stated that—

there can be no real question about the authority of the Congress to deal with discriminatory practices by enterprises whose business affects interstate commerce or interstate travel.

Precedents were cited in the Federal Food, Drug, and Cosmetics Act; the Work Hours Act of 1962; the Sherman Act, and the Fair Labor Standards Act, among others.

Without question this title is unconstitutional, and the Attorney General has tortured all reason in his analogies. He conveniently forgets the obvious distinction between regulating the flow and quality of goods and materials—that is, regulating economic and health matters—and regulating the often very personal relationship between a businessman and his customers. He ignores the basic fact that control of customers is absolutely indispensable in building and maintaining a personal service business. He refuses to even consider the corresponding right of a businessman to sell to whomever he wishes if he contends that it is a man's right to buy wherever he wishes.

Title II represents an encroachment on the rights of private enterprise as guaranteed by the 5th and 14th amendments. What happens to a man who wants to serve only blue-eyed milk maidens? What happens to a restaurant owner if he turns away a Negro who has on dirty overalls? And, if the theory of this legislation is valid, is it not true that the Federal Government could compel a private businessman to do anything it wants, whether it destroys his business or not, simply on the pretext that it is consistent with the public interest?

Also, the Attorney General has stated that discrimination in public accommodations "artificially burdens the free flow of commerce" and that, therefore, "our whole economy suffers" pages 4–5. This is simply one side of the picture. The knife cuts both ways. What happens to the innumerable establishments throughout the South such as public theaters, restaurants, and county fairs which will lose business as soon as integration occurs. It is high time someone took a realistic look at this. The motion picture theater in a small southern town will lose business because white parents will refuse to send their children. This

will happen because the two races in the South (and in the northern cities) are separated by cultural and moral differences. This is highly unfortunate, and efforts are being made to correct it. But, what are we going to do for the theater owner? Establish a Federal subsidy? No; this bill offers but two alternatives to many businessmen; first, go broke, or second, go to court and then go broke.

In this context it becomes easy to foretell that this title would not improve but would hinder economic activity. In my opinion, all this goes to show what we have known all along. This section has exceedingly little to do with economics and is an outright attempt to legislate individual morality and private association. Of course, this is no field for the Federal Government.

I might add that while this title fails to define "substantial" and gives the Attorney General vast power to abuse, it also removes from State and local authorities that discretion which they now have for dealing with the problem. If this provision is passed I predict it will close business, destroy jobs and business initiative so necessary to relieve unemployment, and that the Federal Government cannot afford to hire enough judges and marshals to enforce it.

VOTING

Title I deals with Negro voting. The provision for faster action on voting suits in Federal courts gives preferential treatment to Negroes and, therefore, stands in contradiction to our constitutional guarantees of equality before the law. With free legal services offered by the Department of Justice the orderly functioning of our courts will be completely disrupted.

In truth, I can only speak for South Carolina in this regard, but, as for my State, even so ardent a proponent of civil rights as Roy Wilkins admitted last Sunday that there are no laws nor organized efforts in South Carolina to keep Negroes from voting, and that, and I quote the newspaper article:

It's up to the Negro citizen to come forward, register, and vote.

I strongly condemn the provision stating that a person with 6 years of education shall be presumed literate. The substance of this argument may be correct, but the provision itself is in clear violation of article I, section 2, and also the 17th amendment of our Constitution. The Constitution clearly leaves voter qualifications entirely to the States. Here, again, we have an example of Federal encroachment on States rights in the never-ending drive to centralize all power in Washington.

SCHOOLS

Title III of this bill would give the Attorney General power to institute suits in Federal court against local school boards or public colleges in an effort to force faster integration of public schools. This title is itself discriminatory in that it allows one group of citizens to bypass the normal channels of justice.

This vast grant of abusable power to the Attorney General could easily turn out to be the veritable straw that broke the camel's back. If the highly unfavorable reaction of the vast majority of southerners to the constant drive toward centralization of government in Washing-

ton and destruction of States rights is further amplified by the passage of this title, resistance and, perhaps, violence will increase, not decrease.

This title is tantamount to a total usurpation of authority and control from the States by the Federal Government. State discretion in dealing with the problem would be severely limited, and the States, as far as their public schools are concerned, would become virtual puppets—with all strings being pulled by the Justice Department.

Title III exhibits an utter lack of appreciation for historical change. It neglects the vast economic, social, and cultural differences between the races in the South. In the words of the distinguished Senator from Mississippi and chairman of the Senate Judiciary Committee, it—

would make the Attorney General as great a czar as the world has ever known.

USE OF FEDERAL FUNDS

Title VI, allowing the administration to arbitrarily withhold all sorts of Federal assistance in any circumstances where discrimination is thought to occur, is as dangerous as title II. It has long been argued that the Federal Government is a vast redistributing house that via taxation and subsequent appropriation wealth is redistributed and programs are undertaken which private concerns could not or would not undertake. This title would add something new: It places a value judgment on Federal funds. Our money leaves us, and bear me out, Mr. Chairman and members of the committee, our money leaves us through taxation indiscriminately—only with regard to how much we make.

However, along the long bureaucratic road back to citizens it picks up values, ethics, and conditions. It becomes a force coercing a majority to follow the will of a minority. This is the height of inconsistency and unconstitutionality. Our forefathers of 1776 declared the independence of this Nation because of "taxation without representation." Today we find a proposal for "taxation without benefits" or "taxation with benefits, provided you act as the administration desires."

It was just last April that the administration rejected a Civil Rights Commission suggestion to deny all Federal aid to areas practicing discrimination. In another example of the administration's hysteria and confusion, this position has now been reversed, but with a new twist. Now the President wants a free hand to grant or withhold funds when and where he pleases. I denounce this bid for absolute power as an example of the rule of men replacing the time-honored rule of law.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt our colleague there. I conclude from this very analytical statement that the witness has probably noticed in the administration recommendation the right to withhold grants. The penalty for an alleged violation of law or a rule or regulation thereto is granted to a Secretary of Health, Education, and Welfare, without any provision for review of any kind.

Did the witness notice that?

Mr. WATSON. Yes, sir.

Mr. McCULLOCH. And has our colleague had the opportunity to read the statement of the Secretary of Health, Education, and Welfare, which was made before this committee only the day before yesterday, at which time he said that there was now legislation on the books which authorized his Department to distribute $8.7 billion a year to various political subdivisions of the State?

Mr. WATSON. Mr. McCulloch, I have not read his statement, the one of Mr. Celebrezze. I anticipate reading it.

Mr. McCULLOCH. Do you think that any person, any Secretary of Health, Education, and Welfare, or any single individual should have unrestricted, unreviewable power of this nature?

Mr. WATSON. I certainly do not, and I think further that it would be a total abdication as I shall point in a moment, a total abdication of our congressional responsibilities.

Mr. McCULLOCH. I take note in your statement, and I read from page 11:

I would rather have an explicit provision denying completely such funds than have this proposed provision.

Mr. WATSON. There is no question in my mind at all. At least we will be maintaining our historical position of this is a government of laws rather than of men.

I would rather have an explicit provision denying completely such funds than have this proposed provision. At least then we would know where we stood. At least then there would not be that degrading, backstage string-pulling and coercion by the administration in their effort to impose their will on others. At least then we would still be under the rule of law and not the rule of men, and Congress would not be abdicating its responsibility to the Executive.

Mr. McCULLOCH. Do I take from that statement that you would be opposed to the withholding and any of the so-called payments back to the States and cities and countries as relates to Federal aid under any provision whatsoever, if there is authorization to withhold because that State, county, or city or school district may practice segregation?

Mr. WATSON. Without question. There is no question about it. I am unalterably opposed to it becasue as I have tried to point out here, Mr. Chairman, you are putting this artificial value on tax moneys collected from all the people. From time immemorial Federal funds have been distributed to the various States and governmental entities on the basis of need, not on the basis of a need to force a particular people to follow the line of the administration.

Mr. ROGERS. I know, but let us take the one of need. Let us take the aid to the aged based upon need of the old age pension law of a State. The fact that a State may have a law which would discriminate, the Federal Government should withhold the funds because they do discriminate, do you think that the citizens of the State of South Carolina, for example, should be deprived of the right to receive these funds?

Mr. WATSON. Mr. Chairman, so far as that particular example which you have cited, I think that you will find that there is no problem at all so far as the matter of the Negro race receiving their proportion of welfare checks. In fact, there has been the constant cry in our State, and I dare say it is true throughout the United States, that perhaps the white people have been a little bit more

rigid and discriminating in the matter of allocating welfare payments to the white rather than the colored race.

Mr. ROGERS. But the point is, and as I take it from your statement, of these so-called Federal allocations, you don't feel that there should be any authority given to a Federal agency to withhold because a school district, as an example, should practice segregation?

Mr. WATSON. That is right, I do not.

Mr. ROGERS. Now, you realize that the Supreme Court, without any action from Congress, is the one that made the decision in the *Brown* case in 1954 about desegregation, and that as far as Congress is concerned, no action has been taken by it to bring about desegregation, but the Supreme Court decision said that any statutes in all of the States which led to segregation in the schools is unconstitutional and that—I don't know as it said unconstitutional, but they said they should desegregate with convenient speed.

Now, as you know, we have a number of grants-in-aid to schools and school districts throughout the United States in various forms, and do you feel that in face of the Supreme Court decision in 1954 that if Congress should not make an appropriation, and if it does make an appropriation, that the school districts should not segregate and continue to get the money?

Mr. WATSON. Mr. Chairman, so far as the Supreme Court decision of 1954, I differ with that position. From time immemorial——

Mr. ROGERS. We may all differ from it, but they made the decision. Now, what are we going to do about it?

Mr. WATSON. Of course, the decision applies to that particular case, and I am sure that the Federal Government is leaving no stone unturned in implementing that particular decision. I just don't want to see Congress get into compounding a problem which we have. That is basically what I feel.

So far as that decision is concerned, it broke away from the age-old principle of state decisis. It repudiated the *Plessy-Ferguson* decision. Nowadays we as lawyers don't know what the Supreme Court will decide.

Mr. ROGERS. I agree with you on that.

Mr. WATSON. You can't base it on historical or legal precedent at all. They can go off on any tangent.

Mr. ROGERS. The fact remains they have made this decision and the present indication is that they are going to continue to stand by it. So the only problem is what should Congress do about it.

Mr. WATSON. I feel Congress should not get into the problem by compounding the error. I am sure you will agree with me that the Department of Justice is doing everything, even beyond the realm of reasonableness, in trying to implement the decision of the Supreme Court, and I hope Congress will not inject itself into the law enforcement field.

Mr. ROGERS. I think that is a fair statement. The Department of Justice is trying to help carry out that law as far as possible.

Mr. MCCULLOCH. Mr. Chairman, I can't let the record be silent at this point without commenting on the decision of the Supreme Court in the *Brown* case. Of course that had its inception in a lower court, and the decision was finally the decision of the Supreme Court which in accordance with my knowledge of the law is that the Supreme

Court decision, until it is reversed or until it is modified, is not only the law of the case but is the law of the land on the facts presented in that case. So there was not the decision of one man, even of one judge, in the *Brown* case.

What I have been talking about is a decision of a single administrator on the facts of the case on whether or not there has been discrimination for which there is no provision for a review, either judicial or administrative. That is the type of authority which Ohio on two occasions within my time has felt the lash of unreviewable Federal administrative authority.

Mr. WATSON. I am certainly delighted you mentioned that. Under this legislation we would take away all review by normal judicial process. As Mr. McCulloch so ably pointed out then we would have an administrator, one not necessarily trained in or familiar with the law, refusing a payment without review whatsoever.

I would like to call your attention to another example of administration hysteria and confusion. Recently, the President, at the National Conference of Municipal Officials in Hawaii, stated that the solution of this problem was to be found on the local level. Notwithstanding that statement, the President now proposes the exact opposite by suggesting that the only solution is through Federal legislation. Any reasonable man must conclude that the administration has taken diametrically opposed views, and, accordingly, this committee should give little credence or support to the administration's inconsistent recommendations.

In conclusion, let me reiterate what I said in the beginning. This racial problem is preeminently a southern problem. As has been cited, we have seen other areas with infinitely less Negro population attempt to solve the problem with legislation but to no avail. In truth, it can only be solved by the American people on the local level.

Mr. ROGERS. Any questions, Mr. Corman?

Mr. CORMAN. Yes, sir; I have a question, if I may.

I wonder what your experiences have been with the desegregated facilities at the municipal airport in your home city?

Mr. WATSON. I have heard no reports of any violence or any difficulties down there.

Mr. CORMAN. I assume that there has been actual integration as well as the ability of the colored people to go into the restaurants and sit down and eat, and there have been no problems?

Mr. WATSON. There is no question about that. Mr. Corman, I am sure you understand that generally the colored person who would patronize or use an airport would not be of the average educational and cultural level of his race. That is one problem we have in trying to bring this matter into proper perspective, namely, that we are not dealing with the man who has a college education, or the man in the upper bracket so to speak; we have to look at the overall group, and then work out a solution so far as they are concerned.

Mr. CORMAN. I wonder if we should think about whether or not we ought to force desegregation at all, whether you think there might be more justification for requiring desegregation of those facilities which normally serve the traveler. Perhaps there is some justification for this, and that your experience in your city would indicate that this would not lead to adverse conditions.

Mr. WATSON. You would get yourself into or open the door to problems yet untold in trying to determine, well, who is the traveler. Am I a traveler if I journey 2 miles from home, or across the State line, or what have you? That is one of the problems I know arising in the public accommodations feature of it.

I believe there was some questioning on the other side of the Capitol of Mr. Kennedy about what percentage of the customers would have to be interstate before this law would be applicable to them. I think you would get into an area which would so bog down the courts and would give rise to so many complexities that you would never be able to resolve the issue.

Mr. CORMAN. Do you think that the Congress ought to address itself to the fact that many Americans traveling in interstate commerce have absolutely no facilities open to them in some parts of this country, in and out of the South, for hotel accommodations or restaurants or the normal facilities that are a necessary part of travel? Ought we to address ourselves to that specific problem?

Mr. WATSON. I don't think that we should at all because, frankly, I guess every citizen will sooner or later in traveling find some place where he will be unable to get adequate accommodations. I know I, myself, have been in such a position, and I don't know of any particular area in the South where they do not have accommodations for all races.

Mr. CORMAN. They perhaps do not exist in South Carolina but I assure the genetleman there are vast areas where they do. It would seem to me there might be some distinction between interstate commerce, as such, and public facilities which are normally established to serve the traveler who may be interstate or otherwise.

I take it the gentleman wouldn't concur with that?

Mr. WATSON. As I mentioned earlier, I don't want to see anything, any form of legislation passed, because, frankly, I believe regardless of how we might temper it, how we might try to phrase it, all it is going to do is aggravate a problem which I have tried to say will only be solved on a local level. Frankly, any thing that we do here is going to aggravate the problem rather than help to solve the problem.

Mr. CORMAN. Just one final question. Is it the gentleman's view that compulsory segregation by State law is legal except in those specific court cases dealing with specific plaintiffs that have rules to the contrary?

Mr. WATSON. Well, of course as a lawyer, if you are one, we always say that the facts make the case, and the Supreme Court has said that. Of course, they took an opposite view from the Plessy-Ferguson decision, but I still should like to see each case rest on its own bottom rather than try to have a class action relative to these extremely perplexing problems.

Mr. COPENHAVER. Mr. Chairman, I have one question.

Mr. Watson, if lawyers in the country, and the people of the country refuse to recognize a decision of the Supreme Court, wouldn't we in a sense be flouting the recognized authority of the United States in a way similar to which you suggest that these people engaging in riots are seeking to flout the authority of the officials in the State or of the Federal Government?

Mr. WATSON. I don't see where there is any necessity at all for the Congress to inject itself into a judicial matter. We haven't from time immemorial.

You mean to tell me each time we have a Supreme Court decision, and there might be some objection to it in the various districts, that we, as Congress, ought to inject ourselves into it?

Mr. COPENHAVER. I had interpreted your statement to mean that you did not accept the Brown decision.

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

Mr. COPENHAVER. You do not accept that?

Mr. WATSON. That is right.

Mr. COPENHAVER. My only point would be, and with a great deal of respect, sir, is that if we fail to abide by a Supreme Court decision, are we not in a sense seeking to flout the authority of the United States in a manner similar to which, you indicate that certain rioters are seeking to flout the authority of the United States or of the State or local government?

Mr. WATSON. Mr. Counsel, I do not believe at all that that is true. I think that we have seen clear-cut evidence of the fact that there has been no failure to support an implementation of the Supreme Court decisions by the Department of Justice, even by the Executive. We have seen the National Guard militarized, federalized, and put in there in order to carry out the orders of the Court. Why should Congress come in here and try to inject itself into this strictly judicial matter.

Mr. COPENHAVER. I was not talking about the Congress injecting itself, I was talking about the qeustion of support or lack of support for a Supreme Court decision because if enough people preach a lack of support for a Supreme Court decision that, as I see it, could also breed disrespect for the authority of the United States.

Mr. WATSON. Mr. Counsel, you are a very wise man, and just what you have said has happened on the *Plessy-Ferguson* decision. We had a very solid decision in support of and in compliance with the Constitution there, yet enough people started speaking out against it until they got the Supreme Court to reverse themselves. There was no complaint about those people constantly criticizing that decision in order to get the Supreme Court to reverse itself, but now we who would take issue with the Supreme Court decision, suddenly find that there is something wrong with us taking exception to it. I am sure you will agree that that is a factual statement and that there is full justification for our present objections.

Mr. ROGERS. Thank you, colleague Watson. We appreciate your coming here and giving us the benefit of your views.

As you know, we have a built-in responsibility to consider about 165 bills, and your contribution we certainly appreciate.

Mr. WATSON. I hope that I will be of help, and I might say this in passing, that someone said we might come over here and find it like the man who said, "Don't confuse me with the facts, my mind is already made up."

I am sure your mind isn't already made up.

Mr. ROGERS. We are always delighted to get the facts and have them presented as they will go into the record, and it will help us determine which and what legislation may or may not be reported.

Mr. WATSON. All of you have been very kind. Thank you.

Mr. ROGERS. The next witness is the Honorable Armistead I. Selden, Jr., from the State of Alabama.

I understand that you have a statement. Proceed in your own manner.

STATEMENT OF HON. ARMISTEAD I. SELDEN, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA

Mr. SELDEN. Mr. Chairman and members of the subcommittee, I want to express my appreciation to you for this opportunity to appear before your subcommittee to state my opposition to H.R. 7152, entitled the "Civil Rights Act of 1963." I am going to direct my attention today to the broad and fundamental constitutional issues raised by this proposed legislation.

In my opinion, H.R. 7152 represents the gravest of threats to the civil rights of every American—of every race, creed, and color. By concentrating arbitrary powers in the hands of the Federal executive and judicial branches of Government, this bill, if enacted, would provide a means by which the American system of individual liberty and private property could be destroyed.

I am not speaking today in behalf of the people of Alabama alone, or of the South alone—although I recognize that the initial impact of this bill would be felt by those people—but in terms of the civil rights of all the American people. For this bill is not aimed only at Alabama, or at the South, nor would its punitive aspects affect only one State or region of the country.

Every American—North, South, East, and West, living in the big city or on the farm, whether white or Negro—would, if H.R. 7152 is enacted, ultimately find that this bill, rather than extending the civil rights of our citizens, has in fact curbed them.

Today certain American Negro leaders believe this legislation, or legislation similar to H.R. 7152, would serve to expand and insure the civil rights of their group. But I think they ignore the lessons of history when they believe that individual rights can be attained through providing additional power to a central governmental authority.

For history—and modern history especially—clearly demonstrates that the greatest enemy of individual rights is a centralized government empowered to direct the lives, associations, and property usage of its citizens. Thus, although Negro leaders of 1963 might see H.R. 7152 as a civil rights bill, the provisions of this proposed legislation might on some future day be used to throttle the civil rights of all Americans—including America's Negro population.

Let us briefly analyze H.R. 7152 in terms of its professed aims and its intrinsic dangers.

The first aim set forth in the bill is to "enforce the constitutional right to vote."

In this instance, the bill's own language provides an insight into its dangers. The constitutional "right to vote," if indeed we mean the Constitution of the United States, is a right the regulation of which falls under the scope of the various States. H.R. 7152, by attempting to establish a uniform literacy requirement for voting in

Federal elections, would in fact place sweeping and arbitrary powers of enforcement in the hands of the Federal judiciary, thereby breaking down the constitutional safeguard for separation of powers.

The bill next proposes to invest the judiciary with unprecedented injunctive powers affecting private property and the use thereof. The declared aim here is to provide "relief against discrimination in public accommodations." This provision purportedly finds constitutional basis under Congress power to regulate commerce.

Yet, while I would be the first to admit, it is not easy to mark the legal line separating congressional and State power to regulate commerce, there can be no serious juridical doubt that the commerce clause of the Constitution was not intended to regulate the uses of property or personal relations within the borders of a State.

If indeed the commerce clause of the Constitution can be stretched so far as to include among Federal powers the authority given under the so-called public accommodation section of H.R. 7152, then the commerce clause may well prove to be the undoing of our entire American constitutional system.

I do not believe the framers of the Constitution—nor those who have interpreted the commerce clause since the earliest days of this Republic—foresaw or intended this clause to be used as a legalistic cancer to break down, envelop, and destroy the body of the Constitution itself. But if H.R. 7152 and its public accommodation section is enacted into law, then indeed this cancer will have grown to alarming, perhaps fatal dimensions.

A third section of H.R. 7152, as you know, would provide the Attorney General with authority to institute suits on behalf of private citizens. The danger here lies as much in the discretionary as in the arbitrary powers conferred by this section. Armed with such broad and ill-defined power, the law enforcement branch of the Federal Government could mutilate the traditional structure of American jurisprudence. We are being asked here to provide the Attorney General with a weapon, without any guarantee as to how this, or any future Attorney General, will employ that weapon.

A fourth section of this bill would establish a Community Relations Service to assist other Government agencies in civil rights matters. Superficially, this provision seems innocuous. Yet I do not think we have moved so far toward centralized authority as to accept, without question, the idea that the Federal Government, rather than State and local governments, should be chiefly concerned with matters of community relations. Community relations are by definition best known to and conducted by the communities whose group relations are involved. It is not the proper province of the Federal Government, or any of its agencies, to move into this area, legislatively or otherwise.

The record itself argues against another section of this bill—that section proposing an extension of the life of the Commission on Civil Rights. During its tenure, the Commission on Civil Rights has done little else than exacerbate racial and community tensions, not only in the South but throughout the country. The Commission's recent report, recommending suspension of Federal funding to individual States, appalled even some of its own supporters.

Executive authority to cut off funds for Federal programs is contained in another section of H.R. 7152. This section does not, of course,

go as far as the Civil Rights Commission's recommendation. But it does provide a legislative vehicle by which the executive can employ coercive powers to attain executive ends. Once, again, the question arises as to how this power will be used, to accomplish what specific executive ends. Those proponents of H.R. 7152 who believe, however mistakenly, that this section will serve the purposes of American Negroes, might well consider what other purposes, in the hands of this or another President, such broad discretionary powers might serve.

And, finally, this bill once again proposes establishment of a so-called Commission on Equal Employment Opportunity. This section would do in the realm of employer-employee relations what the "public accommodations" section proposes to do in other areas of community life. What is proposed here, as I see it, is a veritable "Star Chamber Employment Bureau"—a Federal Commission invested with powers of regulation over American business and economic relationships.

Like other sections of this bill, this so-called fair employment section, while purporting to insure individual rights, in fact would submerge individual rights to the power of a centralized Government agency.

The overriding issue involved in consideration of H.R. 7152, therefore, is whether the rights of individual Americans—regardless of race, creed, or color—can be secured or advanced by creation of Government agencies and the extension of Government power. My opposition to this proposed legislation is based on what I believe is the paramount lesson of American history—the principle upon which this country was founded: increased Government power is not the servant of individual liberties—it is its enemy.

Mr. ROGERS. Any questions, Mr. Corman?

Mr. CORMAN. No.

Mr. ROGERS. Mr. Kastenmeier?

Mr. KASTENMEIER. No.

Mr. ROGERS. Mr. McCulloch?

Mr. MCCULLOCH. No.

Mr. ROGERS. Thank you, Mr. Selden. We certainly appreciate your statement and your position on the bill, and particularly your analysis of H.R. 7152. Thank you very much.

Our next witness is the Honorable Samuel S. Stratton. Mr. Stratton, come forward.

I understand that you have a prepared statement.

Mr. STRATTON. Yes, Mr. Chairman.

STATEMENT OF HON. SAMUEL S. STRATTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. STRATTON. Mr. Chairman, and members of the committee, I appear here this morning to urge the committee to report favorably, and as rapidly as possible, upon the administration's civil rights bill, H.R. 7152. I have no long statement to make here, Mr. Chairman, nor would I presume to add to the lengthy and learned analyses which you have already received as to the merits—and in some cases to the alleged demerits—of this legislation, and the urgent need for its adoption.

I am here this morning simply as one Member of Congress who feels strongly about the need for this bill to tell you I am for it, that I am

for it all the way with no ifs, ands, or buts, and to give you my sincere conviction that the circumstances demand that this legislation be adopted just as swiftly as we possibly can do it in this Congress.

Mr. Chairman, in my judgment the time for talk has ended and the time for action is here. We have been deliberating on the subject of civil rights for a very long, long time—actually something over a hundred years. Yet the sad fact is that still today, 187 years after the signing of the Declaration of Independence, and almost a hundred years after the Gettysburg Address, we still have a nation where millions of our citizens cannot regard themselves as possessing full, first-class citizenship, and where for them the principle that "all men are created equal" continues to be a mockery.

Mr. Chairman, I realize that in the nature of the case the legislative process must be a deliberate one, and that legislation must be carefully considered and debated. But our history also demonstrates, Mr. Chairman, that this great legislature of ours, this greatest deliberative body in the world, can act swiftly when the occasion demands, as we acted the day after Pearl Harbor to meet the requirements of that particular hour of crisis. I deeply believe that we are faced today with a crisis no less profound, and no less far reaching in its implications—a social and a moral crisis that cries out for prompt and unequivocal action. Even this morning the press accounts are full of additional violence in the continuing struggle of men and women for equality in America. Surely the time for quibbling is long since over; surely it is time now to move forward with all possible speed to put this Congress and this Nation squarely on record once and for all in favor of human equality and human dignity.

Mr. Chairman, we all know that for this legislation to be passed there must be broad bipartisan support for it. When it comes to granting full citizenship to all men and women regardless of race, creed, or color, surely there can be no room left for Republicans and Democrats. Mr. Chairman, I realize that the temptations of politics are always considerable. But, Mr. Chairman, I want to express my deep conviction here this morning that the time for playing politics with the civil rights issue is over. We are sitting, in my judgment, on a social and a moral volcano in America, and it is time for us to realize that the future of this Nation is vastly more important than the temporary advance of any one of us.

Mr. McCULLOCH. I would like to interrupt our colleague at this point.

It is not the witness' purpose to leave the impression that he expects this committee to accept this bill without complete and careful examination as is, without working its will on any amendments or beneficial suggestions that may be made thereon, is it?

Mr. STRATTON. I wouldn't suggest that for the moment, Mr. McCulloch, but I think that we have to recognize that with some legislation there is also a demand for promptness and I cited the case of the legislation declaring war on Japan and Germany that took place after Pearl Harbor. That, too, required some careful deliberation, but we also had an urgent situation before us.

I think, Mr. Chairman, that the urgency of this situation is something that in my judgment it would be difficult to exaggerate, and I think that while we have to recognize the need for careful analysis,

we also have to be very careful not to let this fall into quibbling or to an exaggerated emphasis on personal interpretations or preferences for a particular authorship of a particular type of phraseology, and so on.

I think that at this point, without short circuiting the deliberative operations of Congress, the ultimate requirement here is speed and effective action. I am satisfied with the bill without amendment.

Mr. McCULLOCH. I am glad for that statement of modification of the witness' statement, and I certainly am going to proceed with proper deliberate speed in this very emotional, yet most important problem.

At the beginning of these hearings I said it was my feeling that it was probably the most important single domestic problem before the Congress, and I have been watching on the tower in this field for a good many years, and there still remains need for deliberation in the legislation that is before us in some 168 bills.

Mr. STRATTON. I might say, Mr. Chairman, that I certainly know that the gentleman from Ohio has been an eloquent and a very hard-working spokesman in the field of civil rights, and I am sure that he will discharge his duties with great distinction in this committee.

There are occasions when you have to act rapidly. When the ship is sinking, for example, you have to take some action, and you have to take it quickly, and if you deliberate too long the ship may go under before you have succeeded in agreeing on the procedure for dealing with the problem.

That I think is the thing that we are apt to run into here. We have been talking about civil rights for a long time, and, as I say, we are sitting, in my judgment, on a volcano, and unless this Congress acts rapidly we may all be blown up before we have had a chance to deliberate on just which particular approach to use.

I am sure the gentleman from Ohio will recognize that and would agree with me on that point.

Mr. McCULLOCH. I certainly do. As early as January, I introduced, along with some 40 other Members of Congress, a bill in this field that is rather comprehensive in scope and it deserves careful study, and I am glad at long last that we are realizing the urgency of proceeding in this field.

Mr. STRATTON. Mr. Chairman, in days gone by we have heard upon the floor of this Congress attacks made on the President of the United States for allegedly not having acted more promptly on the matter of civil rights. Yet I have been amazed, Mr. Chairman, that those who have been most shrill in the past in mounting these attacks now also seem to be the loudest in professing grave doubts or reservations about this or that or some other feature of this particular bill which the President has asked us to enact. Surely here must be the real test of sincerity. Let those who really believe in civil rights rally around this bill—let them forget the recriminations of the past, let them forget the pride of personal authorship or of personal interpretations of this or that section of the Constitution, and let all of us join hands together to get this important job done while time, which is rapidly running out, still remains.

Mr. Chairman, in view of what I have said, let me just conclude by merely mentioning H.R. 6801, a bill which I myself introduced some

days ago, also dealing with the general subject of civil rights. It is legislation which would, I think, help to accomplish the result we all want by putting some real pressure on those States which still discriminate against our Negro citizens by finally enforcing the provisions of the 2d section of the 14th amendment and reducing the representation of those States proportionately in the House. I think my bill should be enacted, I think it could prove extremely useful in this crisis, and I would like to see it enacted. But, Mr. Chairman, I don't want to do a single thing here today that might complicate or slow down the prompt and full enactment of the bill which is presently before you. For that reason I will not press in any way for the inclusion of my bill in the final package recommended by your committee. I do think it could be added as an appropriate additional title to H.R. 7172, but I wouldn't like to see it slow down, although certainly I would like to see that happen. But there will be time enough, I am sure, to consider my bill later on. In fact, if we in this Congress act rapidly enough, and unequivocally enough, there may well not be need for my legislation after all.

That, Mr. Chairman, is the great job this subcommittee can now get started; and it is the great job which I am confident this 88th Congress, for all the obstacles that may be put in our way, can and will complete—and well before the Christmas deadline that some people have lately been predicting.

Mr. McCULLOCH. Mr. Chairman, at that point I would like to state for the record that hearings before this committee started on May 8, 1963, and if there have been any delays, I am sure it is not the fault of the chairman of this subcommittee or the members thereof.

I repeat, the first hearing on civil rights legislation by this subcommittee was on May 8, 1963.

Mr. STRATTON. May I just say that there is certainly nothing intended in this statement to suggest there was anything in the deliberations of this committee that were delaying in nature. I simply want to reinforce my view that we must move swiftly, as I am sure the members of this subcommittee are intending to move swiftly, to deal with this problem, because we are going to have a lot of roadblocks placed in our way elsewhere in the legislative process, and I think we ought to get moving quickly, and I know that the chairman of this committee, as well as the present occupant of the chair, have both been acting with great dispatch to get this important legislation moved along.

Mr. ROGERS. Mr. Kastenmeier.

Mr. KASTENMEIER. Mr. Chairman, I was merely going to comment on that.

I assume our colleague had in mind what this bill is yet faced with in terms of possible congressional obstacles, not really what the subcommittee has done in terms of delay, because I think the record will show that this will not be a hastily considered bill, but the subcommittee will not certainly have acted in delay of it.

We face the problems in the Rules Committee, presumably, and perhaps with our own full committee, and certainly in the other body. We have filibuster which is threatened, and so I can appreciate the concern that you have for possible delay in the future in terms of bringing this to fruition.

Mr. STRATTON. Mr. Chairman, I appreciate the gentleman from Wisconsin's comments because that is exactly, as I mentioned, what I had in mind. I know in days to come there will be many attempts made to delay and to sidetrack this legislation which will come under the heading of further detailed "consideration" of it, and knowing that we have a long session ahead of us, I feel that we ought to move as swiftly as possible.

Mr. ROGERS. Thank you, Mr. Stratton. We appreciate your coming before the committee and giving us the benefit of your views.

You well know we have been holding hearings for some time, and we welcome the expression of thoughts from all of the people, and we appreciate your appearing here this morning.

Mr. STRATTON. Thank you very much, Mr. Chairman.

Mr. ROGERS. Our next witness is the Honorable Joe D. Waggonner, Jr., of Louisiana.

Mr. Waggonner.

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

Mr. WAGGONNER. Mr. Chairman and members of the subcommittee, I appreciate the opportunity to come before you today as you discuss what is before the eyes of the entire Nation with regard to the administration proposals on civil rights.

I hasten to add that I do not envy any of you gentlemen as members of this subcommittee, and as members of the full Judiciary Committee, the task which is yours because I am quite sure that no matter what decision you make you are going to make a decision which is going to be criticized by many Americans, but I hope that the criticism of these many Americans will be sincere because I feel that you gentlemen are going to act sincerely in making whatever decisions you finally make in proposing to the Congress some course of action with regard to civil rights legislation.

Mr. Chairman, in appearing before this committee today, I know that it is not necessary for me to dwell at length on the long series of events which has brought us to this point in time. In the short span I have been a Member of Congress, I have come to know each of the members of this committee—some better than others, as chance would have it—but I know that each of you have much in common. One of the characteristics each of you shares is reasonableness. Another would be a sense of fairmindedness. A third would be a belief in the genuinely American concept, the will of the people.

The legislation before this committee is no longer concerned with "equality" of rights as between the white race and the minority races. This proposal is one of preferential treatment and special privilege for one race, the Negro. There are some who would deny that this is true but the facts will not substantiate them.

The history books are filled with examples of ill-conceived attempts to legislate on so-called moral issues.

Surely all reasonable men agree that there are sincere and honest differences of opinion on the subject under consideration by this committee.

The number of good and responsible people in all walks of life who believe it is neither illegal nor immoral to prefer the peaceful and

orderly separation of the races, without discrimination or rancor of any kind, are legion. They regard the American heritage, freedom of choice, to be as sacred as their freedom of religion or their freedom of speech.

This belief in the freedom to choose is a philosophy I share with them, without apology. God help those, both Negro and white, who make their sorry living exploiting the Negro.

We of the South have long known that there were some Negroes who were not satisfied with separate but equal facilities, who had so little confidence and pride in their own race that they felt they must fasten on to the white man if they were to succeed. This is a feeling most southerners cannot and do not understand; perhaps because self-sufficiency comes naturally to us, and we have a fierce pride in our own accomplishments and faith in what we can do for ourselves.

This dissatisfaction has long been regarded by all those who have not been touched by it as purely a southern problem. Now for the first time this is no longer the case. Northern communities with no Negro population have, through the years, deplored the so-called discrimination practiced in the South, a practice that has, in reality, been nothing more than separation of the races, each free to go his own way. We have always predicted that this would someday be everyone's problem.

That day is now here. Concern exists now where concern never existed before, and there is little wonder that many in the Nation now ask themselves how much of this concern is sincere and how much is political. The question now being asked in the North is: "How does this affect me and my children?"

The actions of the President and the Attorney General in recent months, and the proposals they have sent to Congress have done nothing to dispel the question of politics. On the contrary, it accents it.

Even former President Truman, an old pro at the political game, seemed to sense the same thing when he said in Washington last month that, and I quote:

> This civil rights thing is being promoted by a bunch of demagogs. Their rights—

speaking of the Negroes—

> are set out in laws that have been on the books since 1868.

In a political speech at Charleston, Ill., on September 18, 1858, Lincoln expressed himself on the Negro question. He repeated the same views at Quincy, Ill., on October 13, 1858, during the Lincoln-Douglas debates, in these words:

> I have no purpose to introduce political and social equality between the white and black races. There is a physical difference between the two which, in my judgment, will probably forever forbid their living together on the footing of perfect equality * * * but I hold that, nothwithstanding all this, there is no reason in the world why the Negro is not entitled to all the natural rights enumerated in the Declaration of Independence—the right to life, liberty, and the pursuit of happiness.

After he became President, and throughout the war, Lincoln repeated this view on the racial question in the United States.

I know it is a common practice to quote the authorities who sustain your point of view and omit those who do not, but Mr. Truman's remark was so pointed and accurate I could not resist mentioning it.

Why is it those who quote Mr. Lincoln on this subject omit this statement?

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt the witness there.

I am pleased to advise our colleague that when the Attorney General was before this committee testifying 2 or 3 weeks ago, I mentioned the fact that my State of Ohio had had legislation in this field since as long ago as 1884 or 1885, and I submitted a copy of our statute for the record.

Mr. WAGGONNER. The President's message on civil rights calls attention to previous legislation which he has recommended.

The first was a proposal to permit the Federal Government to interfere in the time-honored right of the States to establish voting qualifications. I do not, for a minute, question the right of any qualified person to vote. Nor, as far as I have ever been able to learn, does any official of the State I represent. My State exercises its right to establish qualifications for all its voters and enforce those qualifications without regard to sex, color, race, or creed.

If requiring Negroes to meet the same qualifications as the white man is, in the eyes of some, discrimination against the Negro, then I cannot agree. I freely admit it does not give the Negro the preferential treatment which the President's proposal calls for. It does, however, adhere to two principles which the law and no reasonable man can deny: The right of the State to set voting qualifications and to give preferential treatment to no one. If any voter in any State has been discriminated against, the present constitutional guarantees are sufficient to protect his rights and no mass of "temporarily-permanent" Federal referees is needed.

Mr. McCULLOCH. Mr. Chairman, I would like again to interrupt the witness.

If I interpret the report of the Civil Rights Commission correctly, it appears that the Commission has concluded that there are some States, and perhaps the State of Louisiana, which do not administer or execute their laws with respect to voting without discrimination. I am saying that I am led to believe from that report that there are some States in the Union—as I recall Louisiana being specifically named—which do execute their laws in a way that is discriminatory against those of color.

Mr. WAGGONNER. Mr. McCulloch, I would be the first to admit that I think that perhaps in times gone by there was a time when Louisiana was discriminatory with regard to voting registration practices. I do not believe that that situation exists in any way today.

The President has called for a vast expansion of the Civil Rights Commission to offer what is vaguely termed, "advice and technical assistance" to the States. This is in keeping with the philosophy that all ills of man can be cured by increased appropriations and the expansion of the Federal Establishment. Congress is already under critical fire, and justifiably so, for having relinquished much of the authority it once exercised to the ever-expanding executive and judicial branches, and to a host of appointed officials, many of whom are power mad. To give away still more of our prerogatives to appointed groups can in no way shift the burden to decide these issues from our shoulders. The Congress must bear the responsibility of any final actions.

On the new proposals which the administration has made, my comments will be to the point.

This is the crux of the matter which you are considering with regard to this entire proposal of civil rights legislation.

The President calls his first proposal "equal accommodations in public facilities."

I do not come before you to pose as an expert witness on the subject of the Constitution or on the early history of our Republic. I can only tell you of the two strongest impressions I have obtained from my study of both. The first is the determination this Nation has always shown to protect the rights of the majority as well as the rights of the minority. The second is the accent this Nation has always placed on the right of the individual to be just that, an individual.

These, more than any other two attributes, distinguishes a citizen of the United States from a great number of other people of the world today. Above all other freedoms we enjoy in America, I believe we prize most the right to choose.

The very essence of liberty consists of freedom of choice and freedom of association—freedom to choose or not to choose a religious faith, freedom to pursue any occupation or calling, freedom to choose a life mate and establish a home, freedom to choose friends and associates. In brief, the liberty to do whatever we will, and to use our own according to choice so long as we do not injure someone else.

The Declaration of Independence begins with the statement of the self-evident truth that all men are endowed by their creator with certain unalienable rights and that these include life, liberty, and the pursuit of happiness, and that governments are instituted among men to secure these rights. These principles of the Declaration were written into the first 10 amendments, constituting the Bill of Rights, when the Constitution was adopted by the Thirteen Original Colonies.

Although the 1st amendment makes no reference to freedom of choice or freedom of association, the Supreme Court of the United States has, on many occasions, referred to it as a freedom protected by the 1st amendment against impairment by the Congress and by the 14th amendment against encroachment by the States. The Court has said that freedom of association is a right closely allied to freedom of speech, and like freedom of speech, lies at the foundation of a free society. In the case of *Bates* v. *Little Rock*, the Supreme Court said:

> Like freedom of speech and a free press, the right of peaceable assembly was considered by the framers of our Constitution to lie at the foundation of a government based upon the consent of an informed citizenry—a government dedicated to the establishment of justice and the preservation of liberty (U.S. Constitution, amendment 1). And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the due-process clause of the 14th amendment from invasion by the States.
>
> Freedoms such as these are protected not only against heavy handed frontal attack, but also from being stifled by more subtle governmental interference. * * *

In *N.A.A.C.P.* v. *Alabama*, the Court reversed a State court judgment which held the plaintiff association in contempt for failure to comply with an order to produce its membership lists, saying:

> It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the due-

process clause of the 14th amendment, which embraces freedom of speech. * * * Of course it is immaterial whether the beliefs sought to be advanced by association pertain to political, economic, religious, or cultural matters, and State action which may have the effect of curtailing the freedom to associate is subject to the closest scrutiny.

In the domain of these indispensable liberties, whether of speech, press, or association, the decisions of this Court recognize that abridgment of such rights, even though unintended, may inevitably follow from varied forms of governmental action. * * *

The decisions of the Court referred to were written to protect the rights of Negroes to associate together for a common purpose, but they are not less applicable to all other races of mankind. The right of white people to choose their associates whether for social, economic, religious, or political purposes is just as sacred in the light of the Constitution as the right of the Negro to determine the membership of the society which he supports.

The freedom to associate with whom one pleases carries with it the liberty of refusing to associate with those whose company we don't desire. It matters not the reason why we choose to share our society with some and deny it to others. Since the "law of the land," as the Court refers to its rulings, declares the right to be the foundation of a free society, any law of Congress abridging or denying the right is as contrary to the Constitution as it is to the laws of nature and nature's God. It is utterly abhorrent to every principle of democracy for the legislative branch of the Government to seek by force to compel free people to serve or associate with individuals or groups whom they don't choose.

Representative Delaney, of New York, speaking of H.R. 9803 (1962) concerning Government responsibility in education, said this in explanation of his proposed bill:

The heart of the issue is that if we surrender freedom of choice in education, a totalitarian system of education will become inevitable. Freedom and coercion cannot live side by side. We cannot preserve a free society by following totalitarian methods.

The foregoing statement is as true in the realm of social and economic affairs as it is in the field of education. As Mr. Justice Brandeis once said, the makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness; they recognized the significance of man's spiritual nature, of his feelings and sensibilities, and of his intellect; they knew that only part of the pain, pleasure, and satisfactions of life are to be found in material things; they sought to protect Americans in their beliefs, their thoughts, their emotions, and their sensations. The most comprehensive and valued right of man is to be let alone. When the Government seeks to legislate his morals, outlaw his prejudices, choose his associates, and run his business for him it destroys the very foundation of his freedom. Hear the words of another American. Woodrow Wilson stated the true principle of freedom when he said that the history of liberty is a history of limitations of governmental power, not the increase of it.

Mr. Justice Harlan in the recent case involving Negro demonstrations in Alabama, stated that the issue before the Nation today is "a clash of competing constitutional claims of a high order: liberty and equality." He then went on to comment in his dissenting opinion:

The 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, ca-

pricious, even unjust "are things" entitled to a large measure of protection from governmental interference.

These are words that express the true democratic principles of our republican form of government. They are frequently used to champion the rights of the black race, but quickly forgotten or ignored by the executive, the legislative, and the judicial branches of our Government when they are invoked by a member of the white race. This is, of course, discrimination in reverse which disregards the 14th amendment and denies to the great majority of Americans the privileges and the protection guaranteed to them by the Constitution.

The so-called civil rights bills now under consideration would deny the right of the individual to choose his associates or to use his property as he has lawfully used it since the Nation was first founded, without Government interference and control.

The civil rights cases which were decided in 1883 held that Congress has no power to pass laws prohibiting individuals operating inns, theaters, restaurants, and places of public recreation, from exercising freedom of choice in the selection of their patrons and customers. That decision is a complete indictment against the civil rights bills now before this Congress. The opinion of the Court concerning the Civil Rights Acts of 1875 refutes all the reasons here offered to support identical proposals. The opinion reads in part:

In this connection, it is proper to state that civil rights, such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful acts of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings. The wrongful act of an individual, unsupported by any such authority, is simply a private wrong, or a crime of that individual; an invasion of the rights of the injured party, it is true, whether they affect his person, his property, or his reputation, but if not sanctioned in some way by the State, or not done under State authority, his rights remain in full force, and may presumably be vindicated by resort to the laws of the State for redress. Hence, in all those cases where the Constitution seeks to protect the rights of the citizen against discriminative and unjust laws of the State by prohibiting such laws, it is not individual offenses, but abrogation and denial of rights, which it denounces, and for which it clothes the Congress with power to provide a remedy. This abrogation and denial of rights, for which the States alone were or could be responsible, was the great seminal and fundamental wrong which was intended to be remedied. And the remedy to be provided must necessarily be predicated upon that wrong. It must assume that in the cases provided for, the evil or wrong actually committed rests upon some State law or State authority for its excuse and perpetration.

The present administration seeks to avoid and evade the compelling effect of the reasoning of the foregoing decision on the tenuous authority of the commerce clause. If the 1954 decision is the law of the land then so is the 1883 decision. If we are to stretch the commerce clause to cover every activity of man which is not subject to regulation by any other provision of the Constitution, then we have indeed abandoned the republican form of government guaranteed by article IV of the Constitution to every State in the Union. To say that the staging of a theatrical performance, or the serving of ham and eggs in a restaurant, or the renting of rooms in a hotel, has any reasonable relation to the flow of commerce between the States, is to resort to ridiculous extremes for the support of legislation suppressing the freedom of choice of the individual citizen. The commerce clause has already been carried to arbitrary extremes that were never contemplated by the Nation's founders, and are not justified by any

principle of American political or social philosophy. To carry it still further, as the proposed bills would do, would destroy every landmark in our fundamental law.

There are those who clamor for the passage of these bills as measures with a great moral and spiritual purpose. We are told that it is un-Christian and immoral to exercise our choice of associates in a way that would deny social equality to the Negro. This is neither the time nor the place to discourse on morals and religion except to say that the Congress has no power to legislate on either subject. The Supreme Court has gone to unpopular extremes in recent years to make that clear. My Bible, and yours, too, admonishes us to judge not and we shall not be judged.

The courts have on many occasions ruled that the Federal Government has no inherent police power which would permit it to interfere with the personal or social relations of its citizens. The first amendment, of course, forbids Congress to legislate in the field of religion. This legislative body would exhibit great moral and spiritual consecration of it were to write the Ten Commandments and the Sermon on the Mount into a beautiful Federal moral code to be enforced by Federal troops and marshals, but no sensible statesman would recommend any such law because religion is a voluntary thing which rests on individual acceptance and personal faith. Those who would attempt to write Christian precepts into Federal law should heed the admonition to render unto Caesar the things that are Caesar's and unto God the things that are God's.

This is the concept that has never before been advanced in the history of this Nation; a theory that is sweepingly un-American and at odds with every precept upon which this free Nation was founded. To concede such power to the Federal Government is to relegate State and local government to the ashcan of history and reduce city halls and State capitols to nothing more than concrete monuments to a system of government we once enjoyed.

Who among us will be the first to vote for the obliteration of local government. As for me, I'll have no part of it. The day will come when you will be sorry if you do. I brought nothing into this world, I'll take nothing out, but I can do my part to leave it free as I found it.

This single statement, and I repeat, that the Federal Government has the same regulatory powers over the private sector that it has over federally regulated common carriers, can have only one meaning: The final and irrevocable end of State authority.

Before coming to the Congress, I served as a member of the State board of education of my State, as president of the school board of my parish, and as president of the State School Boards Association. In this one area I modestly feel I can speak with some authority.

The Constitution of the United States reserves to the States the right to determine their own policies in the field of education. The Congress has repeatedly said the States should control their schools. This is a truth and fact that no judicial fiat of the Supreme Court can alter until the Congress acts to the contrary.

The 14th amendment to the Constitution states that no State shall abridge the privileges of any citizen and I agree that this is just and right, though parenthetically I cannot agree that this amendment was legally ratified by the requisite number of States.

The disgraceful image of southern schools with which the news media have brainwashed so many in the North is as slanderous as it is erroneous.

Negro teachers in fact have teaching jobs in the South and are paid the same salaries as white.

School lunches are provided Negroes exactly as white or, in some cases, at even lower cost.

Schoolbooks are made available on exactly the same basis to both races.

Buildings are constructed of the same materials and at same costs. As a matter of fact, the facilities provided for the Negro are, on balance, better than we provide the non-Negro.

So, in order to sustain the argument that the peaceful and orderly separation of the races is unconstitutional, one has to take the position that, to require one Negro to associate with another, is degrading to him and humiliating. This is monstrously insulting and is a slur that could only have been invented by one who simply does not know the facts. No southerner would insult the Negro race in so gross a fashion.

In all the years I served in these posts, not one single complaint was ever registered, spoken of or hinted at by any Negro teacher, pupil, or parent. Yet, free and unrestrained exchanges on all subjects has been enjoyed by both races over the years.

I cannot at this point resist pointing out once again the political motivation so obvious in these civil rights proposals.

In section II(A) of the President's message to Congress, he asks Congress for authority for the Attorney General to initiate in the Federal courts legal proceedings against local school boards when he, the Attorney General, feels the board is not complying with his wishes or doing so with less than the speed he would like.

Quite obviously, if the Attorney General had this authority now it would not be requested in this proposal.

Yet within the last year, in a move to gain publicity and to create a false impression of the need of this leglislation, and for no other purpose, the Attorney General filed a series of these suits in the South knowing full well he did not have the authority to do so.

Mr. McCULLOCH. Mr. Chairmain, I would like to interrupt the witness there.

Have any of those suits been carried to conclusion as of this date?

Mr. WAGGONNER. Mr. McCulloch, it is my understanding that two of these suits have been carried to conclusion—two have not. Two have been carried to conclusion inasmuch as the presiding judges have said that the Attorney General did not have this right and have dismissed these suits. In one case I believe in Virginia a Federal judge in Richmond has decided to hear this case, saying that he does have this right to file a suit. In one case which has been undecided in the district which I represent involving the Bossier Parish school system, a system to which I referred previously, this suit has not been decided upon because the judge has provided a certain amount of time for other briefs and answers to be filed, and that deadline is now approaching. I believe that the deadline is to be met sometime in August. At this time the presiding judge will make a decision.

Mr. McCULLOCH. In the cases or case that was decided adversely against the Department of Justice, or the Attorney General, are they

pending on review in the court of appeals or in the Supreme Court, do you know?

Mr. WAGGONNER. To my knowledge, those two cases have not been appealed, Mr. McCulloch, but I do not profess to possess full knowledge of the due process.

Mr. MCCULLOCH. Mr. Chairman, I would be glad if counsel would find the status of those two cases which were decided at the trial court level.

Mr. FOLEY. In Louisiana?

Mr. MCCULLOCH. Wherever they were.

Mr. ROGERS. There were two in Louisiana, and one in Virginia. That is what you had reference to?

Mr. WAGGONNER. I believe only one in Louisiana. That case in Louisiana in Bossier Parish has not been decided. I think I could feel free to predict the outcome because I sat in on the hearings.

One in Mississippi, and maybe one in Alabama, I believe, have been decided.

Mr. ROGERS. Thank you.

Mr. WAGGONNER. What is not described in the President's message is the fact that this authority includes the star chamber right to file these suits without affording the accused the right to face his accuser. How, then, are we to know, if, indeed, any accuser exists?

No appointed official, including the Attorney General, should have this authority. This is a dangerous transfer to judicial procedures of a right formerly reserved for administrative procedures and used only when the security of the Nation was involved, and, let me depart again from my prepared statement here to say to you, Mr. McCulloch, I agree with you in your previous statements here this morning when you questioned granting to an appointed official the sweeping powers which these civil rights proposals would under certain circumstances grant to in most cases one individual and that individual an appointed official.

Mr. MCCULLOCH. Mr. Chairman, I would like to ask this question: Does our colleague conclude from a study of the legislation in question, H.R. 7152, that if the Attorney General brings his suit that the defenders or the one against whom the complaint is made would not have compulsory process to require a disclosure of those who were making the accusation?

Mr. WAGGONNER. Yes, sir; I do reach that conclusion.

Mr. MCCULLOCH. Well, if that is a proper conclusion, and I do not mean to indicate it isn't, I think that is another feature of this legislation that needs great study by this committee.

Mr. WAGGONNER. There is clearly no need for Federal legislation abridging the right of the States to prescribe their own educational policies. How could we possibly proclaim this the land of the free and deny the States and all their people this freedom of choice?

The President's third proposal is for "fair and full employment," a proposal which would have the unquestioned backing of everyone if it were designed to do what its title suggests, and that is to be fair.

In the last 2 months, two examples of the administration's interpretation of "fairness" have come to my attention and I mention them only to show what is now being practiced and to give an indication of what is to come.

The Chief of the Corps of Engineers in New Orleans recently published an order which required a written explanation why a Negro was not hired rather than a white man in any case where a Negro was one of three eligibles on the civil service roster to be considered. No report was required as to why the white men were not employed if the Negro was chosen.

This rank discrimination against the white man was later corrected when sufficient protests had been lodged.

Mr. McCULLOCH. Mr. Chairman, I would like to ask our colleague if such regulation has been applied elsewhere in the United States in selecting employees, Federal employees, pursuant to civil service?

Mr. WAGGONNER. It is my understanding that such regulations have been placed into force in other areas of the Government employment.

Many of you will be familiar with the second instance of what the administration calls equality which came to light in the Dallas, Tex., regional post office when, on orders from Washington, the first 53 white men on a post office eligibility list were passed over in order to promote a Negro applicant.

The Chairman of the Civil Service Commission quite openly admits that this was deliberately done and with equal candor admits that it was discrimination against the 53 white men with higher ratings. His sole explanation is that it was done to "rectify" past inequalities. Discrimination against the white race to punish them for imaginary crimes of the past is a new concept in American justice.

No consideration was given to the fact that discrimination had nothing to do with the lack of Negro supervisors. The 53d position on the list was the highest point any Negro applicant had been able to achieve by his own abilities.

I frankly admit I have been unable to answer the questions I have been asked since then by civil service employees as to what guarantee they have that they will not be similarly discriminated against in the future and why this practice has replaced the time-honored system of promotion based on merit. This makes a mockery of the civil service system.

If this interpretation of "fair" and "equal opportunity" employment is pursued, there can on longer be any reason to continue the civil service system save as a recordkeeping institution. I doubt if anyone can convince the 53 men who rated higher than the chosen Negro in the Dallas post office that they received fair and equal consideration.

If enacted into legislation the program proposed in this message would add hundreds of millions to the Federal debt and thousands of employees to the already staggering Federal Establishment.

The radicalism of this proposal adds to the distressing chain of events which in recent months has set a pattern which threatens the very foundation of American behavior.

The Supreme Court has just outlawed prayer in the schools; the Department of Health, Education, and Welfare proposes gestapo legislation requiring police reports when parents discipline children by whippings; the President has taken a stand against discipline by spankings in the schools; he has encouraged civil disobedience by mob demonstrations; the courts are reluctant to convict hoodlums and prisons have been turned into recreation centers. Law, order, and obedience to authority cannot long stand up against such unwarranted,

concentrated attack. This civil rights proposal that freedom be exchanged for faceless equality adds coals to this explosive situation.

The advocates of this legislation do not see, or will not see, that pure equality is communism. Nor do they recognize the fact that there never has been equality within any one race nor will there ever be. By the same token, there has never been equality between races and never will be.

The President has threatened the Congress that unless this proposal is enacted into law the Negro will find "remedy" in the streets. This is an open invitation to mass violence. It ill-behooves anyone who has supped as richly as the President has at the table of freedom to call down a plague on all those who do not agree that Communistic equality should take precedence over freedom.

The time is here for free men and women in Government, and out, from all parts of the Nation—not just the South—to stand together to resist this foreign ideology and ill-advised legislation.

The right of the States to govern themselves was the foundation of the entire Constitution. One of the many reasons for this concept was to restrict to the States the problems that were area in scope and which were better solved by the people most concerned rather than burden the remaining States which were not affected.

It is manifestly impossible for the people of the State of Vermont, for instance, with a total Negro population of 519, (1 percent of their population) to have any remote concept of the problems of Georgia, for instance, with 1,122,000 Negroes, or more than 42 percent of its population.

The State of Louisiana, as an example, has a greater Negro population than the combined Negro populations of all these States: Maine, Nevada, New Hampshire, Utah, Vermont, Arizona, Rhode Island, Colorado, Connecticut, New Mexico, Wisconsin, Wyoming, Minnesota, Idaho, North Dakota, Washington, South Dakota, Iowa, Delaware, Oregon, Nebraska, Alaska, Kansas, Hawaii, West Virginia, Oklahoma, Montana and all of Massachusetts.

More Negroes in Louisiana, I repeat, than all these 28 States combined—plus 48,000 left over to apply toward the District of Columbia.

There has been a desperate effort to put the question of the peaceful and orderly separation of these two vastly different cultures on an "equality" basis. This message proposes that every man may be forced and wrenched into the same mold of equality, a Socialist ideology that is the most slashing attack on the freedom of the individual since Reconstruction days.

As Alexander Hamilton said during the Constitutional Convention of 1787, "Inequality will exist as long as liberty exists. It results from that very liberty itself."

To which I would add that if men are free, they will not be equal, and where men are equal they are not free.

If freedom falls, what else can stand?

This legislation before you diminishes the rights of all men in the exact same proportion by which it reduces the American-born right to choose. The constitutionally guaranteed rights of one man must not be reduced to spoon feed another man for the purpose of political expediency.

the Communists will utilize our actions to be or interpret them to be to other peoples in the world.

Mr. KASTENMEIER. Let me say on that point I agree with the gentleman. I think this is an international question, it is a legal question, and I think it is a moral question, and I think it is of some superficial self-interest to worry overly about what other lands or countries will think, at least in terms of priorities and motives. This should not be very high and I would certainly agree with the gentleman on that point.

Mr. FOLEY. Congressman, in 1960 you had four parishes in Louisiana where the Negroes represented over 60 percent of the population and not a single Negro registered. Has that been changed, do you know?

Mr. WAGGONNER. Yes, sir; that has been changed under Federal provisions which now exist. A Federal judge whom I admire very much, who represents the western district of Louisiana, and who resides in my district, did go into those areas, and he did by investigation uncover a pattern of discrimination and corrected it.

Mr. FOLEY. That was done under the 1957 Civil Rights Act, was it not?

Mr. WAGGONNER. Yes, sir.

Mr. FOLEY. When the School Board of New Orleans was ordered to desegregate its schools, did not the State legislature pass a series of laws to thwart that desegregation, to defy that order?

Mr. WAGGONNER. Yes, sir.

Mr. FOLEY. Did they authorize the Governor to withhold funds from a school that desegregated?

Mr. WAGGONNER. It is my understanding that one of the laws did grant to the Governor this authority, action by the courts since that time have ruled that he did not have this authority, and the State of Louisiana now abides by the court decisions.

I would call to the attention of many people who are unaware of what goes on in Louisiana the fact that we have probably some 1,500 Negroes in our State colleges and universities down there now.

Mr. FOLEY. Didn't your legislature enact a law depriving the school board the right to select its own counsel?

Mr. WAGGONNER. I could not comment with complete certainty on that question, sir.

Mr. FOLEY. According to the Civil Rights Commission report of 1961 that was done and it states that the legislation would cripple the operation by depriving him of funds and cutting off the pay of teachers who continue to teach in segregated schools.

Was such statute enacted?

Mr. WAGGONNER. I replied earlier, sir, that I am not completely aware of that.

Mr. FOLEY. That was 1960.

Mr. WAGGONNER. I do remember that there was a circumstance when certain people in Louisiana, including some members of the legislature, felt that the Orleans Parish School Board was spending unnecessary and unduly large amounts of money in hiring outside counsel. Louisiana law specifies that district attorneys serve as legal counsel for public bodies.

Mr. FOLEY. That is all.

Mr. McCULLOCH. I have one comment that I would like to make in view of our colleague's statement on page 26 that there were more Negroes in Louisiana than in 28 named Northern States.

My State, as I recall, has approximately 410,000 Negroes of 25 years of age, or over, and has approximately 465,000 of 21 years of age or over. So we do have some experiences with people of both races. While I come from a section of Ohio that has perhaps 97 percent native-born whites, I have lived in the Deep South and was a member of the bar of Florida, and I try to look at our problems dispassionately and as factually as that experience gives me the knowledge to do so.

Mr. Chairman, finally I think our colleague has been an able and eloquent advocate of his position and his district's position on this most difficult problem.

Mr. ROGERS. Thank you.

Mr. CORMAN. Mr. Chairman, I have one question.

I want to ask my colleague if we accept the fact that segregation is constitutional, is there any requirement that so far as Government-furnished facilities are concerned that they must be equal? Is there any such constitutional requirement?

Mr. WAGGONNER. Mr. Corman, the first part of your question I did not understand. I believe you said if we accept the fact that segregation is constitutional?

Mr. CORMAN. Yes, sir. It seems to me that your statement is based on your conclusion that—I think you used the term "separate but equal facilities" constituted a compliance with constitutional requirements in this field of providing public facilities such as education.

In other words, if we accept the fact that a city can spend its tax funds for public facilities that are segregated, then is there a requirement that the segregated facilities be equal?

Mr. WAGGONNER. As far as I know, there is no requirement that they be equal for either race where separate but equal facilities are operated. However, any party who feels facilities are not equal could go to court on this basis. My remarks were to the point that from experience I do know that they are equal and above.

Mr. CORMAN. But there is nothing that would, if we accepted the legality of segregation, then there is no imposition of an equality in providing those facilities? Is that a correct conclusion?

I am not talking about privately owned facilities, I am talking about publicly owned facilities, whether they be city, State, or Federal.

Mr. WAGGONNER. No; but I think that the philosophy of separate but equal is put into practice. One naturally follows the other.

Mr. CORMAN. But there is no legal entitlement to equality of segregated facilities?

Mr. WAGGONNER. No, sir; not as I understand your use of the word, but I would hasten to add that I feel a good many States I know something about would be glad to make that change to their constitution should that be the matter in question.

Mr. CORMAN. I understood from my trip last week that many of them were working frantically to accomplish that. The reason I inquire is I visited a draft office, Selective Service I think they call it—it was neither your State nor mine, but it is a place where people have to go to register for the Federal draft, and there was one drinking

fountain and one restroom and they were marked for white only. I inquired as to whether that would fill your requirements to equality.

Mr. WAGGONNER. No.

Mr. CORMAN. This is a county courthouse in which all citizens of that area had to go and register for selective service.

I just wonder if under your interpretation of the law a Negro would have a right to drink at that water fountain in view of the fact that there was only one there?

Mr. WAGGONNER. Well, my position is that separate facilities should have been provided.

Mr. CORMAN. And also that there is no necessity for equality along with segregation?

Mr. WAGGONNER. Oh, there is. You talk about equality of facilities?

Mr. CORMAN. Yes.

Mr. WAGGONNER. Oh, yes, I do believe in the separate but equal facilities attitude and practice.

Mr. CORMAN. I get back to the question: There is only one drinking fountain.

Mr. WAGGONNER. I think they have made a mistake. I think they should have put two drinking fountains in there.

Mr. CORMAN. My query is: Is a Negro who goes in to register for service to his country, does he have a constitutional right to drink out of that fountain?

Mr. WAGGONNER. As far as I am concerned, there is no difference in walking to a drinking fountain where water is available and one says "white" and one says "colored," than going into the restroom where one says "men" and one says "women." To me, it simply points up the fact that there is a difference.

Mr. CORMAN. I am asking about the one drinking fountain which is what disturbs me most.

Mr. WAGGONNER. I think I answered the question. I think they made a mistake. I think they should have had two.

Mr. ROGERS. Thank you, Mr. Waggonner. We appreciate your appearing here and giving us the benefit of your views.

Mr. WAGGONNER. Thank you, Mr. Chairman, and members of the subcommittee. I appreciate your indulgence.

Mr. ROGERS. Our next witness is the Honorable William S. Moorhead.

Come forward, Mr. Moorhead.

STATEMENT OF HON. WILLIAM S. MOORHEAD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA

Mr. MOORHEAD. Thank you, Mr. Chairman.

I have a very lengthy statement so with the permission of the committee, I would like to summarize the statement, and then following that submit the full statement for the record.

Mr. ROGERS. If it is satisfactory with you, we will place your written statement in the record, and you will proceed with the summarization, and we will ask you questions.

Mr. MOORHEAD. Thank you very much. I am grateful for the opportunity to appear before you and offer to this subcommittee my wholehearted support for the strongest civil rights bill which can be passed by the Congress this year.

On this basis I support H.R. 7152, but I hope that this committee will also consider by way of strengthening amendment some of the provisions in certain bills which I have introduced, H.R. 6300, 6301, and 7502.

It seems to me that 100 years after 1863 when American citizens are courageously struggling for their constitutional rights, and they are being shot, beaten, jailed, and harassed for doing so, it is imperative that the Congress take all possible steps to eliminate discrimination.

Now, does H.R. 7152 meet this test? I hope before the committee reports H.R. 7152 it will consider some additional proposals.

For example, H.R. 7152 does not include the fair employment practices commission which is so vital in providing economic rights for minority groups.

Mr. McCULLOCH. Mr. Chairman, I would like to interrupt there. I read in the press that another committee charged with authority and responsibility in this field on yesterday favorably reported such legislation to the House. Is that correct information?

Mr. MOORHEAD. I was not aware of it, but I am very glad to hear it.

Mr. McCULLOCH. Does the witness think it would be better strategy to offer such legislation as a single proposal or as a part of an omnibus measure in this field which has so much controversy already injected into it?

Mr. MOORHEAD. I would defer to the judgment of the gentleman from Ohio on that point, but my feeling is that on the civil rights we are going to have a fight, we are going to have delaying tactics, and we might as well have it in one piece of legislation and get it over with rather than to have numbers of pieces of legislation.

Mr. McCULLOCH. Well, pursuing the question a little further, does the witness believe or have an opinion upon the reception that fair employment practice legislation would have before the Rules Committee, for instance?

Mr. MOORHEAD. It is the opinion of the witness that H.R. 7152, as it stands, will have difficulty before the Rules Committee.

Mr. McCULLOCH. Well, if it came to a decision by the subcommittee, or by this committee, that a half loaf would be better than none, would the witness take a position in support of the half loaf or would the witness say we will take none?

Mr. MOORHEAD. Mr. McCulloch, I opened my statement by saying that I give my wholehearted support for the strongest civil rights bill which can be passed by the Congress this year. I think that this means that I hope we get more than half a loaf, but I would certainly settle for three-quarters or as much bread as I can get.

In the district which I represent, the Negroes are economically deprived to such a degree that they can't fully exercise the rights to equal use of public accommodations to which they are legally entitled.

For example, in my district for every white person seeking employment there are two nonwhite persons. I think that the committee might be interested in the fact that part of the barriers which created this situation in Pittsburgh has recently been taken down. I am pleased to say that last Monday there was an announcement by the mayor of the city of Pittsburgh announcing an agreement that any

residue of discrimination in the building trades union would be eliminated, and in announcing the agreement the mayor said:

It represents a significant beginning and a concerted and genuine effort by all parties to provide equal opportunity for employment in the local construction industry to all persons.

Mr. McCULLOCH. I would like to interrupt the witness there. I am very glad to have the witness furnish that information. At least part of the members of this committee have been pressing for that sort of action for many months, if not many years. It is my opinion that equality of opportunity in earning a living is one of the most fundamental opportunities, and should be one of the liberties which we recognize.

I repeat, I am very glad to hear that statement. I would like to ask, because I do not know and I think it would serve a useful purpose for the record to show, does the United Steel Workers Union of America practice discrimination any longer in the matter of new apprentices and new employees who seek employment as members of that union?

Mr. MOORHEAD. It does not.

Mr. McCULLOCH. How long ago has that discrimination ended, and I know that is a difficult question?

Mr. MOORHEAD. It ended before my service in the Congress, I know that. I don't know how much before.

Mr. McCULLOCH. I am glad to hear that, too.

Mr. MOORHEAD. Mr. Chairman, with the permission of the committee, I should like to submit for the record the statement of the mayor of the city of Pittsburgh describing this arrangement and the report of the subcommittee of the Commission on Human Relations which worked out this arrangement.

I think it might be helpful for the committee to have the full record of this arrangement.

Mr. ROGERS. We will be glad to receive that for the record.

(The statement is as follows:)

STATEMENT BY MAYOR JOSEPH M. BARR

Discussions have been underway for more than 2 months between representatives of the mayor's office, the mayor's commission on human relations, the city law department, and the Pittsburgh building trades in reference to the elimination of discrimination in the construction industry. Within the past 4 weeks, representatives of the Master Builders Association of Western Pennsylvania have also participated.

The purpose of these meetings has been to determine what can be done to eliminate whatever racial bias may exist in the local construction industry and within the local craft unions.

I am pleased to issue the following joint interim report of the mayor's commission, the building trades and the Master Builders, with the understanding that this report outlines only the progress made thus far and does not constitute a final and conclusive answer to all the complex problems involved.

This interim report, in my judgment, represents a significant beginning in a concerted and genuine effort by all parties to provide equal opportunity for employment in the local construction industry to all persons.

I emphasize "beginning" for it should be clearly understood that much remains to be done to follow through on the agreements achieved thus far.

The major proposals agreed to tentatively by all of the Pittsburgh building trades except the ——— [1] are these:

[1] Because the one union which did not participate in this arrangement has subsequently agreed to a virtually identical arrangement under the auspices of the State human relations commission I have deleted all further reference to it in this report.—WSM.

1. Journeymen: Any qualified nonwhite journeymen who can meet the standards set by the union will be accepted immediately for membership. In the event that the union gives an examination a neutral observer will be present or other adequate safeguards will be taken to insure fair and impartial testing.

2. Apprentice program: All of the local unions, again except one, have agreed to take in an appropriate number of qualified nonwhite applicants. In those instances where apprentices are selected by the contractor, the Master Builders have agreed to cooperate in similar fashion.

Not all unions have an active or annual apprentice program, but the above understanding is to be applied when apprentice programs are started. The mayor's commission, with the assistance of other groups in the community, will assume the responsibility for referring qualified applicants to the union and for providing information about the time and place of apprentice testing programs, to the Urban League, the NAACP, and other civil rights organizations.

If these proposals are implemented successfully and in good faith, it will represent a major breakthrough in the nationwide campaign to provide job opportunities without regard to racial considerations.

Of course, the responsibility for fair employment practices in the local construction industry rests equally with the contractors. It should be made clear that the Master Builders Association has also pledged its cooperation to these proposals. However, the Master Builders do not represent all of the firms who perform work for the city of Pittsburgh and in the Pittsburgh area. Therefore, I am directing the mayor's commission to contact the other major contractor associations in this area and attempt to work out similar agreements.

I repeat again that much remains to be done, by the staff of the mayor's commission, by the master builders, and most importantly, by the building trades themselves, to translate these good faith pledges into practice. On the other hand, I know of no craft union group in the United States that has shown a greater awareness of the need to comply with President Kennedy's appeal to end discrimination, to make it possible for Negroes to begin to catch up on job opportunities previously denied them, and to avoid at all costs the violence and incidents that have plagued other communities.

We must recognize that in one respect local craft union leaders are operating under a handicap. Unemployment is higher among their apprentice and journeymen members than in other sections of the country. To a great extent, this makes the proposals outlined above even more difficult to accomplish.

I would hope that the membership of all craft unions involved will give their leadership the support this movement must have. Indeed, in justice, there is no other choice. This Nation can no longer afford the wastefulness and sinfulness of racial discrimination in any facet of community life.

Some persons regard these days as dark and dangerous ones because of the ever-present threat of racial unrest. It seems to me there is a more positive way of looking at this moment in history. Never has there been a time in the past 100 years when the possibility for achieving real equality of opportunity has been greater.

Mr. MOORHEAD. I think that we can go a part of the way through enactment of H.R. 7152 toward building the legal foundations of integration and providing all citizens with the peaceful weapons they need to fight their way to the freedom they were promised a century ago.

I think the most difficult question before this committee, of course, is in the field of public accommodations. I think that it is here that we must pass the moral divide in guaranteeing this freedom. To those who contend that freedom would be diminished by this law, I submit the eloquent statement of the Secretary of State, Dean Rusk, on this subject, who said:

I could not agree that such a law would diminish freedom. The purpose of law in a free society is to enlarge freedom by letting each know what kind of conduct to expect from the other. And it is through our laws that personal freedom is not only protected but constantly enlarged, so we can pursue our orbit with a minimum of collisions.

Mr. Chairman, all Americans of all racial and national origins are proud. They are more interested in the possession of a right than in the exercise of that right. Once the pseudolegal basis for the denial of a constitutional right is abolished, the importance of the exercise of that right is minimized.

In my full statement I set forth the experience that we have had with public accommodation laws in Pennsylvania because I think that our experience shows that I am not trying to propose a racial Armageddon for my southern friends. Our public accommodation laws in Pennsylvania go back to 1887 where the law provided that any person, company, corporation, and so forth, who shall refuse to accommodate or convey or admit any person or persons on account of race or color shall be guilty of a misdemeanor. This statute was upheld as constitutional, and the court cited the Supreme Court of the United States, Mr. Chief Justice Waite, who declared:

> When one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the inerest he has thus created.

This original act of 1887 was amended and strengthened in the middle 1930's. And more recently in 1961 in Pennsylvania we adopted the Fair Employment Act which, among other things, sets up a commission on human relations.

Mr. Chairman, I believe that it would be helpful to the committee to include at the end of my testimony section 4654 of title 18 of the Pennsylvania Penal Code and the pertinent sections of title 43 of the Pennsylvania Human Relations Act.

Mr. KASTENMEIR. Without objection, they will be included.

Mr. MCCULLOCH. I would like to ask if the Pennsylvania law gives the aggrieved party a civil remedy against the person that is alleged to be guilty of violation?

Mr. MOORHEAD. The original law gave only criminal sanction and the present law gives civil sanction and also provides for assistance by the commission on human relations in this matter.

The Pennsylvania courts construed the 1935 act to include, in addition to a criminal action, a civil action for damages, a civil action by the aggrieved person for an injunction, and an action by the attorney general for an injunction.

Mr. MCCULLOCH. The reason I asked, the record will show from the previous hearings that Ohio had similar legislation which dates back to 1884, and there were both criminal sanctions and civil remedies on the part of the aggrieved persons.

Mr. MOORHEAD. Mr. Chairman, in the city of Pittsburgh, we have had a commission on human relations since 1955, and I should ask leave to include as part of my testimony a letter and report to me from Mr. Louis Mason, Jr., executive director of the commission.

In his letter Mr. Mason, based on his experience in this field says:

> None of the fears expressed by respondents such as loss of business, customer objection, etc., were ever realized in the adjustment of our cases. I sincerely hope that Congress sees fit to make the question of public accommodations a national public policy through the enactment of adequate civil rights legislation.

Mr. ROGERS. Mr. Mason's letter may be made part of the record. (The letter is as follows:)

CITY OF PITTSBURGH, PA.,
COMMISSION ON HUMAN RELATIONS,
July 11, 1963.

Congressman WILLIAM S. MOORHEAD,
House Office Building,
Washington, D.C.

DEAR CONGRESSMAN MOORHEAD: Enclosed for your information is a breakdown on the number of cases of public accommodations handled by the commission on human relations since its inception in 1955.

For your information, the commission on human relations does not have written into its ordinance any provisions on cases of alleged discrimination in public accommodations. We did have the authority prior to the passage of legislation enacting and establishing the Pennsylvania Human Relations Commission, the power to investigate "alleged violations of the penal codes of the Commonwealth of Pennsylvania prohibiting discrimination in public accommodations." It is under this mandate that we processed public accommodations cases. Now, through a working arrangement with the Pennsylvania Human Relations Commission, we refer incidents of this nature directly to their regional office in Pittsburgh.

As you will note from the statistical breakdown, we had 31 bona fide cases with probable cause found out of a total of 44. You will further note the phrase "satisfactorily adjusted." This phrase refers to the fact that we were able to, through conciliation and mediation, bring about an adjustment which insured the fact that not only the complainant was afforded the services he desired, but that, in the future, all persons would be served without regard to their race, creed, color, or national origin.

Congressman, there is no question that all of these cases where adjustment was achieved were based upon the fact that the respondent organization had the Pennsylvania laws clearly interpreted to them. Had there been resistance or open defiance the complainant would have taken his case to an alderman and subsequently to the district attorney's office and grand jury proceedings. The attendant publicity that goes with cases of this nature is also a deterrent because the public relations of the institution or business firm is adversely affected. The average American citizen, businessman or otherwise, wants to be a law-abiding citizen. None of the fears expressed by respondents such as loss of business, customer objection, etc., were ever realized in the adjustment of our cases. I sincerely hope that Congress sees fit to make the question of public accommodations a national public policy through the enactment of adequate civil rights legislation.

If this office can be of further assistance to you at any time please do not hesitate to call upon us.

Sincerely yours,

LOUIS MASON, Jr., *Executive Director.*

Public accommodations cases in Pittsburgh, 1955–63

Cases closed with no discrimination found:

Facility	*Number of cases*
Hotels	1
Bowling alleys	1
Hospitals	1
Clubs	1
Bars	1
Dance studio	1
Cab service	1
Health clubs	2
Total	9

Cases closed with probable cause found, but satisfactorily adjusted:

Facility	Number of cases
Bowling alleys	2
Bars	5
Dance studio	2
Cab service	6
Pharmacy	1
Beauty parlor	2
Beauty school	3
Hospitals	3
Skating rink	1
Restaurant	4
Hotels	2
Total	31

Cases with probable cause found, but referred to the Pennsylvania Commission on Human Relations:

Facility	Number of cases
Barber shop	1
Bathhouses	1

Cases withdrawn by complainant:

Bars	2

SUMMARY

Cases closed with no discrimination found	9
Cases closed with probable cause found, but satisfactorily adjusted	31
Cases with probable cause found, but referred to the Pennsylvania Commission on Human Relations	2
Cases withdrawn by complainant	2
Total complaints	44

Mr. MOORHEAD. Finally, it seems absurd to me that someone like the U.N. Russian diplomat Sevastyanov, recently arrested for spying, could have eaten nearly any place he wished and plot his machinations against the United States while Ralph Bunche, another U.N. official and a famous American and patriot, could be refused accommodation at the same places.

Oh, the irony that a democratic nation whose political parties are philosophical descendants of Thomas Jefferson and Abraham Lincoln could permit such a travesty of justice.

Our Nation by its very motto, "In God We Trust," recognizes the fatherhood of God. Can we who believe in the fatherhood of God dispute the brotherhood of man?

Mr. Chairman and members of the committee, as you thoughtfully and prayerfully undertake the consideration of this difficult and controversial legislation I hope that you will have before you as your text the 26th verse of the 17th chapter of the Book of Acts where it is said "God hath made of one blood all people to dwell in all the earth."

Mr. KASTENMEIER. Many thanks to the witness for his testimony.

Any questions?

Mr. MCCULLOCH. I would like to ask one question.

It is my opinion and the opinion of at least some other members of the subcommittee, that H.R. 7152 authorizes a Secretary of Health, Education, and Welfare to withhold any Federal grants in aid to any political subdivision of this country if a Secretary determines that there has been discrimination contrary to law, and that decision of the Secretary is final and is not subject to review.

Does our colleague believe, or is he of the opinion, if he has had time to study the proposal, that any administrative official should have that much authority in view of the very large amounts of money that may be distributed by a Secretary, as much as $3.7 billion in accordance with the Secretary's statement?

Mr. MOORHEAD. Mr. McCulloch, I would like, if I may, to answer that in two steps, just to be sure my position is clear.

No. 1, I think that we should enact proper legislation which permits or authorizes the withholding of funds in cases where segregation is practiced.

No. 2, as a lawyer I tend to favor provisions for judicial review of decisions so that while I haven't studied that particular section, in general I think judicial review is a salutary safeguard in legislation.

Mr. MCCULLOCH. If we should happen to determine that judicial review is too cumbersome and too time consuming, would our colleague have any opinion upon whether or not we should consider administrative review?

Mr. MOORHEAD. I would say this, I have great respect for the members of this subcommittee, all of whom I believe are lawyers and are interested in protecting the rights of States and individuals. I would hate to see another administrative commission set up to review it. I mean, I would think first of the courts, but if this committee should determine that this could be handled more expeditiously and fairly by a commission either existing or created, I would not be opposed.

Mr. MCCULLOCH. The reason I mention administrative review is, in Ohio we have a board of review in the bureau of unemployment compensation. The administrator first makes the determination, and if it be adverse to the employee who has lost his job or his position, then he has the right of review by the board of review of the bureau of unemployment compensation. There isn't outside that bureau a new department of State government created. There is a board of review within the bureau of unemployment compensation which carries it one step beyond the final decision of a single man, an administrator.

Mr. MOORHEAD. It would occur to me that we might have some constitutional difficulties if the Secretary made a decision that a particular State was practicing discrimination and would decide that that State should have all funds out from a particular program. I would think that that State under the Constitution, I believe it would have a right to go directly to the Supreme Court of the United States.

Mr. MCCULLOCH. Well, that is a very difficult question and there is no unanimity on that question. As I recall the Secretary of Health, Education, and Welfare testified here the day before yesterday that it was his tentative opinion that there was no authority by which a State could test that decision.

Mr. CORMAN. Would the gentleman yield?

Mr. MCCULLOCH. Yes.

Mr. CORMAN. As I understand this provision in H.R. 7152, it is not in the nature of a penalty and the Secretary would not be permitted to impose it on the basis but, rather, it could be a withholding until conditions of racial discrimination had been ended. He couldn't withhold it for past offenses, but he could withhold it until there was a demonstration that the beneficiaries would not be discriminated against because of their race. It seems to me there is a difference.

Mr. MCCULLOCH. Probably so, and I appreciate the comment and the analysis of our able colleague. But, if the gentleman will yield a moment further, the authority remains for an administrator to make the decision from which there is presently no appeal, which, although in the technicality of law, I accept my colleague's suggestion, it is not a penalty but it's effect will be to penalize the State unless it does what the administrator says, based upon the decision that he makes.

Mr. CORMAN. I would like to say to the gentleman that I share his concern for review. My first feeling, too, would be it ought to be judicial review as to the existence of racial discrimination, and I think that what the Secretary was concerned about, it seemed to me, and I am not sure I am right, he seemed to want to avoid any intrusion into this discrimination as to whether he could pay or not. He didn't want to be forced to withhold in every instance where there might be racial discrimination. He wanted discretion as to that. I don't think he wanted and I certainly don't think he should have ultimate authority to make a decision as to whether discrimination existed or not. That must be reviewable by the courts, and if he doesn't think it is, I would differ with him because I don't think that this act would give that, and if it does then we ought to change it.

I think the other thing he was concerned about was he wouldn't want to have to have to prove in court that the racial discrimination existed before he could withhold the funds. Now, if he withholds them I think there must be a cause of action with the State or other agency from which funds were withheld, and it would be incumbent upon the Secretary to then establish that the racial discrimination existed. If he were wrong, then the funds would have to be paid. If that isn't what the law says, I would be hopeful we would redraft it, but I believe that is what it says.

Mr. MCCULLOCH. I am of the opinion that we are not too far apart in analyzing this.

Mr. KASTENMEIER. Any other questions?

If not, that concludes our testimony. I want to thank the gentleman from Pennsylvania.

(The prepared statement of Hon. William S. Moorhead, U.S. Representative from the State of Pennsylvania; the section 4654 of title 18 of the Pennsylvania Penal Code, and title 43 of the Pennsylvania Human Relations Act, are as follows:)

STATEMENT OF WILLIAM S. MOORHEAD, MEMBER OF CONGRESS FROM PENNSYLVANIA

Mr. Chairman and fellow colleagues, I am grateful for the opportunity to appear before you and offer to you my wholehearted support for the strongest civil rights bill which can be passed by the Congress this year.

On this basis I support H.R. 7152, but I hope that this committee will also consider by way of strengthening amendments some of the provisions in certain bills which I have introduced—H.R. 6300, H.R. 6301, and H.R. 7502.

I particularly request the committee's consideration of the bill, H.R. 6300, which as nearly as legislatively possible embodies all of the recommendations of the 1960 Democratic Party platform. H.R. 6300 has a symbolic number—because it expresses the 100 years that have elapsed between 1863 and 1963 and the shame that so little has been done in these 100 years.

One hundred years after 1863, when American citizens are courageously struggling for their constitutional rights and are being shot, beaten, jailed, and harassed for doing so., it is imperative that Congress take all possible steps to eliminate discrimination.

Does H.R. 7152 meet this test? I hope that before this committee reports H.R. 7152 it considers some additional proposals. H.R. 7152 does not include a Fair Employment Practices Commission, which is so vital in providing economic rights for minority groups. In the district which I represent Negroes are too economically deprived to exercise fully their right to equal use of public accommodations to which they are legally entitled in Pennsylvania. The extent to which economic deprivation is a problem becomes quite evident when one looks at a statistical picture of the people involved. According to the 1960 U.S. Census, the median family income in Pittsburgh was $5,605. Yet 51 percent of all Negro families had incomes of less than $4,000. Almost 25 percent made less than $2,000. Such an income generally qualifies a family under the criteria for publicly subsidized housing. For every white person in Pittsburgh looking for a job there are two nonwhites.

Part of the barriers which created this situation in Pittsburgh has been taken down, I am pleased to say, with the Monday, July 8, announcement from Mayor Joseph M. Barr, that any residue of discrimination in the building trades would be eliminated. In announcing this agreement, Mayor Barr said that it "represents a significant beginning in a concerted and genuine effort by all parties to provide equal opportunity for employment in the local construction industry to all persons. The mayor continued: "Some persons regard these days as dark and dangerous ones because of the ever-present threat of racial unrest. It seems to me there is a more positive way of looking at this moment in history. Never has there been a time in the past 100 years when the possibility for achieving real equality of opportunity has been greater."

I ask permission to insert the entire statement of the mayor, including the interim report of the subcommittee involved in the agreement.

H.R. 7152 does not adequately expand the power of the Attorney General to bring legal action against all forms of unlawful discrimination. In the field of school desegregation, a time compliance is not mentioned, only a 2-year situation report. These and several other constructive suggestions are embodied in various proposals I have submitted to the Judiciary and Post Office and Civil Service Committees, namely H.R. 6300, H.R. 6301, and H.R. 7502.

But I think we can go a small part of the way, through enactment of H.R. 7152, toward building the legal foundations of integration and providing all citizens with the peaceful weapons they need to fight their way to the freedom they were promised a century ago.

It is in the field of public accommodations that I feel we must pass the moral divide in guaranteeing this freedom. To those who contend that freedom would be diminished by this law, I submit the eloquent statement of the Secretary of State, Dean Rusk, on the subject: "I could not agree that such a law would diminish freedom. The purpose of law in a free society is to enlarge freedom by letting each know what kind of conduct to expect from the other. And it is through our laws that personal freedom is not only protected but constantly enlarged, so we can pursue our orbit with a minimum of collisions."

Mr. Chairman, all Americans of all racial and national origins are proud. They are more interested in the possession of a right than in the exercise of that right.

Once the pseudolegal basis for the denial of a constitutional right is abolished, the importance of the exercise of that right is minimized.

I think that the experience which we have had in Pennsylvania shows that I am not proposing a racial Armageddon for my southern friends.

The history of Pennsylvania shows that we were like many other States in the development of its relations to Negroes. Although the number of Negroes

involved was never large, Pennsylvania had its slave practices and codes too until checked in 1780 by an act for the gradual abolition of slavery. This act was the first of its kind passed anywhere in America and was due directly to the splendid efforts of John Woolman of the Friends Society and of the first Abolition Society in America of which Benjamin Franklin later became president.

Nothing approaching real legal equality, however, was achieved, until the Pennsylvania Legislature, on the 19th of May, 1887, enacted a measure to assure civil rights for all people, regardless of race or color. This was a criminal measure declaring: "That any person, company, corporation, being owner, lessee, or manager of any restaurant, hotel, railroad, street railway, omnibus line, theater, concert, hall, or place of entertainment or amusement, who shall refuse to accommodate, convey or admit any person or persons on account of race or color over their lines, or into their hotel, or restaurant, theater, concert hall or place of amusement, shall upon conviction thereof, be guilty of a misdemeanor, and be punished by a fine not less than $50 nor more than $100" (Penna. Laws 1887, p. 130).

This statute has been explicitly upheld as within the constitutional power of the legislature. The Dauphin County court, in upholding this act against a contention of invalidity in the case of *Commonwealth* v. *Athens George*, 18 Dauph. 40(1914), relied upon the Supreme Court case of *Munn* v. *Illinois*, 94 U.S. 113, 126 (1877), wherein the Court reviewed the historical and jurisprudential bases for governmental regulation of the use of private property. "When," Chief Justice Waite declared, "one devotes his property to a use in which the public has an interest, he, in effect, grants to the public an interest in that use, and must submit to be controlled by the public for the common good, to the extent of the interest he has thus created."

The Pennsylvania court also followed the reasoning of the New York court in *People* v. *King*, 18 N. E. 245 (1888). The court there held that where, in the judgment of the legislature, the public has an interest to prevent race discrimination between citizens on the part of persons maintaining places of public amusement, the quasi-public use to which the owner of such a place devotes his property gives the legislature, acting under its police power, the right to prescribe regulations as to its use.

On appeal from the judgment of guilty entered in this case, the Pennsylvania superior court reiterated the doctrine that the statute, as a proper exercise of the police power, is not an arbitrary deprivation of property without due process of law. "In the enactment of laws under the police power, there is always a certain amount of interference with property rights, but laws are not condemned on that account, unless this interference amounts to a practical confiscation" (*Commonwealth* v. *George*, 61 Pa. Sup. 412 (1915)).

In construing this act making the refusal to admit a person on account of his color a misdemeanor, the Pennsylvania court, under the influence of the then prevailing separate-but-equal doctrine, espoused by the Supreme Court in *Plessy* v. *Ferguson*, 163 U.S. 537 (1896), held that the owner of a theater with a segregated section for Negro patrons had not violated the 1887 statute. It should be noted that the statutory language now reads that all persons are entitled to free and equal accommodations.

In 1935, the 1887 statute was amended (Penna. Laws 1935, p. 297). First, the act affirmatively stated that all persons within the jurisdiction shall be entitled to the full and equal accommodations of public places, subject only to conditions and limitations applicable alike to all persons. Secondly, it was declared that no person, directly or indirectly, was to refuse, withhold from, or to deny such accommodations on account of race or color, or to advertise to that effect or to the effect that the patronage of persons of a particular race was unwelcome. The production of any such advertising was declared to be presumptive evidence in a criminal proceeding. Thirdly, places of public accommodation were broadly defined. It was expressly stipulated that the act did not apply to places which were distinctly private in nature, nor did it prohibit written communications sent in response to a specific written inquiry.

Finally, the act recited that any person violating, aiding, or inciting another in the violation of any provision should for each violation be fined from $100 to $500, or imprisoned from 30 to 90 days, or both.

This act, as amended, was upheld as a valid exercise of the police power of the State (*Commonwealth* v. *Moore*, 45 Dauphin 364 (1938). The act, as amended, did not specify that the violation thereof was a misdemeanor, as had the original measure. Nor did the act specify that the penalties were to be

imposed upon conviction of violation. The *Moore* case held that, notwithstanding these omissions in the amendatory act, the only reasonable construction is that the violation thereof is a misdemeanor and that the penalties are to be imposed upon conviction. (Ibid.)

In 1939, the act was amended to correct these deficiencies and to change the fine to a maximum of $100 (Penna. Laws 1939, p. 872, sec. 654, title 18, sec. 4654).

The Pennsylvania courts have held that the fact that the statute enumerates some 40-odd places which "shall be deemed" places of public accommodation does not imply that only the places thus mentioned are within its purview (*Commonwealth* v. *Figari*, 70 A. 2d (1950); *Everett* v. *Harron*, 110 A. 2d 383 (1955); *Commonwealth* v. *Gibney*, 9 Chest. 152 (1959)).

The 1887 act as amended is a part of the Penal Code of Pennsylvania and, therefore, permits an aggrieved person to initiate a prosecution against a violator of the act. It has been held that an aggrieved person is entitled to redress the grievance thereby suffered by bringing a civil action for damages (*Everett* v. *Harron*, 110 A. 2d 383 (1955)). The statutory basis for this decision was the statement in the act that the production of any communication prohibited therein "shall be presumptive evidence in any *civil or criminal action*" (emphasis supplied). Further, the statute has been interpreted as conferring a right to equitable relief. In the *Everett* case, supra, operators of a recreation park with a swimming pool were held to be properly enjoined at the suit of a private individual from excluding the complainant, on the sole ground of race or color, from the use of the pool. And in *Commonwealth* v. *Gibney, supra*, the statute was further construed to permit the Attorney General to file a complaint in equity to seek a preliminary injunction and ultimately a final decree enjoining the defendant from refusing the accommodations of his business on account of race or color. (Citing *In re Debs*, 158 U.S. 584, holding that the Federal Government may apply to its courts to enjoin actions which would jeopardize the public welfare.)

Thus, the remedies available under the statute include (1) a criminal action instituted by the aggrieved person; (2) a civil action for damages; (3) a civil action by the aggrieved person for an injunction; and (4) an action by the Attorney General for an injunction.

In addition to this provision of its penal code, Pennsylvania has another relevant provision. In 1961 the Fair Employment Act (Pa. Laws 1955, p. 744) was amended so as to embrace discriminatory practices in housing and public accommodations, as well as those in employment (sec. 953, 954(1), and 955 are relevant). This act creates the human relations commission in the department of labor and industry, defines its functions in hearing complaints of discrimination, provides for procedures of education and conciliation, establishes enforcement procedures, provides for judicial review and enforcement, and imposes penalties.

Thus, Pennsylvania has the dual approach to the problem of racial discrimination in places of public accommodation endorsed by Konvitz and Leskes, "A Century of Civil Rights" (1961) in their analysis of the operation of State public accommodation statutes.

Mr. Chairman, I would like to request permission to include in my testimony section 4654 of title 18 of the Pennsylvania Penal Code and pertinent sections of title 43, the Pennsylvania Human Relations Act.

To continue, as a result of the 1961 law, for the first time, there was created efficient machinery for proper administration of public accommodation complaints. During the annual report year 1962 (ending February 28, 1962), a total of 50 complaints were filed by individuals or the commission. The type of respondents are as follows:

Hotels, motels	13
Eating, drinking places	13
Retail stores	1
Recreation, amusements	17
Personal services (barbershops, beauty salons, etc.)	4
Resorts, lodges	1
Other	1

Of these, 7 cases were found as charged and adjusted, 7 cases were found to have no specific charge; the other 36 had adjustment pending.

The important thing to note here, I think, Mr. Chairman, is the amazingly small number of cases in a year's time. Pennsylvania has a total of 864,616 nonwhite residents, or over 7 percent of the population and relatively speaking these individuals would not fail to lodge a complaint should the need arise. This seems to point out to me that public accommodations laws have not resulted in chaos, in legal confusion, or in governmental bullying. I have neither seen nor heard any objections from the vast majority of businessmen of our State who have responded admirably to the law in point.

In the city of Pittsburgh we have had a commission on human relations since 1955. I ask leave to include as part of my testimony a letter and report to me from Mr. Louis Mason, Jr., executive director of the commission. In his letter, Mr. Mason, based on his experience in this field, says: "None of the fears expressed by respondents such as loss of business, customer objection, etc., were ever realized in the adjustment of our cases. I sincerely hope that Congress sees fit to make the question of public accommodations a national public policy through the enactment of adequate civil rights legislation."

It seems absurd to me that someone like the U.N. Russian diplomat, Sevastyanov, recently arrested for spying, could have eaten nearly any place he wished and plot his machinations against the United States, while Ralph Bunche, another U.N. official and a famous American and patriot, could be refused accommodation at the same places.

Oh, the irony that a democratic nation whose political parties are philosophical descendants of Thomas Jefferson and Abraham Lincoln could permit such a travesty of justice.

Our Nation by its very motto, "In God We Trust," recognizes the fatherhood of God. Can we who believe in the fatherhood of God dispute the brotherhood of man?

Mr. Chairman and members of the committee, as you thoughtfully and prayerfully undertake the consideration of this difficult and controversial legislation, I hope that you will have before you as your text the 26th verse of the 17th chapter of the Book of Acts where it is said, "God hath made of one blood all people to dwell in all the earth."

COMMITTEE ON HUMAN RELATIONS IN BUILDING TRADES

Interim report of subcommittee

I. PROCEDURE

On June 17, 1963, at the request of Mayor Joseph M. Barr, a special committee representing the building trades council, the Master Builders' Association, and the mayor's commission on human relations, was formed to implement a program of wider employment of nonwhite craftsmen in the construction industry in the city of Pittsburgh. The working subcommittee appointed by this group has held six meetings and has conferred with representatives of all the major unions included within the building trades council with the exception of ———.[1]

It should be noted at the outset that with the exception of ———,[1] every union contacted by the subcommittee appeared at the scheduled meetings and indicated their willingness to cooperate with the mayor's committee by either opening up union membership to the nonwhite worker or by increasing nonwhite membership in these unions which already have integrated membership. The bricklayers, an integrated union, indicated their cooperation but were unable to attend for internal reasons.

II. ANTIDISCRIMINATION LEGISLATION

General legislation in the city of Pittsburgh embodied in the Pittsburgh Fair Employment Ordinance, No. 237, approved June 25, 1955, has established as the public policy of the city of Pittsburgh the elimination of discrimination in employment because of race, color, religion, ancestry, national origin, or place of birth by employers, employment agencies, labor organizations, and other groups.

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[1] Because the one union which did not participate in this arrangement, has subsequently agreed to a virtually identical arrangement under the auspices of the State human relations commission I have deleted all further reference to it in this report.—W. S. M.

Therefore, in meeting with each union, the aim of the subcommittee was to implement these prohibitions against discrimination by a positive program and to enlarge the participation by nonwhites in the building trades.

III. VARIATION IN UNIONS

Because neither the apprentice training programs, the membership procedures or hiring practices are similar for the various trades, the subcommittee is attaching to this report a breakdown, union by union, of the steps tentatively accepted by the representative of the individual union and the subcommittee. In some instances, these steps require formal ratification by the membership, in others these steps have been ratified.

Again because of these differences in union practice, and the degree of integration presently existing in certain unions, it was not felt desirable at this moment to request a specific percentage or number of nonwhite members, but rather to emphasize the elimination of racial barriers within the building trades to qualified members of the minority community interested in pursuing employment in local construction both as journeymen and apprentices.

IV. PROGRAM FOR INCREASED NONWHITE MEMBERSHIP

In our attempt to widen the employment opportunities of nonwhite citizens, we should not overlook the integration in significant numbers which has occurred voluntarily through custom and tradition, in certain unions. On the other hand, where nonwhite membership is token or absent from a union for whatever reason, this situation will be remedied with all possible speed.

In essence, all of the major unions of the building trades council with the exception of ———[1] have accepted the resolution of the council to cooperate on every level with the mayor's commission on human relations and to implement the extension of employment opportunities for the Negro worker. To this end, the subcommittee can report that all of these unions with the exception, noted above, have tentatively agreed to the following proposals:

(1) Journeymen (skilled craftsmen): Any qualified nonwhite craftsman (known as journeymen in the construction industry) who can meet the present standards of skill established by the individual union will be accepted immediately for membership.

In the event that the union gives either a written or oral examination to establish qualifications, a neutral observer selected by the Mayor's Commission, or other safeguards to protect both the union and the applicant will be taken, to insure fair and impartial testing. These safeguards are viewed not as a lack of faith in any given union, but as a protection to both the union and the applicant.

(2) Apprentice program: Because of current unemployment in the building trades industry, many of the unions do not have a currently active apprentice program. However, each union agreed to open up the next apprentice program to applications from any interested nonwhite applicant and to take an appropriate number of such qualified nonwhite applicants. In those unions where the trainee is selected entirely by the employer, the unions agree that they would set up no barriers to the selection of nonwhite applicants and would welcome such apprentices.

Because of the variance of apprentice practices in each union and the range of the size of the class, the initial meeting with any union can only begin to establish the necessary procedures to implement a positive program for increased participation by the nonwhite community in the building trades.

V. IMPLEMENTATION

It is the feeling of this committee that all of the major craft unions with the exception of ———[1] have indicated evidence of a desire to cooperate and implement a positive program of training for and participation of Negroes in the building industry. However, in fairness to all participants, the community should be aware of the serious unemployment in the building trades and that presently trained craftsmen both Negro and white of many years' experience are currently without employment. The efforts being made in this community to increase employment opportunities and new construction constitutes the ultimate solution of the unemployment problem not only of nonwhite workmen but of all citizens of this community.

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[1] See footnote on p. 1753.

However, it is the firm belief of this committee that simultaneously with efforts to increase employment opportunities there should be stepped up training of the nonwhite youth so that they will be able to take full advantage of skilled job opportunities.

VI. FUTURE RECOMMENDATIONS

As has been indicated above, the work of the subcommittee to date has been with union representatives. In many trades the apprentice's training opportunities as well as employment rests with the contractor. While the Master Builders Association has been a member of this subcommittee, other employers, such as the electrical and roofing contractors, have not been members of this committee. Therefore, the subcommittee recommends the following:

(1) Meetings by the subcommittee with all affected employer groups to establish more specific procedures particularly on apprentice programs;

(2) Specific followup by the mayor's commission with both unions and employers on each apprentice program at the time of recruitment; and

(3) A progress report from the individual unions to the mayor's commission at the end of a 3-month period, to determine the effects of this program on journeymen applications for union membership.

PENNSYLVANIA

[Pa. Stat. Ann. Tit. 18 § 4654 (1945)]

§ *4654. Discrimination on account of race and color*

(a) All persons within the jurisdiction of this Commonwealth shall be entitled to the full and equal accommodations, advantages, facilities, and privileges of any places of public accommodation, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. Whoever, being the owner, lessee, proprietor, manager, superintendent, agent or employe of any such place, directly or indirectly refuses, withholds from, or denies to, any person, any of the accommodations, advantages, facilities, or privileges thereof, or directly or indirectly publishes, circulates, issues, displays, posts or mails any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such places, shall be refused, withheld from, or denied to, any person on account of race, creed, or color, or that the patronage or custom thereat of any person belonging to, or purporting to be of, any particular race, creed or color is unwelcome, objectionable or not acceptable, desired or solicited, is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine of not more than one hundred dollars ($100), or shall undergo imprisonment for not more than ninety (90) days, or both.

(b) The production of any such written or printed communication, notice or advertisement, purporting to relate to any such place and to be made by any person being the owner, lessee, proprietor, superintendent or manager thereof, shall be presumptive evidence in any civil or criminal action that the same was authorized by such person.

(c) A place of public accommodation, resort or amusement, within the meaning of this section shall be deemed to include inns, taverns, roadhouses, hotels, whether conducted for the entertainment of transient guests, or for the accommodation of those seeking health, recreation or rest, or restaurants or eating houses, or any place where food is sold for consumption on the premises, buffets, saloons, barrooms, or any store, park, or inclosure where spirituous or malt liquors are sold, ice cream parlors, confectioneries, soda fountains, and all stores where ice cream, ice and fruit preparations, or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drug stores, dispensaries, clinics, hospitals, bathhouses, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of this Commonwealth, garages and all public conveyances operated on land or water, as well as the stations and terminals thereof.

(d) Nothing contained in this section shall be construed to include any institution, club or place or places of public accommodation, resort or amusement, which is or are in its or their nature distinctly private, or to prohibit the mailing of a private communication in writing sent in response to a specific written inquiry.

§ 955. Unlawful discriminatory practices

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania: * * *

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employe of any place of public accommodation, resort or amusement to

(1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry or national origin, either directly or indirectly, any of the accommodations, advantages, facilities or privileges of such place of public accommodation, resort, or amusement.

(2) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of race, color, religious creed, ancestry or national origin or that the patronage or custom thereat of any person, belonging to or purporting to be of any particular race, color, religious creed, ancestry or national origin is unwelcome, objectionable or not acceptable, desired or solicited.

(See also §§ 953, 954(1).)

CHAPTER 17.--HUMAN RELATIONS

§ 951. Short title

This act may be cited as the "Pennsylvania Human Relations Act". 1955, Oct. 27, P.L. 744, § 1, as amended 1961, Feb. 28, P.L. 47, § 1.

Title of Act: An Act prohibiting certain practices of discrimination because of race, color, religious creed, ancestry, age, or national origin by employers, employment agencies, labor organizations and others as herein defined; creating the Pennsylvania Human Relations Commission in the Department of Labor and Industry; defining its functions, powers and duties; providing for procedure and enforcement; providing for formulation of an educational program to prevent prejudice; providing for judicial review and enforcement and imposing penalties. 1955, Oct. 27, P.L. 744, as amended 1961, Feb. 28, P.L. 47, § 1.

Library references: P.L.E. Civil Rights § 2.

§ 952. Findings and declaration of policy

(a) The practice or policy of discrimination against individuals or groups by reason of their race, color, religious creed, ancestry, age or national origin is a matter of concern of the Commonwealth. Such discrimination foments domestic strife and unrest, threatens the rights and privileges of the inhabitants of the Commonwealth, and undermines the foundations of a free democratic state. The denial of equal employment, housing and public accommodation opportunities because of such discrimination, and the consequent failure to utilize the productive capacities of individuals to their fullest extent, deprives large segments of the population of the Commonwealth of earnings necessary to maintain decent standards of living, necessitates their resort to public relief and intensifies group conflicts, thereby resulting in grave injury to the public health and welfare, compels many individuals to live in dwellings which are substandard, unhealthful and overcrowded, resulting in racial segregation in public schools and other community facilities, juvenile delinquency and other evils,

thereby threatening the peace, health, safety and general welfare of the Commonwealth and its inhabitants.

(b) It is hereby declared to be the public policy of this Commonwealth to foster the employment of all individuals in accordance with their fullest capacities regardless of their race, color, religious creed, ancestry, age, or national origin, and to safeguard their right to obtain and hold employment without such discrimination, to assure equal opportunities to all individuals and to safeguard their rights at places of public accommodation and to secure commercial housing regardless of race, color, religious creed, ancestry, or national origin.

(c) This act shall be deemed an exercise of the police power of the Commonwealth for the protection of the public welfare, prosperity, health, and peace of the people of the Commonwealth of Pennsylvania. 1955, Oct. 27, P.L. 744, No. 222, § 2, as amended 1961, Feb. 28, P.L. 47, § 1.

Library references: P.L.E. Civil Rights § 2.

§ 953. Right to freedom from discrimination in employment, housing, and places of public accommodation

The opportunity for an individual to obtain employment for which he is qualified, and to obtain all the accommodations, advantages, facilities, and privileges of any place of public accommodation and of commercial housing without discrimination because of race, color, religious creed, ancestry, age, or national origin are hereby recognized as and declared to be civil rights which shall be enforceable as set forth in this act. 1955, Oct 27, P.L. 744, No. 222, § 3, as amended 1961, Feb. 28, P.L. 47, § 1.

Criminal liability, discrimination in places of public accommodation, resort, or amusement, see section 4654 of Title 18, Crimes and Offenses.
Library references: P.L.E. Civil Rights § 2.

§ 954. Definitions

As used in this act unless a different meaning clearly appears from the context:

(a) The term "person" includes one or more individuals, partnerships, associations, organizations, corporations, legal representatives, trustees in bankruptcy, or receivers. It also includes, but is not limited to, any owner, lessor, assignor, builder, manager, broker, salesman, agent, employe, lending institution, and the Commonwealth of Pennsylvania, and all political subdivisions, authorities, boards, and commissions thereof.

(b) The term "employer" includes the Commonwealth or any political subdivision or board, department, commission, or school district thereof and any person employing twelve or more persons within the Commonwealth, but does not include religious, fraternal, charitable, or sectarian corporations or associations, except such corporations or associations supported in whole or in part, by governmental appropriations.

(c) The term "employe" does not include any individual employed in agriculture or in the domestic service of any person, nor any individual employed by his parents, spouse, or child.

(d) The term "labor organizations" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms, or conditions of employment or of other mutual aid or protection in relation to employment.

(e) The term "employment agency" includes any person regularly undertaking, with or without compensation, to procure opportunities to work or to procure, recruit, refer, or place employes.

(f) The term "Commission" means the Pennsylvania Human Relations Commission created by this act.

(g) The term "discriminate" includes segregrate.

(h) The term "age" includes any person between the ages of forty and sixty-two inclusive.

(i) The term "housing accommodations" includes (1) any building or structure or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home residence or sleeping place of one or more individuals, groups, or families whether or not living independently of each other; and (2) any vacant land offered for sale or lease for commercial housing.

(j) The term "commercial housing" means housing accommodations held or offered for sale or rent (1) by a real estate broker, salesman, or agent, or by

any other person pursuant to authorization of the owner; (2) by the owner himself; or (3) by legal representatives, but shall not include any personal residence offered for sale or rent by the owner or by his broker, salesman, agent, or employe.

(k) The term "personal residence" means a building or structure containing living quarters occupied or intended to be occupied by no more than two individuals, two groups, or two families living independently of each other and used by the owner thereof as a bona fide residence for himself and any members of his family forming his household.

(*l*) The term "place of public accommodations, resort, or amusement" means any place which is open to, accepts, or solicits the patronage of the general public, including but not limited to inns, taverns, roadhouses, hotels, motels, whether conducted for the entertainment of transient guests or for the accommodation of those seeking health, recreation, or rest, or restaurants or eating houses, or any place where food is sold for consumption on the premises, buffets, saloons, barrooms, or any store, park, or enclosure where spirituous or malt liquors are sold, ice cream parlors, confectionaries, soda fountains, and all stores where ice cream, ice, and fruit preparations or their derivatives, or where beverages of any kind are retailed for consumption on the premises, drugstores, dispensaries, clinics, hospitals, bathhouses, swimming pools, barbershops, beauty parlors, retail stores and establishments, theatres, motion picture houses, airdromes, roof gardens, music halls, race courses, skating rinks, amusement and recreation parks, fairs, bowling alleys, gymnasiums, shooting galleries, billiard and pool parlors, public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges, and universities, extension courses, and all educational institutions under the supervision of this Commonwealth, garages and all public conveyances operated on land or water or in the air as well as the stations, terminals, and airports thereof, but shall not include any accommodations which are in their nature distinctly private. 1955, Oct. 27, P.L. 744, § 4, as amended 1961, Feb. 28, P.L. 47, § 1.

Library references: P.L.E. Civil Rights § 2.

§ 955. Unlawful discriminatory practices

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania:

(a) For any employer because of the race, color, religious creed, ancestry, age, or national origin of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions, or privileges of employment, if the individual is the best able and most competent to perform the services required. The provision of this paragraph shall not apply, to (1) termination of employment because of the terms or conditions of any bona fide retirement or pension plan, (2) operation of the terms or conditions of any bona fide retirement or pension plan which have the effect of a minimum service requirement, (3) operation of the terms or conditions of any bona fide group or employe insurance plan.

(b) For any employer, employment agency, or labor organization, prior to the employment or admission to membership, to:

(1) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, color, religious creed, ancestry, or national origin of any applicant for employment or membership.

(2) Print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specification, or discrimination based upon race, color, religious creed, ancestry, age, or national origin.

(3) Deny or limit, through a quota system, employment or membership because of race, color, religious creed, ancestry, age, national origin, or place of birth.

(4) Substantially confine or limit recruitment or hiring of individuals with intent to circumvent the spirit and purpose of this act, to any employment agency, employment service, labor organization, training school, or training center or any other employe-referring source which services individuals who are predominantly of the same race, color, religious creed, ancestry, age, or national origin.

(c) For any labor organization because of the race, color, religious creed, ancestry, age, or national origin of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individuals with respect to hire, tenure, terms, conditions, or privileges of employment or any other matter, directly or indirectly, related to employment.

(d) For any employer, employment agency, or labor organization to discriminate in any manner against any individual because such individual has opposed any practice forbidden by this act, or because such individual has made a charge, testified or assisted, in any manner, in any investigation, proceeding, or hearing under this act.

(e) For any person, whether or not an employer, employment agency, labor organization, or employe, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful discriminatory practice or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be unlawful discriminatory practice.

(f) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his race, color, religious creed, ancestry, age, or national origin.

(g) For any individual seeking employment to publish or cause to be published any advertisement which specifies or in any manner expresses his race, color, religious creed, ancestry, age, or national origin, or in any manner expresses a limitation or preference as to the race, color, religious creed, ancestry, age, or national origin of any prospective employer.

(h) For any person to:

(1) Refuse to sell, lease, finance, or otherwise to deny or withhold commercial housing from any person because of the race, color, religious creed, ancestry, or national origin of any prospective owner, occupant, or user of such commercial housing.

(2) Refuse to lend money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair, or maintenance of commercial housing or otherwise withhold financing of commercial housing from any person because of the race, color, religious creed, ancestry, or national origin of any present or prospective owner, occupant, or user of such commercial housing.

(3) Discriminate against any person in the terms or conditions of selling or leasing any commercial housing or in furnishing facilities, services, or privileges in connection with[1] the ownership, occupancy, or use of any commercial housing because of the race, color, religious creed, ancestry, or national origin of any present or prospective owner, occupant, or user of such commercial housing.

(4) Discriminate against any person in the terms or conditions of any loan of money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair, or maintenance of commercial housing because of the race, color, religious creed, ancestry, or national origin of any present or prospective owner, occupant, or user of such commercial housing.

(5) Print, publish, or circulate any statement or advertisement relating to the sale, lease, or acquisition of any commercial housing or the loan of money, whether or not secured by mortgage, or otherwise for the acquisition, construction, rehabilitation, repair, or maintenance of commercial housing which indicates any preference, limitation, specification, or discrimination based upon race, color, religious creed, ancestry, or national origin.

(6) Make any inquiry, elicit any information, make or keep any record, or use any form of application containing questions or entries concerning race, color, religious creed, ancestry, or national origin in connection with the sale or lease of any commercial housing or loan of any money, whether or not secured by mortgage or otherwise for the acquisition, construction, rehabilitation, repair, or maintenance of commercial housing.

(i) For any person being the owner, lessee, proprietor, manager, superintendent, agent, or employe of any place of public accommodation, resort, or amusement to:

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[1] Enrolled bill reads "with."

Criminal liability, discrimination in places of public accommodation, resort or amusement, see section 4654 of Title 18, Crimes and Offenses.

Library references: P.L.E. Civil Rights § 2.

(1) Refuse, withhold from, or deny to any person because of his race, color, religious creed, ancestry, or national origin, either directly or indirectly, any of the accommodations, advantages, facilities, or privileges of such place of public accommodation, resort or amusement.

(2) Publish, circulate, issue, display, post, or mail, either directly or indirectly, any written or printed communication, notice, or advertisement to the effect that any of the accommodations, advantages, facilities, and privileges of any such place shall be refused, withheld from, or denied to any person on account of race, color, religious creed, ancestry, or national origin or that the patronage or custom thereat of any person, belonging to or purporting to be of any particular race, color, religious creed, ancestry, or national origin is unwelcome, objectionable or not acceptable, desired, or solicited.

Nothing in subsection (h) of this section shall bar any religious or denominational institution or organization or any charitable or educational organization, which is operated, supervised, or controlled by or in connection with a religious organization or any 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. 1955, Oct. 27, P.L. 744, § 5, as amended 1956, March 28, P.L. (1955) 1354, § 1; 1961, Feb. 28, P.L. 47, § 2.

§ 956. Pennsylvania Human Relations Commission

There shall be, and there is hereby established in the Department of Labor and Industry a nonpartisan, departmental administrative commission for the administration of this act, which shall be known as the "Pennsylvania Human Relations Commission," and which is hereinafter referred to as the "Commission."

Said Commission shall consist of eleven members, to be known as Commissioners, who shall be appointed by the Governor by and with the advice and consent of two-thirds of all the members of the Senate, not more than six of such Commissioners to be from the same political party, and each of whom shall hold office for a term of five years or until his successor shall have been duly appointed and qualified: *Provided, however*, That in making the first appointments to said Commission one member shall be appointed for a term of one year, two for a term of two years, two for a term of three years, two for a term of four years, and two for a term of five years. The two members added to the Commission hereby shall be appointed for terms to run concurrently with the term of the member or his successor who was appointed for a one-year term when the Commission was first established. Vacancies occurring in an office of a member of the Commission by expiration of term, death, resignation, removal, or for any other reason shall be filled in the manner aforesaid for the balance of that term.

Subject to the provisions of this act, the Commission shall have all the powers and shall perform the duties generally vested in and imposed upon departmental administrative boards and commissions by the act, approved the ninth day of April, one thousand nine hundred twenty-nine (Pamphlet Laws 177), known as "The Administrative Code of one thousand nine hundred twenty-nine," and its amendments,[1] and shall be subject to all the provisions of such code which apply generally to departmental administrative boards and commissions.

The Governor shall designate one of the members of the Commission to be its chairman who shall preside at all meetings of the Commission and perform all the duties and functions of the chairman thereof. The Commission may designate one of its members to act as chairman during the absence or incapacity of the chairman and, when so acting, the member so designated shall have and perform all the powers and duties of the chairman of the Commission.

Six members of the Commission shall constitute a quorum for transacting business, and a majority vote of those present at any meeting shall be sufficient for any official action taken by the Commission.

Each member of the Commission shall receive per diem compensation at the rate of fifteen dollars ($15) per day for the time actually devoted to the business of the Commission.

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[1] Section 51 et seq. of Title 71.

Library references: P.L.E. Civil Rights § 2.

The Commission shall adopt an official seal by which its acts and proceedings shall be authenticated, and of which the courts shall take judicial notice. The certificate of the chairman of the Commission, under the seal of the Commission and attested by the secretary, shall be accepted in evidence in any judicial proceeding in any court of this Commonwealth as adequate and sufficient proof of the acts and proceedings of the Commission therein certified to. 1955, Oct. 27, P.L. 744, § 6, as amended 1961, Feb. 28, P.L. 47, § 3; 1961, Aug. 4, P.L. 922, § 1.

1961 per diem compensation and expenses provisions, see section 773.3 of Title 71, State Government.

§ 957. Powers and duties of the Commission

The commission shall have the following powers and duties:

(a) To establish and maintain a central office in the City of Harrisburg.

(b) To meet and function at any place within the Commonwealth.

(c) To appoint such attorneys with the approval of the Attorney General, and other employees and agents as it may deem necessary, fix their compensation within the limitations provided by law, and prescribe their duties.

(d) To adopt, promulgate, amend, and rescind rules and regulations to effectuate the policies and provisions of this act.

(e) To formulate policies to effectuate the purposes of this act, and make recommendations to agencies and officers of the Commonwealth or political subdivisions of government or board, department, commission, or school district thereof to effectuate such policies.

(f) To initiate, receive, investigate, and pass upon complaints charging unlawful discriminatory practices. As amended 1961, Feb. 28, P.L. 47, § 3.

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(g) To hold hearings, subpoena witnesses, compel their attendance, administer oaths, take testimony of any person under oath or affirmation and, in connection therewith, to require the production for examination of any books and papers relating to any matter under investigation where a complaint has been properly filed before the Commission. The Commission may make rules as to the issuance of subpoenas by individual Commissioners. In case of contumacy or refusal to obey a subpoena issued to any person, the Court of Common Pleas of Dauphin County or any court of common pleas within the jurisdiction of which the hearing is to be held or the said person charged with contumacy or refusal to obey is found, resides or transacts business, upon application by the Commission, may issue to such person an order requiring such person to appear before the Commission, there to produce documentary evidence, if so ordered, or there to give evidence touching the matter in question, and any failure to obey such order of the court may be punished by said court as a contempt thereof.

No person shall be excused from attending and testifying, or from producing records, correspondence, documents, or other evidence in obedience to the subpoena of the Commission or of any individual Commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. The immunity herein provided shall extend only to natural persons so compelled to testify.

(h) To inspect upon request such records of the Commonwealth or any political subdivision, board, department, commission, or school district thereof as it may deem necessary or advisable to carry into effect the provisions of this act.

(i) To create such advisory agencies and conciliation councils, local or statewide, as will aid in effectuating the purposes of this act. The Commission may itself or it may empower these agencies and councils to (1) study the problems of discrimination in all or specific fields of human relationships when based on race, color, religious creed, ancestry, age or national origin, and (2) foster, through community effort or otherwise, good will among the groups and elements of the population of the State. Such agencies and councils may make recommendations to the Commission for the development of policies and procedure in general. Advisory agencies and conciliation councils created by the Commission shall be composed of representative citizens, serving without pay, but the Commission may make provision for technical and clerical assistance to such agencies and councils, and for the payment of the expenses of such assistance.

(j) To issue such publications and such results of investigations and research as, in its judgment, will tend to promote good will and minimize or eliminate discrimination because of race, color, religious creed, ancestry, age or national origin.

(k) From time to time but not less than once a year, to report to the Legislature and the Governor describing in detail the investigations, proceedings and hearings it has conducted and their outcome, the decisions it has rendered and the other work performed by it, and make recommendations for such further legislation concerning abuses and discrimination because of race, color, religious creed, ancestry, age or national origin as may be desirable. 1955, Oct. 27, P.L. 744, § 7, as amended 1956, March 28, P.L. (1955) 1354, § 1.

Fair Educational Opportunities Act, authority, powers, and duties, see sections 5005 and 5006 of Title 24, Education.

§ 958. Educational program

In order to eliminate prejudice among the various racial, religious and nationality groups in this Commonwealth and to further good will among such groups, the Commission, in cooperation with the Department of Public Instruction, is authorized to prepare a comprehensive educational program, designed for the students of the schools in this Commonwealth and for all other residents thereof, in order to eliminate prejudice against such groups. 1955, Oct. 27. P.L. 744, No. 222, § 8.

§ 959. Procedure

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice may make, sign and file with the Commission a verified complaint, in writing, which shall state the name and address of the person, employer, labor organization or employment agency alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the Commission. The Commission upon its own initiative or the Attorney General may, in like manner, make, sign and file such complaint. Any employer whose employes, or some of them, hinder or threaten to hinder compliance with the provision of this act may file with the Commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be taken by the Commission against such employer.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the Commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for crediting the allegations of the complaint, the Commission shall within ten days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his attorney may, within ten days after such service, file with the Commission a written request for a preliminary hearing before the Commission to determine probable cause for crediting the allegations of the complaint. If it shall be determined after such investigation that probable cause exists for crediting the allegations of the complaint, the Commission shall immediately endeavor to eliminate the unlawful discriminatory practice complained of by conference, conciliation and persuasion. The members of the Commission and its staff shall not disclose what has transpired in the course of such endeavors: Provided, That the Commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the Commission circumstances so warrant, the Commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, requiring the person, employer, labor organization or employment agency named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the Commission at a time and place to be specified in such notice. The place of any such hearings shall be in the county in which the alleged offense was committed.

The case in support of the complaint shall be presented before the Commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise,

with or without counsel, and submit testimony. The complainant may likewise appear at such hearing in person or otherwise, with or without counsel, and submit testimony. The Commission or the complainant shall have the power reasonably and fairly to amend any complaint, and the respondent shall have like power to amend his answer. The Commission shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The testimony taken at the hearings shall be under oath and be transcribed.

If, upon all the evidence at the hearing, the Commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this act, the Commission shall state its findings of fact, and shall issue and cause to be served on such respondent an order requiring such respondent to cease and desist from such unlawful discriminatory practice and to take such affirmative action including but not limited to hiring, reinstatement or upgrading of employes, with or without back pay, admission or restoration to membership in any respondent labor organization, or selling or leasing specified commercial housing upon such equal terms and conditions and with such equal facilities, services and privileges or lending money, whether or not secured by mortgage or otherwise for the acquisition, construction rehabilitation, repair or maintenance of commercial housing, upon such equal terms and conditions to any person discriminated against or all persons as, in the judgment of the Commission, will effectuate the purposes of this act, and including a requirement for report of the manner of compliance. If, upon all the evidence, the Commission shall find that a respondent has not engaged in any such unlawful discriminatory practice, the Commission shall state its findings of fact, and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

The Commission shall establish rules or practice to govern, expedite and effectuate the foregoing procedure and its own actions thereunder. Any complaint filed pursuant to this section must be so filed within ninety day after the alleged act of discrimination. Any complaint may be withdrawn at any time by the party filing the complaint. 1955, Oct. 27, P.L. 744, § 9, as amended 1961, Feb. 28, P.L. 47, § 3.

Criminal liability, discrimination in places of public accommodation, resort or amusement, see section 4654 of Title 18, Crimes and Offenses.

§ 960. Enforcement and judicial review

The complainant, the Attorney General or the Commission may secure enforcement of the order of the Commission or other appropriate relief by the Court of Common pleas of Dauphin County. When the Commission has heard and decided any complaint brought before it, enforcement of its order shall be initiated by the filing of a petition in such court, together with a transcript of the record of the hearing before the Commission, and issuance and service of a copy of said petition as in proceedings in equity.

When enforcement of a Commission order is sought the court may make and enter, upon the pleading, testimony, and proceedings set forth in such transcript, an order or decree enforcing, modifying and enforcing as so modified, or setting aside, in whole or in part, the order of the Commission, and the jurisdiction of the court shall not be limited by acts pertaining to equity jurisdiction of the courts. An appeal may be taken as in other civil actions.

Any failure to obey an order of the court may be punished by said court as a contempt thereof.

The Commission's copy of the testimony shall be available at all reasonable times to all parties for examination without cost, and for the purpose of enforcement or judicial review of the order. The case shall be heard without requirement of printing.

Any order of the Commission may be reviewed under the provisions of the act of June four, one thousand nine hundred forty-five (Pamphlet Laws 1388), known as the "Administrative Agency Law," and its amendments.[1] 1955, Oct. 27, P.L. 744, § 10, as amended 1961, Feb. 28, P.L. 47, § 3.

Criminal liability, discrimination in places of public accommodation, resort or amusement, see section 4654 of Title 18, Crimes and Offenses.

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[1] Section 1710.1 et seq. of Title 71.

§ 961. Penalties

Any person who shall wilfully resist, prevent, impede or interfere with the Commission, its members, agents or agencies in the performance of duties pursuant to this act, or shall wilfully violate an order of the Commission, shall be guilty of a misdemeanor and, upon conviction thereof, shall be sentenced to pay a fine of not less than one hundred dollars ($100.00) nor more than five hundred dollars ($500.00), or to undergo imprisonment not exceeding thirty (30) days or both, in the discretion of the court, but procedure for the review of an order shall not be deemed to be such wilful conduct. 1955, Oct. 27, P.L. 744, § 11.

§ 962. Construction and exclusiveness of remedy

(a) The provisions of this act shall be construed liberally for the accomplishment of the purposes thereof, and any law inconsistent with any provisions hereof shall not apply.

(b) Nothing contained in this act shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this Commonwealth relating to discrimination because of race, color, religious creed, ancestry, age or national origin, but as to acts declared unlawful by section five of this act the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this act, he may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this act and the interpretation of a similar provision contained in any municipal ordinance, the interpretation of the provision in this act shall apply to such municipal ordinance. As amended 1961, Feb. 28, P.L. 47, § 3.

Criminal liability, discrimination in places of public accommodation, resort or amusement, see section 4654 of Title 18, Crimes and Offenses.

§ 963. Separability

If any clause, sentence, paragraph or part of this act, or the application thereof, to any person or circumstance, shall, for any reason, be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this act nor the application of such clause, sentence, paragraph or part to other persons or circumstances, but shall be confined in its operation to the clause, sentence, paragraph or part thereof and to the persons or circumstances directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the legislative intent that this act would have been adopted had such provisions not been included or such persons or circumstances been expressly excluded from their coverage. 1955, Oct. 27, P.L. 744, § 13.

Library references: P.L.E. Statutes §§ 14, 15.

Mr. KASTENMEIER. This subcommittee stands adjourned until 10 a.m., on Wednesday, July 17.

(Whereupon, at 12:50 p.m., the subcommittee adjourned until Wednesday, July 17, 1963, at 10 a.m.)

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which the Court lays down reflects insufficient reckoning with the course of history.

It is suggested that requiring proof of the effect of such laws in individual instances would involve "attempting to separate the mental urges of the discriminators" (*ante*, p. ——). But proof of state of mind is not a novel concept in the law of evidence, see 2 Wigmore, Evidence (3d ed. 1940), §§ 385–393, and such a requirement presents no special barriers in this situation. The mere showing of such an ordinance would, in my judgment, make out a *prima facie* case of invalid state action, casting on the State the burden of proving that the exclusion was in fact the product solely of private choice. In circumstances like these that burden is indeed a heavy one. This is the rule which, in my opinion, even-handed constitutional doctrine and recognized evidentiary rules dictate. Its application here calls for reversal of these convictions.

At the trial existence of the Greenville segregation ordinance was shown and the city adduced no rebutting evidence indicating that the Kress manager's decision to exclude these petitioners from the white lunch counter was wholly the product of private choice. All doubt on that score is indeed removed by the store manager's own testimony. Asked for the reasons for his action, he said: "It's contrary to local custom *and* its also the ordinance that has been discussed" (quite evidently referring to the segregation ordinance). (Emphasis added.) This suffices to establish state action, and leads me to join in the judgment of the Court.

II.

The Lombard Case (No. 58).

In this case, involving "sit-ins" at the McCrory store in New Orleans, Louisiana, the Court carries its state

As it has been eloquently said before: "I would rather give a man two new rights than take away one that he now has." This is a philosophy we can all endorse without qualification.

I challenge you, if you are interested in the freedom and welfare of this country and the will of the people—and I hasten to add that I sincerely believe that each of you are—to make whatever changes are finally proposed in the form of constitutional amendments and let us hear the voice of the people. My friends, those who advocate this legislation will get the shock of their lives. The people don't want it. I don't believe they will have it.

Mr. ROGERS. Any questions?

Mr. KASTENMEIER. I must say my colleague presented his case very well even though I dare say I don't agree with a word he says.

In particular at the end in terms of what equality is, of course, we may be talking about two different things, but I think we are talking about equality under the law, and I would to the contrary submit that where men are not equal under the laws, there will not be freedom, which is just the opposite of what you stated.

I scarcely can believe you feel that if men are, as you state here, to which I would add that if men are free they will not be equal, "where men are equal they are not free." Where men are equal under law they are not free. I can scarcely believe that is what you mean.

Mr. WAGGONNER. Mr. Kastenmeier, behind the Iron Curtain in Communist Russia today men are equal under the law, but they are not free.

Mr. KASTENMEIER. I would submit to my colleague that the Communists don't have either freedom or equality, the equality they preach, but I don't think we can gain much from Communist experience because we are only interested in our own institutions and our own laws, and what equality of freedom should mean here.

I am talking about legal equality. People differ, as we all do, one with the other, in terms of equal abilities, but we are not really talking about equal abilities as individuals but we are talking about equal opportunities, equal ability to vote, or equal right to vote under the law, for example.

Mr. WAGGONNER. With regard to the equal right to vote, I would be the first to agree that every man on the face of this earth should have that equal right to vote if legally qualified, but the question is who is going to determine what those qualifications will be. Will it be an all-powerful Federal Government, or will it be as the courts have said time after time a prerogative of the State?

Mr. KASTENMEIER. It would be a prerogative of the States unless that prerogative is in defiance of the Constitution on that point. This is one of the things I think we are legislating, and I think we are entitled to legislate on it.

Mr. WAGGONNER. I appreciate your comments, Mr. Kastenmeier, on this subject more than you know, and I certainly appreciate what you have had to say about the fact that there isn't anything for us to gain from any of the Communist philosophies, which lead me to say that we should give no credence to the fact that some of the people who have appeared before this committee, on the Senate side or this side, have stressed the point that we should be overly concerned about what