

TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

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HEARINGS BEFORE THE COMMITTEE ON RULES HOUSE OF REPRESENTATIVES NINETIETH CONGRESS

SECOND SESSION

ON

H. Res. 1100

PROVIDING FOR AGREEING TO THE SENATE AMENDMENT TO
THE BILL (H.R. 2516) TO PRESCRIBE PENALTIES FOR CERTAIN
ACTS OF VIOLENCE OR INTIMIDATION, AND FOR OTHER
PURPOSES

MARCH 28 AND 29, AND APRIL 2, 1968

PART 1

Printed for the use of the Committee on Rules



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TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

THURSDAY, MARCH 28, 1968

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

The committee met at 10:40 a.m., in room H-313, the Capitol, the Honorable William M. Colmer, chairman, presiding.

Present: Messrs. Colmer, Madden, Delaney, Bolling, O'Neill, Matsunaga, Smith, Anderson of Illinois, Martin, and Quillen.

Staff present: Laurie C. Battle, counsel; Mary Spencer Forrest, assistant counsel; and Robert D. Hynes, Jr., minority counsel.

Mr. COLMER. The committee will come to order.

Mr. Celler, the committee will hear from you on the 1968 version of the civil rights bill.

STATEMENT OF HON. EMANUEL CELLER, CHAIRMAN, HOUSE COMMITTEE ON THE JUDICIARY

Mr. CELLER. I appear here this morning, together with a number of distinguished members of the Judiciary Committee, to urge the Committee on Rules to report favorably House Resolution 1100 so that the House may work its will and adopt H.R. 2516, together with the Senate amendment thereto.

Mr. COLMER. Pardon me. Would you mind rereading that last sentence?

Mr. CELLER. I ask a favorable report on House Resolution 1100 so that the House may work its will and adopt H.R. 2516. I asked for such concurrence by unanimous consent; that was refused and that is why a resolution was offered.

Mr. COLMER. The reason I interrupted is I wondered if the House had the opportunity to work its will.

Mr. CELLER. Well, that could be interpreted a number of ways. It is like the fellow who held up a bottle and says it is half full and the other one says it is half empty.

The House approved the bill, H.R. 2516, on August 16 of last year. The bill as adopted and sent to the Senate specified certain kinds of rights to be protected by Federal law and provided criminal penalties for the forcible interference with the exercise of those rights. The committee will recall that the bill was overwhelmingly approved by a vote of 326 yeas to 93 nays.

In the Senate H.R. 2516 was considered in public hearings before the Senate Judiciary Committee and was reported favorably to the Senate floor on November 7, 1967. It was the subject of 7 weeks of

extensive debate in the other body and was amended by the adoption of an amendment in the nature of a substitute which contained many provisions not contained in the bill which the House adopted.

In my statement this morning, I wish to outline in general terms the meaning and intent of the Senate amendment in order to promote an understanding of this committee and to help assure prompt and favorable action.

However, before turning to the bill, I believe the words of President Johnson 2 years ago describing the challenge which we confront are more pertinent today. The President said:

The task is to give 20 million Negroes the same chance as every other American to learn and grow, to work and share in society, to develop their abilities—physical mental, and spiritual—and to pursue their individual happiness.

I believe that H.R. 2516, as amended by the Senate, meets that challenge. I am convinced it would significantly promote the causes of social, political, and economic progress through the rule of law to which this Nation is firmly committed.

In the first place, in general terms, the provisions of sections 101 through 103 of title I parallel the coverage of H.R. 2516, as passed by the House. The Senate amendment sets forth provisions designed to protect against violent interference with the exercise of a variety of benefits and activities. Each area of protected activity is specifically described. They include: voting, public accommodations, public education, public services and facilities, employment, jury service, use of common carriers and travel in interstate commerce, and participation in federally assisted programs.

The proposed statute would also protect citizens who lawfully aid or encourage participation in these activities as well as those who engage in speech or peaceful assembly opposing denial of the opportunity to participate in such activities. Persons who have duties to perform with respect to the protected activities—such as public school officials, restaurant owners and employers—would also be covered. The bill prescribes penalties graduated in accordance with the seriousness of those results of violations, ranging from misdemeanor penalties to life imprisonment.

The bill, as amended by the Senate, does differ, however, in the following three respects:

First, to assure that dual State-Federal jurisdiction is carefully exercised by the Federal Government, the bill requires advance certification of prosecutorial authority by the Attorney General or the Deputy Attorney General; in other words the local U.S. attorneys cannot take action unless they get advance approval;

Second, the Senate bill exempts proprietors of "Mrs. Murphy" public accommodations from the prohibitions of the act; and,

Third, the bill expressly states that police shall not be considered in violation of the new law for lawfully carrying out the duties of their office or for enforcing Federal or State law.

Title I also established penalties for incitement to riot. These provisions penalize interstate travel or the use of interstate facilities, including the mail, to incite, organize, or promote a riot. Violations of the act are punishable by a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both. To commit a punishable offense under this section, one must not only use interstate facilities with the

intent to incite a riot but must also commit an overt act in furtherance of that intent.

"Riot" is defined as acts or threats of violence by one or more persons in an assembly of three or more resulting in or damage to or greatly endangering the person or property of others. Actions which are the mere expression of ideas or beliefs are specifically exempted from the definition of riot. The statute makes clear that State and local law enforcement is not to be preempted by the new Federal law. A judgment of conviction or acquittal on the merits under the law of any State would operate as a bar to any Federal prosecution for the same act or acts.

These provisions closely parallel the provisions of H.R. 421, the so-called antiriot bill, which was favorably reported by the Committee on the Judiciary and adopted by the House on July 19, 1967.

Titles II through VII of the Senate amendment to H.R. 2516 concern protecting the rights of American Indians. In general terms, these titles establish a bill of rights for American Indians, and provide for assumption by States of civil and criminal jurisdiction over Indian country with the consent of the Indian tribes affected.

Title II creates a "bill of rights for Indians in relation to their tribes similar to the Bill of Rights in the Constitution that applies to other citizens' relation to their Government. Among other features, the title retains the present maximum penalty of a \$500 fine or imprisonment for a term of 6 months which may be imposed by an Indian tribe, and assures a person in criminal proceedings of the assistance of counsel for defense at his own expense. The title also provides that the writ of habeas corpus shall be available in any U.S. court to test the legality of detention by order of a tribal court. The provisions of title II would go into effect 1 year following the date of enactment in order to facilitate compliance with its terms by Indian tribes.

Title III authorizes and directs the Secretary of the Interior to draft a model code to govern the courts of Indian offenses, to assure due process in the administration of justice by such courts and to implement the rights specified by title II.

It is anticipated that this model code would supplement the present code of offenses and procedures regulating the administration of justice now contained in title 25, Code of Federal Regulations, which was established more than 30 years ago. In preparing this code, the Secretary of the Interior is directed to consult with Indians, Indian tribes and interested agencies of the United States.

Title IV amends Public Law 83-280, 67 Stat. 588, which conferred to certain States—California, Minnesota, Nebraska, Oregon, and Wisconsin—civil and criminal jurisdiction over Indian country. Title IV provides for U.S. consent to the assumption by any State of criminal and civil jurisdiction over Indian tribes, with the consent of the tribes affected. Thus, Public Law 280 is modified by requiring tribal consent as a precondition to a State's assumption of jurisdiction.

Title V amends the "Major Crimes Act," 18 U.S.C. 1153, by adding "assault resulting in serious bodily injury" to the list of Federal offenses. At present, Federal courts have jurisdiction over the crimes of murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, assault with intent to commit rape, carnal knowledge, arson, burglarly, robbery, embezzlement; and larceny

committed by an Indian against another Indian or another person. This amendment will make possible Federal prosecution for such aggravated assault committed in Indian country.

Title VI establishes a new rule governing approval by the Secretary of the Interior or the Commissioner of Indian Affairs for the employment of legal counsel for Indian tribes and other Indian groups. It provides that applications relating to the employment of legal counsel made by Indian tribes or Indian groups shall be deemed approved if neither approved nor denied within 90 days from the date of filing such application with the Secretary or the Commissioner.

Title VII authorizes and directs the Secretary of the Interior to revise, compile and republish materials relating to Indian constitutional rights and Indian laws and treaties.

Title VIII, entitled "Fair Housing," is designed to assure all persons an equal opportunity to buy or rent housing without discrimination because of race, color, religion, or national origin. The goal of a "decent home and a suitable living environment for every American family" proclaimed in the National Housing Act of 1949 has not been achieved.

The late President Kennedy, in November 1962, issued Executive Order No. 11063, which established a Committee on Equal Housing Opportunity and forbade discrimination in recent FHA or VA insured housing.

In recent years there has been considerable State and municipal reaction against discrimination in housing and today some 22 States, the District of Columbia, Puerto Rico, the Virgin Islands, and a large number of municipalities have enacted fair housing laws prohibiting discrimination in private housing transactions, but nevertheless it is plain that the combined efforts of State and local laws, executive orders, as well as actions by private volunteer groups is just not enough. Court decisions are not enough. Federal legislation to eliminate the blight of segregated housing and the pale of the ghetto is demanded.

While discrimination in housing is a fact which needs no proof, the consequences for both the individual and his community are not always so apparent. Segregated housing isolates racial minorities from the public life of the community. It means inferior public education, recreation, health, sanitation, and transportation services and facilities, and often means denial of access to training and employment and business opportunities. Too often it prevents the ghetto inhabitants of liberating themselves.

Much of the urban crises that we witness today is a product of Negro segregation in the city ghettos and the flight of whites from the Negro and from these ghettos. To the extent that residential segregation prevents States and municipalities from carrying out their obligations to promote equal access and equal opportunity in all public aspects of community life, the 14th amendment authorizes the removal of this blight.

We cannot open the gates to the domiciles outside the Medinahs, and they must remain shut up in slum quarters, if they cannot because of racial discrimination change their abode. The voice of Leviticus, the Bible tells us, proclaims liberty throughout the land. That voice

did not say liberty to some and not to others. It said to all the inhabitants.

The President's Advisory Commission on Civil Disorders, two of the distinguished members of which are in this room this morning, for whom I have the highest regard and esteem, my distinguished colleague, the minority leader of the Judiciary Committee, Mr. McCulloch, and my distinguished committee colleague, Mr. Corman, that Commission said: what white Americans have never fully understood, what Negroes can never forget, that white society is deeply implicated in the ghetto. White institutions created it, white institutions maintained it, and white society condones it.

It is time, I think, to adopt new strategies for action which produce quick and visible programs. We need new attitudes, new understanding and new will. Fair housing will appreciably help this. This is a small key that can open a large door.

Title VIII bans discrimination on grounds of race, color, religion, or national origin in the rental, sale or financing of residential housing subject to certain specific limited exceptions.

I shall briefly outline the coverage of these provisions:

1. Upon enactment—that is in this year, 1968—the bill would cover by statute the types of housing now subject to prohibition on discrimination under Executive order—the order I mentioned before issued by President Kennedy. This includes:

1. Housing owned or operated by the Federal Government.
2. Provided in whole or in part with the aid of loans, advances, grants, or contributions made by the Federal Government.
3. Provided in whole or in part by loans insured or guaranteed by the Federal Government.
4. Urban renewal redevelopment housing receiving Federal financial assistance.

Among other types of housing these provisions cover housing provided with FHA or VA mortgage insurance or guarantees, housing in urban renewal areas, senior citizens' housing, and low rent public housing.

Two, after December 31, 1968—namely, the year 1969—the bill would cover other housing subject, however, to three exemptions:

(a) Any single family house sold or rented by a private owner who owns no more than three such single family houses. In the case of the sale of a single family house by an owner who is not the resident nor the most recent resident therein, this exemption applies only with respect to one such sale within a 24-month period.

(b) Rooms or units in dwellings of four or fewer family units where the owner actually occupies one of the units as his living quarters.

(c) Housing, operated for other than commercial purposes, furnished to members of religious organizations, associations, or societies or members of private clubs.

Three, after December 31, 1969—that is in 1970 and thereafter—the single-family house sale or rental exemption would continue only if the sale or rental is made without the use of the facilities of a real estate broker or other person in the business of selling or renting dwellings, and, without the publication or posting of any notice or advertisement indicating an intention to discriminate. Thus, the bill

prohibits the use of a professional real estate dealer or similar person to help accomplish the owner's discriminatory purpose. The bill assumes that when an individual uses the public mechanisms of the real estate industry to effect a sale he should not be permitted to require that industry to carry out his discriminatory purposes. Such sales are to be regarded as "public" offerings.

The bill, H.R. 14765, the Civil Rights Act of 1966, which passed the House on August 9, 1966, prohibited almost the exact same type of conduct with respect to housing discrimination as would be prohibited by H.R. 2516, as amended by the Senate. One difference is that the 1966 bill banned discrimination by real estate brokers and other persons in the business of selling or renting dwellings, while H.R. 2516 applies its prohibitions, with certain exceptions, to sales by any person. However, since the definition of a "person in the business of building, developing, selling, renting, or leasing dwellings" contained in the 1966 bill was broad, the difference in the reach of the prohibitions of the two bills is more apparent than real. Multiple sale or multiple rental transactions were covered by the 1966 bill and would also be covered by H.R. 2516. H.R. 2516 achieves essentially the same results as the 1966 bill by prohibiting discrimination in the sale of most types of housing whether or not the seller is "in the business," but at the same time exempts sales or rentals by single-family homeowners.

Enforcement: H.R. 2516 provides three methods of obtaining compliance: administrative conciliation, private suits, and suits by the Attorney General for a pattern or practice of discrimination.

Administrative conciliation: The Department of Housing and Urban Development would have conciliation authority to resolve complaints alleging discriminatory housing practices. A person aggrieved files his complaint within 180 days after the alleged acts of discrimination. The Secretary of HUD would have 30 days after filing of the complaint to investigate the matter and give notice to the person aggrieved whether he intended to resolve it. If the Secretary decides to resolve a complaint, he would engage in informal conference and conciliation with the person alleged to have committed the discriminatory housing practice, and attempt to bring an end to such practice by that means. If, however, conciliation failed, or if the Secretary declined to resolve the charge or otherwise did not act within the 30-day period, the aggrieved person would have 30 days in which to file a civil action in either a State or Federal court.

If the complaint alleges acts constituting a violation of State or local law, and that law provides rights and remedies substantially equivalent to the rights and remedies provides in the bill, the Secretary would be required to refer the matter to the appropriate State or local agency, who would have at least 30 days to act on the matter before the Secretary could begin conciliation proceedings. In States with substantially equivalent rights and remedies any suit filed following failure of conciliation efforts would have to be brought in the State or local court.

Both the Secretary and the party charged have power to subpoena records, documents, individuals and other evidence or possible sources of evidence.

In addition to his conciliation function, the Secretary would be required to make studies and to publish reports with respect to the

nature and extent of discriminatory housing practices in the United States. He would also be directed to cooperate with, and to render technical assistance to, Federal, State, local, and private agencies which were carrying on programs to prevent or eliminate discriminatory housing practices, and to administer HUD programs and activities in a matter affirmatively to further the policies of the bill.

Private civil actions: In addition to administrative remedies, the bill authorizes immediate civil suits by private persons within 180 days after the alleged discriminatory housing practice occurred in any appropriate U.S. district court or appropriate State or local court of general jurisdiction.

The bill further provides that any sale, encumbrance, or rental consummated prior to a court order issued under this act and involving a bona fide purchaser, encumbrancer, or tenant, shall not be affected. In such circumstances as the court deems just, the bill authorizes the appointment of an attorney for the plaintiff and the commencement of a civil action without the payment of fees, costs, or security. The court is authorized to issue a permanent or temporary injunction, or other appropriate orders, and may award actual damages and not more than \$1,000 in punitive damages, together with court costs and reasonable attorney fees.

Suits by the Attorney General: The third enforcement method under H.R. 2516 authorizes the Attorney General to institute civil actions for preventive relief whenever he has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this bill, or whenever he has reasonable cause to believe that any group of persons has been denied such rights in a case of general public importance.

Finally, title VIII specifically provides that it shall not be construed to invalidate or limit any State or local law that grants or protects the same rights. The Secretary of HUD is authorized to cooperate with State and local fair housing agencies and, with their consent, can utilize the services of such agencies.

Title IX is entitled "Prevention of Intimidation in Fair Housing Cases." Title IX, using language similar to that found in title I of the bill, protects persons from forcible interference or injury because of race, color, religion, or national origin, and because they were seeking to sell or acquire housing, to finance or occupy a dwelling, or to exercise other rights connected with housing. The title also prohibits forcible interference with those who would aid or encourage others to exercise these rights or lawfully speak or assemble to protest denials of these rights. The criminal offenses described and the graduated penalties provided in title IX are similar to those stated in title I of the bill.

Title X establishes three new Federal offenses and provides a penalty of a fine of \$10,000, imprisonment up to 5 years, or both. The three new offenses are:

One, teaching or demonstrating the use or making of any firearm or explosive or incendiary device, knowing or having reason to know, or intending that it will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce, or the conduct or performance of any federally protected function;

Two, transporting or manufacturing for transportation in commerce a firearm or explosive or incendiary device, knowing or having reason to know, or intending that it will be used unlawfully in furtherance of a civil disorder;

Three, committing, or attempting to commit, any act to obstruct, impede, or interfere with any firearm or law enforcement officer lawfully engaged in the lawful performance of his duties incident to, and during the commission of, a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the conduct of performance of any federally protected function.

"Civil disorder" is defined as "any public disturbance involving acts of violence by assemblages of three or more persons, which causes an immediate danger of, or results in damage or injury to, the property or person of any other individual."

Mr. Chairman, let me emphasize with all the strength that I can command that this bill embodies essential and fundamental first principles—the principles basic to the human rights and dignity of every American.

As I stated at the outset, residential segregation of Negroes in this country is a fact which needs no proof. The objective dimensions of urban American ghettos include overcrowded and deteriorated housing, crime, disease, and alarmingly high infant mortality. The subjective dimensions are no less alarming. They include resentment, hostility, despair, apathy, and self-depreciation.

While studies exist that show that desegregated housing does not depress real estate values, many of the real estate and building business fear to take a chance. They feel trapped by custom and the possibility of competitive disadvantage. The fact is, however, that their policies and their practices perpetuate segregated housing.

The analogy of this bill to the Civil Rights Act of 1964, particularly the public accommodations title, is plain. There, hotel and motel owners and restaurateurs, for example, also feared to set out independently to serve all customers without discrimination. Those of us who supported that legislation urged that by enacting a rule of fair treatment, a universal law against discrimination, all would be in a position to serve without discriminating. None would be doing so at his economic peril.

Experience under title II of the 1964 Civil Rights Act has proved the correctness of that contention. Nondiscrimination in hotels, in motels, and restaurants has been accomplished without disrupting business. Indeed, it has improved business. And so, too, will the open housing title of this bill promote expansion in the housing industry. I believe it a mistake to consider the sanctions contained in title VIII as the most significant aspect of a Federal fair housing law. What is more significant is that this law can be used as a shield to protect those in the housing business when they do what is right. Of course, the same protection will be afforded the individual homeowner who wants to do right.

The time is long overdue for us to make good the promise of the National Housing Act of 1949: "a decent home and a suitable living environment for every American family."

I urge the committee to favorably report House Resolution 1100 so that the House can work its will on this historic legislation.

Mr. COLMER. I shall read your statement; that is your complete statement?

Mr. CELLER. Yes, sir.

Mr. COLMER. Mr. Celler, permit me first to compliment the gentleman, the dean of the House, one of the most able men in the House, upon your ability to present your side of the argument in a most convincing way.

As one who has directly differed with my friend, on other matters, I envy the gentleman's ability in the use of the language and the general ability to convey your side of the argument.

I am not going to undertake to fence with the gentleman upon the legal provisions of this bill. I think I might like to comment upon some of the implications and upon where it is leading us, further down the road to strong centralized government where the state is the master and the people are the servants. This, in my humble judgment, not only in this matter, but in other legislative proposals here, can only finally end up in one form of socialistic government, not too far and unlike that of the Communist States that we are so busy fighting upon the battlefields of the farflung countries.

First, I should like to interrogate the distinguished gentleman upon what he has said here for the adoption of this resolution that has been dutifully introduced here by my distinguished colleague, the gentleman from Indiana, Mr. Madden. It simply provides that this House, notwithstanding the fact that many provisions of this bill have not been considered by us, shall take up the Senate version of the bill and adopt it. And, we will thereby make it law, because that is exactly what will happen if the resolution that you advocate were passed by the House after having, of course, been reported by this committee.

If I recall correctly, the original bill that the Senate acted upon, or rather two bills that this House passed, the antiriot bill and interference with civil rights workers, carries with it these additional provisions—as I say, that have not been considered.

Now, you propose, and what my friend from Indiana proposes here, that we take this resolution down to the floor of the House with 1 hour of debate, adopt it, then it goes to the White House for signature and becomes law.

Mr. MADDEN. Will you yield?

Mr. COLMER. If the gentleman will permit me, please.

Mr. MADDEN. 4 hours.

Mr. COLMER. Now, why all of the haste?

Mr. CELLER. May I just say the procedure that we are asking you to follow was followed on three specific occasions, all concerning civil rights. In the 1957 Civil Rights Act, a bill was adopted by the House, it was amended by the Senate, and the Senate amendments were concurred in. The 1960 Civil Rights Act followed similar procedures. It was adopted, the Senate made amendments, the House concurred.

The Civil Rights Act in 1964 was similar. So we have three distinct precedents for the action we are asking today.

Mr. COLMER. Very well, if I may continue.

Mr. CELLER. I thought you were asking a question.

Mr. COLMER. And I thought the gentleman had given me his answer to that.

I do not think that the gentleman would contend that those bills were as far reaching or contained nongermane amendments as does this bill.

Mr. CELLER. Do you want me to answer that, sir? I think on close examination, you will probably find all these titles concern civil rights and, therefore, are germane.

The question of Indian civil rights indicates germaneness. This is a civil rights bill. Indians are a part of the Nation and they are entitled to civil rights.

The question of rights—that originally was a bill that was put in a bundle in the House itself, and was held to be germane by the Parliamentarian. It was split up so that there was no question about the rights provision being germane. The question concerning housing certainly is a matter of civil rights. They involve the 14th amendment and not only that, as Mr. Rogers has reminded, we passed it before as a part of the civil rights bundle. There was no question about germaneness raised then.

The question of firearms, while I would say that the Senator Long amendment is not a distinctly firearms act, yet it is a matter that involves civil rights because it is weighted so as to prevent civil rights disturbances, riots, and so forth, that may grow out of civil rights. So, conceivably, there would be no difficulty in holding that germane. I would say all in all, whatever is hung on this by the Senate is proper as far as germaneness is concerned.

Mr. COLMER. Again, I would have to respectfully disagree. I do not think this question of Indians would be held germane upon the floor of the House. I think it would be subject to a point of order.

I think the firearms provision that was added over in the Senate would be subject to a point of order, and, I would think, although I would want to look into that a little further, that the House provision—H.R. 421—would be held nongermane.

But, I come back to, Why the haste?

Now, take the question that was brought up, the Indians. That is a bill that is now under consideration in a committee of the House, headed by the distinguished and able and splendid chairman of one of the committees of this House, a colleague and friend, Mr. Aspinall, who, by the way, has indicated that he would like to appear before this committee and object to this provision being in this bill.

Now, the gentleman would not condemn—or rather, would agree with me that the subject of Indians was not considered in his committee, either in this Congress or in a previous Congress.

Mr. CELLER. I certainly agree with that.

Mr. COLMER. Yes. Now, the housing provision of this bill—

Mr. CELLER. May I interject one thought.

You know this is not the first time this thing happened. I remember we had a very insignificant immigration bill and they tacked on a football proposal and I do not remember anybody in the committee or any other committee that made objection to it.

Mr. COLMER. Oh, yes.

Mr. CELLER. Then, we had another simple tax bill and they tacked onto that a congressional redistricting bill and nobody objected to that.

Mr. COLMER. Yes; there were people who objected to that.

And, getting back to the gentleman's statement about the football, the gentleman will recall that—was it football or baseball—I recall that the gentleman was violently opposed to that and as a result, with some connivance with this occupant of the chair, the gentleman introduced House Resolution 207, which would amend the rules of the House to prevent nongermane matters, and that the Chair—as chairman of this committee previously, in this session of the Congress and in a previous session, attempted to do the very same thing.

And, I deplore, as I am sure the gentleman from New York does, the practice of the other body tacking some bill that is nonconsequential and tacking on something entirely foreign and I hope, in spite of the gentleman's efforts in this particular case to accomplish his purpose, that he will not lose sight of the overall objective of this House doing something about this question of nongermaneness.

Mr. CELLER. May I just say, and I have had conversations on this matter, and I certainly deplore the practice of the other body tacking onto bills provisions that are utterly and entirely nongermane to the House provisions, and I do hope the matter can be given sufficient study.

That is not to say the provisions that have been added on this bill are not germane. I think they are. I think the rules of the House should be changed and whether it has been determined conclusively and clearly that which has been added on by the other body is not germane, then that nongermane provision should be sent to the committee of the House that has jurisdiction over that nongermane subject matter and considered by that committee, so the House can work its will adequately on these provisions. I share the gentleman's view on that, and I will cooperate in everything to get a rule to do away with this very, very evil practice.

Mr. COLMER. Mr. Celler, again, I remind the gentleman that I will be very happy to cooperate with him and, whenever he signifies to me that he is ready for his presentation to this committee, I will endeavor to do the best I can to get it considered.

Mr. CELLER. May I say, also, that we have a brief in preparation by the committee. We have not had a chance to work on the brief and I will have that worked on and have that within about 10 days.

Mr. MADDEN. Can we not take care of that under the reorganization bill pending before this committee?

Mr. CELLER. It could be.

Mr. SMITH. May I say, that it is not germane to the reorganization bill—

Mr. MADDEN. This committee could waive the germaneness.

Mr. COLMER. If I could make one observation on the gentleman's comments about the reorganization bill without again being distracted, I would suggest that I have not heard much from the gentleman from Indiana on this reorganization bill.

Mr. MADDEN. My tongue is calloused.

Mr. COLMER. Very well, Mr. Celler, you and I apparently differ here today on what is germane and what would be germane under the House rules in this bill.

Again, if this committee grants your request and sends this bill to the floor, then there is no opportunity to raise the question of germaneness about these questions that I have raised.

Mr. Celler, again, I come back to the question of, Why the haste?

Here is a bill that started out with an antiriot bill in this House, and the gentleman is familiar with what happened on that, that we had some difficulty, those of us who favor the antiriot bill had some difficulty, even getting it out of your committee. But, we did get it out.

And then your committee reported another bill, which in the judgment of this humble Member, was a perfect antidote for the antiriot bill, but that is a question that I am willing to pass in the interest of time.

So, we passed two bills. These bills went over to the Senate—when, August of last year, as I recall, and I am prompted to recall—those bills have been over there with that body having the opportunity to work its will for about 9 months.

It was debated on the floor of the House, and under the more liberal rules of the Senate, for some 40 days. Yet, notwithstanding your statement, Mr. Chairman, that you want to see the House work its will on this bill, you would have us dispose of it in an hour by the simple adoption of a rule. I do not think that would be fair to the membership of this House, with all of the amendments that were adopted over there, which have never been considered over here, and which would not be given an opportunity to be debated.

I may just happen to be one of those who is jealous of the prerogatives of this body of the Congress. I recall when the Founding Fathers set this Government up and provided for this Congress, they provided that the House, by implication, was to be the important body. It was to review the matters, appropriations; control of the purse strings was to be left in the House—or would be initiated in the House, to more accurately state it. And yet, by the process of evolution this body has permitted the other body to take over and become pretty largely the legislative body. We, the direct representatives of the people, who, the Founding Fathers provided, should have to come fresh from the people every 2 years so that the people would have an opportunity to clear the rascal out—if I may use that term—do not proceed along that line anymore.

And, as a Member of the House, I resent this evolution that is going on. We hear a lot about second-class citizens. Are we second-class legislators that we must take everything the other body sees fit to pass, without even an opportunity to debate it.

So, I cannot see why all of the haste. Why not give this House, as the gentleman stated in the opening statement, an opportunity to work its will on these amendments that were put in by the Senate—the other body?

Now, I know that the gentleman, who is the dean of this House, shares some of the views that I have just expressed. Although the gentleman, under the circumstances, may differ with me, I do not think it is fair to the House. Whether it was a civil rights bill or a bill to regulate the importation of bear meat, I would be opposed to it.

I hear some comments in that connection, Mr. Chairman, that the haste is due to the fact that some man, who has set himself up as a modern messiah, has arranged to have a big convention here in Washington, bring in all of the “whoopie,” and that it would be a good time to consider this legislation again.

What would be wrong if he wanted to give everybody a guaranteed wage and living, if he wants to make the Great Society greater, if he wants to get everybody on a parity—there are conventions here every day.

What would be wrong with that, if his purpose—although it seems to me it might help your case since most of the people that he is going to bring are obviously people of the so-called minority race.

And, I will digress to point out that I sometimes wonder now who is the minority in this country among our citizens.

I have glanced through this legislation, to the best I could in the time that I have, and I think you have more than 20 changes in the House bill. And, yet, you are asking to take it to the floor and let the House pass it.

Let me ask my friend, in the ordinary procedure, where there are the differences in the version of the two bodies, a bill is sent to conference. That is the ordinary procedure; is it not?

MR. CELLER. That is correct. There have been cases where we have conceded to the Senate view and vice versa. It works both ways.

MR. COLMER. Usually the gentleman will have to admit that they are minor changes, but here is one that is gargantuan in its change—important matters that have not been considered by your committee nor any other committee of the House. And yet the gentleman does not ask to send this bill to conference. I would think that, and I certainly do not want to reflect upon the able gentleman, but I would think that in your capacity—

MR. CELLER. Will the gentleman yield?

MR. COLMER. Let me just finish.

I would think that in your capacity as chairman of this great Committee on the Judiciary, you would want to have them consider this; that you would want to protect the minority, possibly of your committee, and give them an opportunity to consider this legislation.

MR. CELLER. We have considered every phase of this bill except the matter of the reference to Indians. We have considered every title, firearms, housing—we have considered all phases of this bill except one. They occupied days of attention by the Judiciary Committee, all except the Indians.

MR. COLMER. What has your committee done on firearms?

MR. CELLER. We are still working on firearms.

MR. COLMER. You are still considering it, Mr. Chairman, but you propose by this legislation to take it away from your committee and send it to the floor, is that a correct statement?

MR. CELLER. The Judiciary Committee still has it and, as to the firearms, the subcommittee reported to the full committee a firearms bill and the full committee is now in the throes of considering it.

MR. COLMER. That is the point I am making.

MR. CELLER. I have been advised that this is rather a narrow aspect of the firearms bill.

MR. COLMER. And it is a matter of such great importance that you think your committee should give it ample and proper consideration.

MR. CELLER. I think we have given ample and proper consideration to all of these, except the matter involving Indians.

Mr. COLMER. Evidently I misunderstood the gentleman a moment ago about the fact that he had not taken any affirmative action on the firearms provision. In other words, you are still studying it.

Mr. CELLER. I beg your pardon.

Mr. COLMER. You are still studying it.

Mr. CELLER. Yes, sir.

Mr. COLMER. And, I think your committee ought to have an opportunity to come up with its recommendation and not be deprived of it.

I am going to leave this to the others—you know, that provision of the bill, as the gentleman is aware, is something that affects all section of this country.

I am going to leave this one observation. I realize that we have departed in many instances from the Magna Carta of the liberties of this young Republic as envisioned by the Founding Fathers.

But, we now have reached a stage in that process of removing the liberties and privileges and rights of our citizenship where no longer can a citizen of this great America acquire, enjoy and dispose of his private property as he sees fit, without the strong arm of the Federal Government reaching out and telling him how he has got to dispose of it.

Mr. Smith, Do you have any questions?

Mr. SMITH. Mr. Celler, I feel like you and I had a friendly walk around the track and we are pretty much back where we started a year ago.

I remember when the chairman of the Rules Committee mentioned he was going to hold hearings on H.R. 421 and your committee held hearings and placed these two bills together. I remember we had a discussion down the hall about separating the two bills. I said that if you reported H.R. 421 and H.R. 2516 separately I would cooperate with you in connection with those matters; but we are now back where we started from about the first of last year with the two of them together.

Mr. CELLER. That is correct.

Mr. SMITH. I would like to get into a parliamentary situation before the committee and the House.

I am not an expert, and we will not know precisely until this committee takes action concerning House Resolution 1100. Your request to the committee has been that we adopt it and send it to the floor and then there would be 1 hour of debate—I assume 30 minutes on each side, and it would be voted up or down. We have had some discussion here and a lot of discussion out of this room: are you requesting that your committee have time to debate the subject on the floor of the House prior to the vote on House Resolution 1100?

Mr. CELLER. I take it that this committee would have the authority to determine whether or not there should be more than 1 hour of debate on the resolution, House Resolution 1100, in which the whole subject matter could be the subject of the debate.

Mr. SMITH. I do not think that there is any doubt this committee has the authority to do what it wants as long as the majority of the House agrees—I am asking you if you wish some time to discuss the subject matter in H.R. 2516 before we reach the final vote on House Resolution 1100?

Mr. CELLER. I would prefer that there be the usual hour of debate and then the previous question would be asked for and either voted up or down. If it is voted for, that would be the end of it. Then we could concur in the Senate amendment. If it is voted down, it would more or less have a free-for-all resolution, another motion could be made to either send it back to the Judiciary Committee or to send it to conference or consider an amendment to the bill.

Mr. SMITH. Those are the things I am trying to get some answers to so I will be able to—

Mr. CELLER. I would prefer—we have been working on this thing for months. We passed this bill way back in August and we have been working on this thing for a long, long time. I think the Members have pretty much made up their minds as to what they are going to do. The very subject of real controversy is fair housing. I do not think much debate could change Members' minds. Everybody knows exactly where he is going. That is the real crux of this bill and I do not think we need any further lengthy debate on the matter. My answer to your question is, 1 hour debate on the resolution, offer the previous question, let it be voted up or down.

Mr. SMITH. That is all the time you want. You do not request this committee to grant any type of special resolution?

Mr. CELLER. No, sir, I do not.

Mr. SMITH. To give time to debate the provisions of the bill. You are not asking us for that?

Mr. CELLER. No, sir, I am not.

Mr. SMITH. And you speak for your committee in that regard or do I have to ask them all?

Mr. CELLER. I have not spoken to all of the members of the committee, but there are a number of members here. The question could be asked of them.

Mr. SMITH. But, you personally, are not requesting additional time to debate the bill?

Mr. CELLER. No.

Mr. SMITH. You would oppose the possibility of offering an amendment during floor consideration?

Mr. CELLER. Could there be any amendment offered to the Resolution 1100. It could not be offered unless the previous question is voted down.

Mr. SMITH. Supposing we would report a separate resolution for several hours of debate and open this bill for amendment on the floor. We could do that, but you would not want us to do that?

Mr. CELLER. I would not want that done. As I said, I want to get through with this matter. Everybody else wants to get through with it. We have had this a long, long time.

Mr. SMITH. You do not want to get it back in your committee to hold hearings on the bill?

Mr. CELLER. No, I do not.

Mr. SMITH. On the voting up or down, if you think this is an unfair question or an untimely question, you may so state.

Mr. CELLER. May I give a reason why I want more or less speed on this. If the previous question is voted down and it goes to conference, for example, the bill would probably change. It has to go back to either House. I do not know what the other body might do. They are

addicted to what is known as filibustering and if there is a filibuster I do not think this bill would ever see daylight. They may amend it out of all recognition if it goes over there again. I do not know what the Judiciary Committee might do, I do not know what the House would do if we get to the floor. You said before, we would be just where we started.

Mr. SMITH. Now, getting to the question that might be unfair to you; assuming that we report House Resolution 1100 and it is voted up or down without any motion to vote down the previous question and assume it is voted down, would you then, as chairman of the committee, rise and ask that it be taken from the Speaker's table and conferees be appointed?

Mr. CELLER. You have asked me a very difficult question at this time.

Mr. SMITH. I have tried to say, if you think it is an untimely or unfair question I will withdraw it. I am trying to think about what somebody has in mind.

Mr. CELLER. I take it, if the previous question is voted down—

Mr. SMITH. Let's leave the previous question. What is your position if the House voted down House Resolution 1100?

Mr. BOLLING. Will the gentleman yield?

My understanding is that before the gentleman from New York could rise and ask for a majority vote in the House to send the matter to conference, he would have to be instructed by his committee. So, there is another step involved that must be taken into consideration.

Mr. SMITH. The Speaker is going to have to recognize somebody for that purpose and if another Member decided to get up—if the Speaker does not recognize him for that purpose it could not be done.

Mr. BOLLING. The procedure requires action by the committee having jurisdiction. That is the only point that I am trying to make.

Mr. SMITH. In any event, so far as your answer to me is concerned, you do not know what you will do. In other words, I am in the position of not wanting to place any Member of the House in the position of voting down House Resolution 1100 and discovering that it will not then be sent to conference. That is where I think it ought to go, and I want to try to get some help from somebody, and I have talked to a lot of people and nobody says what they are going to do.

Mr. CELLER. I would say this, my choice, if the previous question is voted down and, therefore, we cannot recede and concur, the next choice would be to go to conference.

Mr. SMITH. There has been some discussion around the Halls that we are either going to have this bill or no bill. Some of the leaders of both bodies say, let us have this bill or we will not have any.

Mr. CELLER. I want this resolution voted so we can recede and concur.

Mr. O'NEILL. Will the gentleman yield?

Supposing it was defeated and eventually, through a motion of your committee, it got to conference. What would take place from then on?

Mr. CELLER. I am afraid it would be very, very difficult. We would have a very difficult time.

Mr. O'NEILL. That would mean it would be months and months and it would go back to the other body and there would be 40 more days in the Senate as they had before, and, chances are, you will have no civil rights bill if it gets to conference.

Mr. SMITH. I completely disagree with the gentleman's observation. The Senate is so sick of this——

Mr. O'NEILL. You do not know what the Senate will do.

Mr. SMITH. I have had some conferences over there.

Mr. SMITH. Now, just briefly, a further comment has been made that we have to dispose of this one way or another before Easter, because as the gentlemen said earlier, some march is going to occur the week we come back. Does that have anything to do with it at all?

Mr. CELLER. I do not see how you could isolate the circumstances. People will correlate those events with our consideration of the bill whether you will it or not, and my answer would be a conditional yes.

Mr. SMITH. Supposing that rumors stated in the paper, indicating that the march may be postponed, and it is postponed from the week of the 22d of April when we are to come back. Does that change the circumstances so we can have our Easter recess and come back and handle the bill then?

Mr. CELLER. That is what Franklin D. Roosevelt would call an "iffy" question.

Mr. SMITH. It seems I cannot get a good answer from anybody on anything.

Mr. CELLER. I am sore put to answer a question like that.

Mr. SMITH. We are going to have a tax bill here some time around April 30. We will have to hear that—we have got a lot of bills around here.

Mr. CELLER. I started—I wanted to get this bill out. We have so many contingencies. We have Easter recess, we have the Republican National Convention starting in August and we do not have very much time. If you want to get a civil rights bill out, considering all of these factors, so I say, take it or leave it.

Mr. SMITH. Do you want to answer my question whether or not if Mr. King's march occurs on the 29th it would make things easier and we can go home and see where the districts are and you can see how you are running in New York?

Mr. CELLER. I have got a primary contest.

Mr. SMITH. I have 75,000 new people and I do not know them from Adam. You would like to have me go home?

Mr. CELLER. I like you so well I want you to stay.

Mr. SMITH. I would just like to get an answer to the question. Here or sometime in the cloakroom, I hope somebody will tell me because I want to help get a bill on the floor, though I am not going to vote for this.

I will pass to the gentleman from Indiana.

Mr. MADDEN. Mr. Celler, you stated that you would be satisfied with this committee reporting this bill out with 1 hour of debate.

Would you object if we saw fit to give about 3 or 4 hours so that the rest of the committee could talk on it or possibly some of the other Members could talk on it?

Mr. CELLER. My preference is 1 hour. If the committee wants to increase it, they have the authority. I would prefer 1 hour.

Mr. MADDEN. But, you would not object to 3 or 4 hours?

Mr. CELLER. I cannot object to what this committee does.

Mr. MADDEN. Would you think the committee members might want to speak on this?

Mr. CELLER. I am looking at the king in this room.

Mr. MADDEN. I did not hear what you said.

Mr. CELLER. You are the boss.

Mr. MADDEN. You have got me mixed up with somebody else.

Mr. CELLER. I am speaking generically.

Mr. MADDEN. I entirely agree with the chairman of the Judiciary Committee. I can testify that over the past years we have had civil rights debated and redebated, not only in the House, but over in the other body, back and forth about every year, and I do not think there is much necessity of even considering sending this bill back to the Senate again this year.

Of course, you mentioned about the Republican Convention coming in and the urgency to adjourn—possibly after what Nelson Rockefeller did there will not be any Republican Convention.

Mr. QUILLLEN. Are you agreeing that it will be all right to forgo the Republican Convention and go ahead and put a Republican in the White House?

Mr. MADDEN. I think the Republicans have nominated their man already.

Let me say this, do you think in your own mind, with your best experience here, that if this legislation went to a conference committee and if it went back to the Senate, there would not be any antiriot legislation or civil rights legislation passed in this session of Congress?

Mr. CELLER. I would say there is grave danger that that result would happen.

Mr. MADDEN. The chairman is very anxious to know what the hurry is on this. Do you not think that the sooner the antiriot phase of this bill is enacted into law the better it is going to be for a number of cities over the country? That we will not have the same riots we had last year? I think there were 46 riots, or more, last year.

Mr. CELLER. I think it would relieve the swelling.

Mr. MADDEN. It would relieve it very much, and the quicker this legislation is passed the better.

Mr. COLMER. The committee will be in order.

Mr. MADDEN. I think this would be a great asset to impede riots in cities and towns this coming summer.

Do you think that the quicker the bill is passed, the further we would be away from the riots?

Mr. CELLER. I think the bill would be a great help in that regard.

Mr. MADDEN. The chairman made the statement about the state is going to take over, and I presume he means the National Government when he said that. What is your idea about some of the progress that has been made, not only of the Negro folks of the country, but probably of other folks who have been denied education? There are a great number of Negroes living—do you think that the lack of education in certain areas of this country has brought on some of the lack of education, and the lack of education of these young people when they grow up leads to riots? They are more susceptible to it.

Mr. CELLER. The President's Advisory Commission on Civil Disorders certainly bears out that statement you just made. They were very, very vehement in their statement as to providing improved education to the underprivileged.

MR. MADDEN. I am one who believes that had legislation of this type, and the educational legislation that was passed in the 89th Congress, been enacted 20 years ago, we would not have had any riots over the Nation this last year.

The people participating in these riots are people who are influenced by agitators and are gullible due to lack of intelligence or lack of education, and just swing in a frenzy. Had legislation of this kind been passed 20, 30 years ago, we would have no riots in this country whatsoever.

I think the timing, when the chairman remarked of the hurry, is very, very essential. I think that it is essential that this legislation be passed just as quickly as possible. It is the first step I have heard of any legislature or any Congress taking to stop the disturbances and riots that have gone on. I think that is one reason why we should get this bill passed and acted on this session.

Now, regarding the statement that was made that the Government is taking over too much authority. I think it is time that the Government should take over some authority in regard to some segments of our population in this country, and give them a chance to enjoy what all citizens should enjoy. From the standpoint of education or lack of education in certain areas, I think that, in itself, has brought about most of the disturbances in this country. We have not had riots in the Calumet region of Indiana—we have a large Negro population there. A lot of the Negro people came up from the South during the war and worked in the industries, and a lot are there without any education at all.

But, they came up there and got jobs. Naturally, some are getting older and they would like to get some kind of a job where they do not have to do manual labor. And they are not equipped for it.

Some people say the Federal Government is taking the powers away from the States. Well, some people would not have an education if it were not for the Federal Government.

I get tired of this thing that the Federal Government is taking all of the power away from the State.

I was a delegate to the national convention in 1964 at Atlantic City. I was on the platform committee and Governor Wallace got up and made a speech and he told about the education down in his State, and I happen to have a breakdown of every State in the Union on the boys who were rejected during the draft. There were some States where 33 out of a 100 boys could not get into the Army or Navy because they could not read or write. The Governor was—could I have a little order?

MR. COLMER. The committee will be in order.

MR. MADDEN. I hear people talking about—let us not touch the power of the State. It is too bad we did not do this 30 years ago and we would not have these riots that we are having today.

So, we hear every time a civil rights bill is brought up, and every time an educational bill is brought up, that you are infringing on the power of the State. It is too bad it was not done 25 years ago. I think one of the most important things that Congress can do this year is to get the resolution out of here and let the House vote on it, up or down. Even some of the Members over there in the Senate, who always

opposed civil rights and housing, voted for this bill in the Senate. Senator Mundt was one who voted for this bill, Dominick and a lot of Members that never voted for civil rights, never voted for housing—they voted for this bill. So, there is nothing that anybody should fear about this legislation being enacted into law this year.

Mr. COLMER. Gentlemen, we have not finished with the first witness. We have 11 more who have signified their intention or desire to testify on this matter. Obviously, we cannot go any further right now. I would like to know what the will of the committee is. As far as the chairman is concerned, I see no reason why we should not come back here at about 1:30. At least we can finish with Mr. Celler.

Mr. CELLER. May I be excused; Mr. Rogers, Mr. Corman, Mr. McCulloch, Mr. Mathias of Maryland, and others are here. I have a very important engagement in New York. As I said, I am in a primary fight. Self-preservation is the first law of—

Mr. BOLLING. I have one comment. I suggested that the hearing on this matter start some time ago and if there is any squeeze developing on the hearing it is not the fault of the then minority of the committee.

Mr. COLMER. The Chair appreciates the gentleman's observation.

The Chair would like to make one of his own. One, that this matter is going to be concluded before April 9 and I was just addressing myself to the desires and wishes of the committee. If the Chair is going to have to make the decision, I will make it.

Mr. QUILLEN. I think we will have some questions.

Mr. COLMER. So far as the gentleman from New York is concerned, the chief proponent—or I should say, the key proponent—there might be some other people who would like to interrogate him.

I would like to accommodate the gentleman from New York, just as I want to accommodate the wishes of the committee.

Could the gentleman be here in the morning?

Mr. CELLER. I would prefer Monday morning. As I said, this is a contest that I have to address myself to and it is a very important matter developing, and I want to be back in New York for that purpose. The other members of the committee could—

Mr. COLMER. Very well, sir. Mr. Chairman, we will have you come back next week.

Then, the committee will recess until 10:30 tomorrow morning.

(Whereupon, at 12:25 p.m., the committee was recessed, to reconvene at 10:30 a.m., Friday, March 29, 1968.)

TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

FRIDAY, MARCH 29, 1968

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

The committee met at 11 a.m., in room H313, the Capitol, the Honorable William M. Colmer (chairman) presiding.

Present: Messrs. Colmer (chairman), Madden, Bolling, O'Neill, Young, Matsunaga, Smith, Anderson (Illinois), and Latta.

Staff present: Laurie C. Battle, counsel; Mary Spencer Forrest, assistant counsel; and Robert D. Hynes, Jr., minority counsel.

Mr. COLMER. The committee will hear from Mr. Rogers on House Resolution 1100.

We are sorry we detained you here so long, but we have had a little difficulty of our own.

Mr. Rogers.

STATEMENT OF HON. BYRON G. ROGERS

Mr. ROGERS. Mr. Chairman and members of the committee, I appear this morning before the Committee on Rules to urge prompt approval of House Resolution 1100 so that the Members of the House may work their will and approve H.R. 2516, as amended by the Senate.

Yesterday, the chairman of the Committee on the Judiciary, Mr. Celler, outlined the salient features of each of the 10 titles contained in H.R. 2516, as amended. This morning, I should like to outline the main provisions of titles II, III, IV, V, VI, and VII which deal with Indian rights.

I may state that the provisions of the titles were contained in a bill that was approved by the Senate on December 7, which is S. 1843.

Mr. COLMER. Mr. Rogers, would you pardon an interruption right there, please?

Mr. ROGERS. Yes, sir.

Mr. COLMER. As one member of the committee I would hope you would go into detail and explain what this Indian bill is. I know the House has taken no action, but your able colleague from Colorado, as chairman of the Interior Committee, is now in the process of conducting hearings on that. If this committee has to take action before next Friday, it would be before his committee finishes.

It would certainly be helpful if this could be covered so we could understand what is involved in that.

Mr. ROGERS. I will be most happy to try to comply with the request. If you will bear with me, I will try to outline what the intentions are

in connection with the six titles that are contained in the rights of the Indians which begins on page 12 of the bill and extends down through line 3 on page 23—about 10 pages as it deals with the Indian rights.

Mr. COLMER. I understand that Mr. Aspinall will appear—rather, he has requested to appear in opposition to this provision.

Mr. ROGERS. Yes, as I understand that, the subcommittee of the Interior and Insular Affairs Committee headed by the Honorable James Haley, of Florida, who incidentally is probably the most outspoken champion of Indians, is going to conduct hearings in connection with this legislation.

It is my understanding that Senator Ervin, at the time that S. 1843 was put together, arrived at the conclusion that under his subcommittee dealing with constitutional rights of individuals, this was a good place to protect the civil rights of the Indians and hence, he brought about the passage of it in the Senate and it is pointed out to me that it passed without opposition.

Title II gives the Indian the basic rights and privileges in his relationship with his tribal government that every other American citizen now has in relationship with his State, local and Federal Government.

More specifically, title II makes the Bill of Rights applicable to an Indian when he is charged with a crime by a tribal court.

Now, I may state that most tribes have a tribal council and that throughout the years, this tribal council had certain jurisdiction, especially as the white man moved him on west and they exercised probably the only authority of government among themselves and the story is, in Oklahoma, it is often told of when they moved the Cherokees and the Creeks from Alabama and Georgia, part of them from Mississippi, that the Creeks were not satisfied with the agreement that was made by their chief for their removal to Oklahoma and on the way to Oklahoma they had a tribal council and hanged the chief who made the agreement for them to be transported there.

And, that shows the powers that the tribal council had in dealing with the Indian. Now, as I have pointed out, they have had their own form of government and certain rights to conduct tribes.

What we are attempting to do here is to extend constitutional rights to the Indian, as all other citizens of the United States have, as it relates to his tribal council.

The tribal governments have been considered by the courts as quasi-sovereign entities to whose actions the Bill of Rights along with other constitutional provisions, do not apply. In many instances tribal governments have deprived Indians of the right to be represented by counsel, the right to be free from illegal search and seizure, the right to freedom of religion—rights that others take for granted.

Now, title II, prohibits Indian tribes from first, making or enforcing any law prohibiting the free exercise of religion or abridging the freedom of speech, press or assembly, or the right of the people peaceably to assemble and to petition governmental units for a redress of grievances.

Second, violating or abusing individual Indians in their person, home, or possession and securing protection to individual Indians against abuses in the search and seizure of their persons, homes, and possessions.

Third, subjecting any person for the same offense to be twice put in jeopardy.

Fourth, compelling any person in any criminal case to be a witness against himself.

Fifth, taking any private property for a public use without just compensation.

Sixth, denying to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense at his own expense.

Seventh, requiring excessive bail or fines and inflicting cruel and unusual punishment. The penalty of a \$500 fine or imprisonment for a term of 6 months or both would remain the maximum limitation as to the punishment for any one offense.

Eighth, denying to any individual Indian within its jurisdiction equal protection of the laws or deprive any person of liberty or property without due process of law.

Ninth, passing any bill of attainder or ex post facto law.

Tenth, denying to any person accused of an offense punishable by imprisonment the right upon request, to a trial by jury of not less than six persons.

Title II also provides that any Indian detained by order of a tribal court is entitled to the right of the writ of habeas corpus in a court of the United States to test the legality of detention by the tribal court. In order to give the Indian tribes an opportunity to adjust to this new system of jurisprudence, the provisions of title II will become effective 1 year after the date of enactment.

Now, I may say that this is an inhibition against the tribal courts from violating the various sections of the Federal Constitution. I am sure that each of you recognize that these are the first, fourth, and fifth amendments together with the sixth, and eighth amendments and article 1, section 9 and article 3 of section 2 to the Constitution.

Now, this is a limitation upon the tribal courts. In order to facilitate this matter, title III of this bill, which begins on page 15, is designed to compliment the provisions of title II; that is, it directs the Secretary of the Interior to recommend to Congress a model code governing the administration of justice by courts of Indian offenses on Indian reservations.

The present code found in title 25 of the Code of Federal Regulations, part II, is outmoded, impractical, and fails to provide for adequate administration of justice.

For example, under the existing code, the total number of challenges in selecting a jury, challenges for cause and preemptory challenges is three, and the fee for jury duty remains 50 cents a day.

In carrying out the provisions of title III, the Secretary of the Interior is directed to consult with the Indians, Indian tribes and interested agencies of the United States.

Title IV, repeals Public Law 83-280 which permits States to assume criminal and civil jurisdiction over Indian tribes regardless of the wishes of the tribe.

In 1953, Public Law 83-280, 67 Stat. 588, conferred to certain States civil and criminal jurisdiction over Indian tribes.

Now, those States, I think were enumerated yesterday by the chairman in his statement and among those States were California, Minnesota, Nebraska, Oregon, and Wisconsin.

Tribes have been critical of Public Law 83-280 because it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances.

Moreover, it appears that tribal laws were unnecessarily preempted and as a consequence, tribal communities could not be governed effectively.

The Senate Subcommittee on Constitutional Rights in its summary report of the hearing and investigation of the constitutional rights of the American Indian arrived at the following conclusion to remedy Public Law 83-280:

"Indian governments do not, of course, bear full responsibility for those denials of rights which have occurred or which in the future may occur. It appears, paradoxically, that the States have also erred, both by failing to prosecute offenses and by assuming civil and criminal jurisdiction when the assumption was clearly against the wishes of the Indian people affected.

"Concurrent jurisdiction by the United States in the first instance and a repeal of Public Law 280 or at least the modification to include tribal consent as a precondition to the State's assumption of jurisdiction, would seem to provide a suitable remedy."

Under this title, any State desiring to assume civil and criminal jurisdiction over an Indian tribe must obtain the consent of the affected tribe. The repeal of Public Law 280 has been a major goal of the Indian tribes since the enactment of this legislation—legislation which prevented the Indians from having any voice in how or by whom they were to be governed.

In other words, what this does, it says to the Indian tribe, if you want to be under the jurisdiction of State law, then the consent of the Indian tribe, itself, must be had before the State can assume that jurisdiction.

So, the objective to have the Indians, themselves, determine whether or not they want to come under the State law, and unless they make that determination and unless the State accepts it, then the State law is not imposed. There is a method in this bill which provides Indian consent should be by an election of those who are on the rolls of the tribe at the time.

The purpose of title V is to add to the Major Crimes Act the offense of assault, resulting in serious bodily injury. This new crime would amend section 1153 of title 18 of the United States Code.

In 1885, Congress enacted the Major Crimes Act, which presently provides Federal courts with jurisdiction over the crimes of murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, assault with intent to commit rape, carnal knowledge, arson, burglary, robbery, embezzlement, and larceny committed by an Indian against another Indian or other person.

The Federal courts have jurisdiction over these crimes where the States have not assumed criminal jurisdiction over Indian offenses.

This title adds assault resulting in serious bodily injury to the Major Crimes Act. Since Indian courts cannot impose more than a 6-month sentence, the crime of aggravated assault should be prosecuted

in a Federal court where the punishment would be in proportion to the gravity of the offense.

The purpose of Article VI is to expedite the approval of contracts between Indian tribes or other groups of Indians and their legal counsel when such approval by the Secretary of the Interior, or the Commissioner of Indian Affairs is required by law.

As a result of his guardianship powers, the Secretary of the Interior has been provided authority to approve contracts between Indians and their attorneys. Despite efforts of the Department of the Interior in 1960 and 1962 to expedite approvals of tribal attorney contracts, administrative delays in approving such contracts is a continuing problem. Frequently these delays extend for over a year and consequently impose so severe a hardship upon the tribes in need of counsel that they constitute a denial of due process of law.

Incidentally, I think the record will show that recently there was a case of an Indian tribe that made a contract with counsel downtown. The Secretary did not approve it, and about a year and a half later he went into the Federal court and he was compelled to approve it.

Now, what we provide in this legislation is that the application relating to the employment of legal counsel made by Indians and other Indian groups to the Secretary of Interior or the Commissioner of Indian Affairs is deemed approved if neither approve nor deny within 90 days from the date of filing. In other words, if the tribe makes a contract for certain services—legal services and submits it to the Secretary as he is required to do, and the Secretary fails to act within 90 days, then it is approved.

No, title VII authorizes and directs the Secretary of the Interior to revise and republish Senate Document 319 of the 58th Congress, and the treatise entitled "Federal Indian Law." This section directs that an accurate compilation of the official opinions of the Solicitor of the Department of the Interior be compiled and maintained on an annual basis, and that Senate Document 319, containing treaties, laws, executive orders, and regulations relating to Indian affairs be kept current on an annual basis. The need for adequate and up-to-date research tools in the area of Indian affairs is pronounced. If our Indian citizens are to receive benefits in full measure from their own efforts, as well as from the activities of their attorneys and of scholars working on their behalf, full and easy access must be had to relevant documentary sources. Instances of out-of-print, out-of-date, and out-of-circulation materials must be corrected.

The passage of this bill into law will not provide the final solution to the legal dilemma in which the American Indian finds himself. But, it is a long step toward granting him his share in the American dream.

The Congress and the States have long neglected the rights of an American who has not been able to amass powerful lobby groups, large sums of money, and vast numbers of political crusaders.

For most of us, the basic constitutional protections are taken for granted. However, for the American Indian, the words we prize so highly had a hollow ring. He needs action, not silent sympathy or lengthy pronouncements of good intentions or pompous promises of assistance.

This legislation has been endorsed by the National Congress of American Indians, the American Civil Liberties Union, the American

Indians Committee of the Daughters of the American Revolution, tribal attorneys, and Indian tribes from every part of the Nation.

Accordingly, Mr. Chairman, I believe that H.R. 2516, as amended, provides needed Federal protection, not only for our Negro citizens and those who aid and encourage them to exercise their constitutional rights, but also needed protections for our Indian population.

I urge this committee to promptly approve House Resolution 1100. That is my statement.

Are there any questions?

Mr. COLMER. Mr. Rogers, very briefly, on this argument you have made for this provision in this bill with reference to the Indians, it was never considered by your committee. Of course, your committee did not have jurisdiction of it, did they?

Mr. ROGERS. I will put it this way. It was never assigned to us. It was assigned to the Interior and Insular Affairs Committee and was not considered as a civil rights or constitutional matter by the Parliamentarian, at least when he made the assignment.

And, I may say, that the jurisdiction of the Indian affairs has historically been with the Interior and Insular Committee.

Mr. COLMER. My question was, simply, your committee did not consider this subject matter.

Mr. ROGERS. That is right.

Mr. COLMER. And it is also true that this matter has been referred to the Interior and Insular Affairs Committee, and that committee is conducting hearings on this whole subject. Is that not your information?

Mr. ROGERS. That is correct.

Mr. COLMER. The gentleman is aware, of course, that committees around this House, as well as on the other side of the Capitol, are rather jealous of their jurisdiction and prerogative and it would, therefore, come as no surprise to you, I am sure, that your able colleague from Colorado has requested the opportunity to appear here in opposition to this bill.

Now, my other question. As I understand the gentleman, you are in support of the resolution which was introduced by my distinguished colleague here, Mr. Madden, House Resolution 1100?

Mr. ROGERS. Yes, sir, that is correct.

Mr. COLMER. Now if this committee should report that resolution to the floor of the House, no amendment could be given or offered to this provision that you have spent some 30 minutes here now explaining to, is that correct?

Mr. ROGERS. That is my understanding.

Mr. COLMER. Mr. Smith, do you have any questions?

Mr. SMITH. Just before I left the office I got a letter from the Department of the Interior. I think they mentioned that a couple of the sections had to do with the Justice Department. The letter said something about the first and fifth amendments; they did not know whether the Indians were ever under them. Do you have any explanation; does it change something materially in that regard?

Mr. ROGERS. Here is what it does, and probably one of the things that the big fuss is about.

An Indian tribal council and its laws are autonomous within themselves and they make their own rules and regulations.

They say what their rules for procedure may be on criminal cases, these determine what the bill shall be and so forth.

Now what this does, it provides that whenever a tribal council conducts a criminal case, it shall respect constitutional rights, and those constitutional rights are set out in section 202 at page 13.

So all it says to the tribal council is, you must follow the constitution as it relates to freedom of speech, or of the press, or the right of the people peaceably to assemble and petition for a redress of grievances and so on down the list as I have read, and they are all outlined in 10 different items as they appear in section 202, as I tried to point out, this relates to our own first 10 amendments of the Constitution of the United States and it says that the Indians shall abide by it. There is no problem as I see it in the tribe living up to the Federal Constitution in a trial of its criminal cases.

Mr. SMITH. Does this put the Indians under the State laws?

Mr. ROGERS. May I point out this, what we have been discussing—what I have been discussing relates to the procedures in a tribal council as it relates to the punishment and as they deal with it and the Secretary of the Interior is under an obligation to help them work out the procedures in these counsel.

Now, the other is that, if the Indian tribe and the State should agree that they should come under the State law, then the State should take the action. There is an election, that is outlined on page 20, by the Indians who were enrolled Indians within the affected area of such Indian territory and they may accept such jurisdiction by majority vote of the adult Indians voting at a special election held for that purpose.

Now, when that happens and the State agrees to it, then they come under the State law itself. So you have two different things dealing with it.

If the tribal council wants to continue as such, they can do so. If the Indian on the roll votes to place it under the State and let the State carry out the functions and apply the State law to the crimes and offenses they may agree to do so.

Mr. SMITH. I remember in the State legislature, and I am not trying to be facetious, we changed laws in California having to do with sex crimes—sex psychopaths and so forth, I remember some of the prosecuting officials that testified got into the Indian question and discussed whether or not where, with respect to crimes such as rape, the Indian way of thinking was compatible to our laws. They said a lot of times when Indians have committed rape they are given a horse and made a prince instead of being penalized; I was wondering if this would place them under the California law.

Mr. ROGERS. As I pointed out in my statement in title V, the Major Crimes Act presently provides Federal courts with jurisdiction, if a specified offense is committed on an Indian reservation.

Mr. SMITH. I have just a couple of other questions.

If we proceed in accordance with your request, as the chairman said, we could not change the Indian situation. If you had your druthers, would you think, as a learned and experienced and able member here, that it would be better for the Congress to consider the Indian problem alone rather than in a civil rights bill?

Mr. ROGERS. I know that a good study was made of this by Senator Ervin's subcommittee and the Senate Judiciary Committee. I under-

stand, due to that testimony that was offered they arrived at the conclusion that they had covered the waterfront, so to speak. That they had analyzed it from every standpoint and said that they could understand and that was why it was written in this. Not only did they do that, but they went ahead and passed it unanimously by the United States Senate last December. With the result that if you are going to reform it and bring tribal council courts under the jurisdiction of the Federal Constitution, then this is the only method that I know of that can be done and you will not accomplish anything by further testimony in connection with it.

Now, the balance of it is up to the tribe itself. If it does not want to come under the State jurisdiction or the State does not want to assume the jurisdiction, it does not occur. But, this bill requires a majority vote of those adults duly enrolled on tribal rolls. Now how much more could you accomplish even if there were hearings conducted forever.

Mr. SMITH. My point is, if we are going to proceed in such a way, we might as well have a unilateral congress and let the Senate pass everything while we go home and campaign.

Mr. ROGERS. What I am trying to point out is, that the subcommittee headed by Senator Ervin, certainly analyzed it and came up with a reasonable conclusion. When you examine the conclusions that he came up with, it is difficult to improve upon them. The only thing that is forced upon the Indians here is the Bill of Rights of the Constitution in his tribal courts.

Now the rest of it, the Indian is free to make his own determination by special election. How could anything be more fair than that?

Mr. SMITH. Does it violate any treaties we have with the Indians?

Mr. ROGERS. Well, there is a provision in title IV, on page 16, at line 21:

Nothing in this section . . . shall deprive any Indian or any Indian tribe, band, or community of any right, privilege or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control of licensing or regulation thereof.

That part is on page 17.

Mr. SMITH. One other question.

If House Resolution 1100 is voted down, would you be willing to go to conference, or are we just going to stop there?

Mr. ROGERS. I certainly would not want to stop.

Mr. SMITH. You would like to see some civil rights legislation?

Mr. ROGERS. Yes.

Mr. SMITH. Do you think this bill could be improved, or are you satisfied it is the best that can be done?

Mr. ROGERS. In the face of the experience that we had in all civil rights legislation, I do not think very many of them ever went to conference because of the situation being as it is, I would imagine that it would be very difficult, especially if you had to invoke cloture in the Senate, to get the conference committee report approved.

Mr. SMITH. That is all.

Mr. COLMER. Mr. Madden, do you have any questions?

Mr. MADDEN. Mr. Chairman. Mr. Rogers, this Indian part of the bill, has that ever been included in any of our civil rights bills before?

Mr. ROGERS. Now the Senate put many things in this, and probably they should have put the bill prohibiting desecration of the flag in

here, too, because that is one that was passed out by the House. But, historically, the Judiciary Committee of the House of Representatives never had jurisdiction of the Indians or the Indian affairs.

Mr. MADDEN. What committee considered it in the Senate?

Mr. ROGERS. It was the Senate Subcommittee on Constitutional Rights. It came, I think, out of the Senate Judiciary Committee.

Mr. MADDEN. Did they proceed to have that legislation as a separate piece of legislation and on second thought incorporate it in the civil rights bill?

Mr. ROGERS. What they did, as I outlined to you, they passed the Senate bill, S. 1843, on December 7, 1967, without objection—unanimous in the U.S. Senate.

Mr. MADDEN. Which included this Indian bill?

Mr. ROGERS. Which included the Indian bill. So Senator Ervin, when he had written the civil rights up, he put the rights of the Indians in there and it went in.

Mr. MADDEN. Ordinarily, if there was not a civil rights bill, Senator Ervin would probably have had the Indian legislation as a separate bill.

Mr. ROGERS. You mean he had already passed the bill over there?

Mr. MADDEN. You are talking about this bill.

Mr. ROGERS. No; the Indian bill, S. 1843.

Mr. MADDEN. Why did he not send it over as it passed without including it here?

Mr. ROGERS. He sent it over and it was referred to the Interior and Insular Affairs Committee when it got over here.

Mr. MADDEN. How did he get this bill in the Senate?

Mr. ROGERS. The history of it shows, I think, that Senator Ervin offered it as an amendment and the Senate took it.

Mr. MADDEN. What State is Senator Ervin from?

Mr. ROGERS. North Carolina.

Mr. MADDEN. Are there many Indians in North Carolina?

Mr. ROGERS. Yes; there are.

Mr. MADDEN. Of course, the Indians have not been around here very long and I was wondering—

Mr. ROGERS. May I tell you the story of how he got the Indians. I mentioned the story of when the Cherokee and the Creeks were moved—

Mr. MADDEN. And they hung the chief. Was that out of North Carolina that they hung the chief?

Mr. ROGERS. There is a bunch that did not get out. They got in the hills of North Carolina and stayed there. They stayed in North Carolina and Tennessee, and then the tribe went on to Oklahoma and set up the Cherokee Nation and those that were left in the hills soon got together, and if you want to go over the mountains into North Carolina you will find Cherokee, N.C., which is a rather flourishing little town made of the ones that were left.

One of the big problems that the Cherokee Nation and the boys out in North Carolina wonder what the interest may be in some of the tribal rights of some of the Cherokee Nations in Oklahoma.

Mr. MADDEN. That makes it very plain.

Mr. ROGERS. You see, when I read in the paper that they set up a committee over in the Senate to protect the constitutional rights of

everybody, I wondered exactly what they had in mind. I understand that any Government employee that wants to make a complaint can do so to his committee.

Mr. MADDEN. Anyhow, this Indian legislation that is incorporated in this bill passed unanimously in the Senate?

Mr. ROGERS. I am so informed. I have not personally checked the record.

Mr. MADDEN. And the Senator, evidently in his committee, was very anxious that it be incorporated into law, or it would not be in this bill.

Mr. ROGERS. That is right.

Mr. MADDEN. Do you not think we might be doing the Senate a great favor, although they have not reciprocated very much—I remember 14(b) and there were about seven and eight Senators who would not allow the Senate to vote on it? It might be good and beneficial, and benefit millions of people over this country by the adoption of this resolution. The immediate consideration and enactment of this bill might prevent some of these riots. Maybe if this bill was passed a month ago this thing would not have happened in Memphis yesterday. So I want to thank you and the Judiciary Committee for the outstanding work you have done. I am trying to get legislation through this Congress this year in order to relieve a critical situation. I want to thank Senator Ervin for taking up the welfare of the Indians too, because we have been a long time getting around to that, and we ought to accommodate them by getting this resolution out and passed and signed by the President.

That is all, Mr. Chairman.

Mr. COLMER. Mr. Anderson, do you any questions?

Mr. ANDERSON of Illinois. I think my distinguished colleague from Indiana has raised a very important and interesting point that maybe deserves some comment. Any of us on this committee who regard the Senate amendment to H.R. 2516 as maybe a little bit less than perfect are immediately attacked as being enemies of civil rights and open housing. On the other hand, I think the colloquy between Mr. Madden and the gentleman who is now in the chair indicates this bill has been weighted down with matters and issues that are decidedly extraneous to the whole question of civil rights, and yet the gentleman from Colorado, I would think, now finds himself in the position of carrying water for those people who may even be, as Mr. Madden suggested, enemies of civil rights legislation per se are loading this bill down; yet the gentleman would be opposed to going to conference and refining this bill to the point where it would deal exclusively with important issues of civil rights.

Mr. ROGERS. I think Mr. Celler pointed out yesterday, and I think the examination of this bill will show, that all of the provisions, with the exception of the Indians, is something that the House Judiciary Committee has passed.

Mr. ANDERSON of Illinois. That is the point I am making. There is an exception and it is an exception that occupies, I think, a total of six titles of the bill. I want to make one other observation.

There are some who take a rather cynical view of the legislative process and suggest there is some "piddling" and "fiddling" going on because we are conducting these hearings, I want to thank the gentle-

man from Colorado, but I just cannot help but think what a wonderful privilege I have; for almost an hour I have been privileged to listen to him discuss six titles of this bill and that is about three-quarters of the time that will be available to the Members of the House in considering the entire bill with all of its ramifications. I want to thank you for the statement. It was very helpful.

Mr. ROGERS. Thank you.

Mr. COLMER. Mr. Bolling, do you have anything to ask?

Mr. BOLLING. I think I will save my statement for later.

Mr. COLMER. Mr. O'Neill?

Mr. O'NEILL. No.

Mr. COLMER. Mr. Matsunaga?

Mr. MATSUNAGA. Thank you, Mr. Chairman.

I wish to commend the gentleman from Colorado for the excellent statement. I think the statements he has made this morning really clarify the Indian provisions, and I can see the germaneness of the Indian provisions to the original bill, I am inclined to fully support the entire bill.

About how many tribes are involved here?

Mr. ROGERS. I tried to ascertain that number, but depending upon the number that are still on the reservation, and I do not think they have counted them lately, they are the ones who usually carry out the provisions of the tribal council. In my own State, there are the Utes, and they have a reservation in the southwest part of the State and extends over into Utah. There are a number of tribes in Arizona and New Mexico, as well as South Dakota, as I understand from our colleague from South Dakota.

Mr. MATSUNAGA. What is the approximate number in tribes, as well as total population?

Mr. ROGERS. You mean how many, approximately the number of Indians that may be involved?

Mr. MATSUNAGA. That will be affected by this bill.

Mr. ROGERS. As I understand, at least 14 States are involved in it. The population on the tribal reservations may vary and the Indian associations, as I say the figure has not been obtained and I do not know.

Mr. MATSUNAGA. Are the figures available?

Mr. ROGERS. Yes, I am sure that the Commissioner of Indian Affairs, or the Secretary of the Interior can outline them and I am sure—I say I am sure, if you will take the hearings that the Senate had in connection with it, I think it can be supplied.

Mr. MATSUNAGA. I was appalled at your statement that the jury fee still stands at 50 cents today. Why do we allow this?

Mr. ROGERS. That is the question for the tribal council. You see, when I am talking of that, you have the tribal council, which under Federal law, is limited to imposing a \$500 fine and 6 months penalty.

Mr. MATSUNAGA. Now, the bill would provide against cruel and unusual punishment.

According to whose custom, whose standards, will we judge what is cruel and what is unusual?

Mr. ROGERS. The objective, as set forth in this legislation, is that the Secretary of the Interior shall consult with the Indians, Indian tribes, and interested agencies of the United States.

Now, that is his obligation and when we placed a limitation upon him that he should see that the rights and privileges under the Constitution of the United States will be guaranteed. It would be then, according to Federal decisions interpreting the eighth amendment to the Constitution.

Mr. MATSUNAGA. I am inclined to agree with an earlier statement, with the gentleman from Indiana, that I think the Indians have had it long coming to them and this, I believe, will help to elevate the standard of our fellow Americans to a point of dignity.

Thank you.

Mr. ROGERS. Thank you.

Mr. COLMER. Is there anything further, Mr. Rogers?

Mr. ROGERS. No, sir.

Mr. COLMER. Mr. Rogers, there are a number of things I would like to have gone into here with you, but you confined your testimony to the Indians and I will confine my questions to that.

A lot of the questions that I will ask about the Indians apply to the rest of the bill.

There are some other people here who want to be heard and the committee will thank you for your time.

Mr. McCulloch.

Mr. MCCULLOCH. I prefer to follow the chairman of the Judiciary Committee after he has concluded his testimony.

Mr. COLMER. Very well.

Mr. Dingell.

STATEMENT OF HON. JOHN D. DINGELL, A MEMBER OF CONGRESS FROM THE STATE OF MICHIGAN

Mr. DINGELL. I would like to thank the committee for the privilege of appearing before you this morning. For the record, I am John Dingell, a Member of the Congress from the 16th District of Michigan.

I would like to discuss, briefly, a matter that I think should be brought to your attention, which is on page 46, title X, the so-called civil obedience section of the bill.

I am sure, Mr. Chairman, that you recall I have long——

Mr. COLMER. What page?

Mr. DINGELL. Page 46. Actually, 46 and following through the bottom of page 49.

As you recall, Mr. Chairman, for a long period of years I have had considerable interest in responsible firearms and arms control legislation. It has long been my position that this country should have legislation which permits possession of firearms, and for the legitimate sporting and self-defense purposes, and I have sponsored a number of pieces of legislation to impose some responsibility and limitation on the right to own firearms and the right to use firearms.

I am concerned about the so-called Civil Obedience Act of 1968 and the title which appears there because, if applied in an area of calm, when there is no strife and passions are not running high, in all probability that section would create little mischief for the individual.

Mr. COLMER. What?

Mr. DINGELL. It would create little mischief for the individual.

However, if this section were to be applied in times when passions are running high, when emotions are at fever pitch and where there is some civil disorder, conceivably it could be applied, possibly as *ex post facto* law, by excited prosecutors acting under the pressures of public opinion to punish certain persons for possession, for use, for ownership of firearms, or for teaching the use of firearms. Conceivably, it could be utilized for acting against persons who might possess substances which might be explosive in nature or flammable in nature, but the ownership and intent of the individual concerned might be innocent.

The interesting thing about this section, Mr. Chairman, is that it does not deal with the act of the criminal, misuse of the firearms, unrelated or other circumstances, or to the teaching of the application or the making of firearms. It is triggered by something that takes place later. That is the use of the firearm in some kind of civil disorder, or criminal misuse of the firearm. This criminal misuse then relates back to the original act of demonstrating the use of a firearm demonstrating or teaching of the application of the use of a firearm.

The result of this could be that a person who innocently showed a neighbor how to use a firearm might be conceivably, at a later time, charged with a violation of this section by reason of the neighbor, at a later time, using that firearm in defense of his home. One might conceivably be charged with a crime, or rather violation of section 231, because unbeknown to him, that neighbor might have used that firearm in some portion, or in some section, in some way related to a riot.

This, conceivably, could have an extremely dangerous effect on him and on the Negro citizen in terms of the ability to buy a firearm. It is highly doubtful that a hardware store will sell a shotgun to an innocent Negro citizen in a time of approaching, what we have been led to call in recent years, "long hot summers," because, conceivably the owner of that store might be chargeable with—

Knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article . . .

This is very broad language. It is language that can be stretched to cover an abundance of circumstances not altogether known to the parties of the circumstance at the time a firearm is sold or demonstrated.

Now, there was some language interpreting this which was entered into during the Senate debate. There was an attempt to expand this very broadly to include firearm sales or other matters by certain individuals of the Senate, who were long known to the opposition of the ownership of firearms for lawful purposes, sporting and defense purposes.

I believe that the fact that the criminality of the act is triggered by circumstances unrelated to the happening, that the going forward should raise questions in the minds of a good legal draftsman, because the crime mortality of the act is not necessarily the sale, but it is the later use of the firearm or the explosive which may be used.

Now, I have no defense for explosives. I think explosives are something which really should be most rigorously controlled. But a firearm used by sporting persons, by a large number of citizens, and they

are used, is traditionally regarded as defense and a protection of the home and the individual. I believe this question should be considered very carefully. The provisions of this title greatly trouble me.

I say this because I am greatly troubled, both from the standpoint of the draftsmanship and the standpoint of the effect they might have later on.

I have joined in sponsoring legislation which would make criminal misuse of firearms. But it is very plain, I would say, Mr. Chairman, from reading this section, that it is not the intent that this section be regularly applied, but that this section will be triggered by the happening of riots. So, I believe, this is a section that should be more carefully considered.

I have no suggestions to the committee as to how the committee should evolve the decision for having this section appropriately considered. There are an abundance of laws on the books, both State and Federal and local, to control the traffic and possession of firearms and the unlawful use of firearms. There are, indeed, some 20,000 laws dealing with the possession and ownership and use of firearms, State, Federal, and local.

There are two strong Federal statutes available, which have little been used by the Department of Justice, setting a more strict control, the National Firearms Act and the Federal Firearms Act, which would control the traffic in machineguns, which caught Rap Brown passing from one State to another. He is the only fellow, to my knowledge, who has been prosecuted under that section.

I think this would raise questions. There are laws on the books, Mr. Chairman. I believe a reading of this will cause considerable concern to a person with regard to the possible effect of this statute on someone who is doing, at the time, what seems to him, and which was plain to the person around him, to be an entirely innocent act. I am very troubled by this section. I wanted to come here to bring my concerns to the attention of this committee so you would be aware of the facts.

I want to point out one other thing. The bill sets out two definitions; in one they set up a definition of civil disorder. And, of course, this further complicated the application of section 231 and the provisions thereof, which might deal with the innocent instruction and the use of the firearm.

I point, as an example, to the business of the instruction and use of firearms. There are a number of police programs which are conducted for the benefit of the children around the country, some of which are marksmanship programs, and sportsmanship programs. Many of these are conducted, I think, for and to the substantial benefit of our young people in the underprivileged neighborhoods and areas of this country.

Conceivably, in the course of one of those programs, a police officer could be charged at a later time with having breached this section by teaching the use—and careful use—of firearms and perhaps he taught good sportsmanship and love of the outdoors at the same time. And his action might be entirely innocent. But because he had taught a Negro youth in the practice of the firearm, the officer could conceivably be charged under section 231 with having reason to know, or intending, that the same would be unlawfully employed in the course of a riot.

So, I hope, Mr. Chairman, in its consideration of the matter before this committee, this committee will give very careful thought to this section. I speak as one who has long supported civil rights legislation. I have voted for all of it since 1955. I have been one of the framers of the discharge petition that brought civil rights legislation to the floor. I have suffered politically in my district for the support of this, and it has had a major effect in some of the campaigns. I do not speak as an opponent of the bill, but as one who is concerned about having good legislation on the floor for the House to consider and work its will in the public interest.

I believe there is need for legislation to attack the problem of civil disorder and control the traffic of firearms, which are a problem in connection with riots. But I am not satisfied that the provision that you see before you, drafted in haste on the Senate floor, is necessarily the best device to protect our people from the hazard of riot and hazard of unwise use of firearms in the course of riots.

Thank you, very much, Mr. Chairman.

Mr. COLMER. Thank you.

Mr. Dingell, I have known of your interest in this subject matter of firearms, as many of your colleagues have, for a number of years.

I think it is something that concerns all of us. There are two sides to the coin as usual, and here involved is the right, as I understand it, to own and enjoy the use of firearms for peaceful purposes.

Now, you made a very good statement, say that you wanted this committee to give serious consideration to this provision of the bill; as you say, it was hastily adopted on the floor of the other body.

Of course, the gentleman has been around a long time and he, I am sure, is aware of the fact that this committee cannot amend this bill. It cannot take anything away from it. It cannot add anything to it.

It is a question of how, and when, and if, it goes to the floor for consideration.

Now, of course, the gentleman also is aware of the fact that if the resolution that has been introduced here, and which is now under consideration, were reported out without any amendment and, of course, that resolution can be amended, neither the gentleman from Michigan, nor anyone else could offer an amendment on the floor to clarify this matter, or strike it, or do anything else about it.

In other words, the membership of the House, under the resolution pending here would be put in a straitjacket so far as this division of the bill is concerned, along with all other provisions of the bill.

I am sure that the gentleman does not look with favor upon that type of legislation. So, and I have no desire to put words in the mouth of the gentleman or in any way embarrass him, but since he has taken the time to come up here and give us the benefit of his voice on this matter, I would take it that he would not be in favor of reporting this straitjacket resolution to which I have just referred.

Mr. DINGELL. My personal preferences are that this matter should be considered under circumstances where the bill can be perfected.

I think there is no good reason to think that either by referring this matter to the Judiciary Committee from whence it originally came, or by referring it to a conference, that the objectionable features like this can be eliminated without hazard to the fundamental piece of legislation itself.

We will be here in session, I expect, until the first of July or August and probably into August. The Senate has demonstrated themselves to be thoroughly sympathetic to a bill of this kind. The conferees, I am satisfied, of both the House and Senate, would be sympathetic and friendly to the legislation. I am sure that they would not do anything to prevent the civil rights bill from ultimately becoming law. I see no reason why we should fear sending the House bill to conference. I am well satisfied the conferees would act diligently to eliminate such bugs as would appear and act expeditiously to bring the bill to the House for consideration. I think I am satisfied, on the basis of the vote and the announcement made by the Vice President, that we could look forward to having legislation.

It is important, and we are going to have to eliminate the abuses in terms of affording all of our citizens full equality. Unless and until we do, we are not going to have peace in this country.

I am satisfied the members would recognize the responsibility to the body that sent them to the conference, to the electorate that has sent them to this great House and Senate. And I am satisfied we would have a good bill back on the floor which the membership of this body and the other body could consider in an appropriate fashion and we could present to the President a civil rights bill which would accomplish most of the things in the bill that is now before this committee.

Mr. COLMER. Mr. Dingell, I am going to be very brief and conclude.

What committee of the House has jurisdiction of this firearms legislation?

Mr. DINGELL. This is a much abused subject, Mr. Chairman. If you recall, traditionally, the Ways and Means Committee has had jurisdiction over tax matters; the Interstate and Foreign Commerce Committee has jurisdiction over matters dealing with interstate commerce. By reason of comity, the Interstate and Foreign Commerce Committee waived over to the Ways and Means Committee the jurisdiction of the entire structure of the firearms law of the United States. But recently, because of some connivance of the administration downtown through circumstances that no one really fully understands, with the possible exception of perhaps the Parliamentarian and the Speaker, the question of firearms legislation should wind up in the Judiciary Committee. The administration was shopping for a more favorable form to strip the citizens of the right to have firearms and that wound up in the Judiciary Committee.

Mr. COLMER. The Judiciary Committee?

Mr. DINGELL. Yes, it is a very tenuous jurisdiction that the Judiciary Committee has.

Mr. COLMER. To the best of your knowledge, has the Judiciary Committee considered this subject?

Mr. DINGELL. They have considered it at great length, Mr. Chairman. A bill was reported out of the subcommittee which I do not expect will see the light of day because it will strip from our citizens the right to use firearms and to possess them for legitimate purposes.

Mr. COLMER. To the best of your knowledge, has the Judiciary Committee given any consideration in the way of hearings to this Senate version of the firearms?

Mr. DINGELL. To the best of my knowledge, no.

Mr. COLMER. I think the testimony of Mr. Rogers would possibly confirm your knowledge of that subject.

We are now put in the position here of the Judiciary Committee not being able to agree on any bill itself, but now advocating the taking of a bill that was written on the floor of the other body, and adopting it here without any opportunity for amendment.

Mr. DINGELL. I think the facts on that speak for themselves, Mr. Chairman.

Mr. COLMER. I think they did very loudly.

Are there any questions of Mr. Dingell?

Mr. SMITH. I would like to commend the gentleman. I think this is one of the finest statements that I have ever heard presented to the committee. It is nonemotional, forward, and honest. I appreciate it very much.

I only wish the whole Judiciary Committee could have been here and heard that statement and the whole House. I think they would have a much better idea of the problem which I did not see before your presentation. I appreciate it very much.

Mr. DINGELL. Thank you.

Mr. COLMER. Mr. Madden.

Mr. MADDEN. I have no questions.

Mr. COLMER. Mr. Anderson.

Mr. ANDERSON of Illinois. I would like to commend the gentleman for what I think is a very reasoned and dispassionate statement on a very controversial subject. Some of us want a bill, but we think it can be a better bill than it is at the present time. It was hastily written and adopted on the floor of the other body.

I do have one question. If this bill could be amended, chapter 12 and section 231, to take out those words, "having reason to know" which I found, I think, in a couple of places—at lines 15 and 16, on page 46, and line 2 on page 47—do you think that would cure the concern that you have expressed, that a person such as an instructor in a firearms program or an incidental shipper of firearms could be arrested because of future actions of others?

Mr. DINGELL. It would go a long way.

Mr. ANDERSON of Illinois. From your knowledge and experience, do you think that would substantially improve this?

Mr. DINGELL. I think, if you were to make one change in the bill by striking "or having reason to know," it would probably do as much to correct the objection that I have asserted to this section as any one thing.

I have to say that, in all probability, in matters of this kind the court will, in more mature deliberations, apply their wisdom. I am less sure that prosecutors and grand juries will do it equally because they will be operating much closer in point of time to the unpleasant circumstances that were triggered in the use of this section.

Mr. ANDERSON of Illinois. If I could site one hypothetical case to make sure that I understand the language of subparagraph (a) dealing with transportation or making for transportation: say the Colt Co. up in Connecticut should, within the last week, have shipped some firearms into the Memphis, Tenn. area, which exploded in violence this week; could it be argued under the language of this section that Colt should have had reason to know that those firearms would be going into the hands of the people that would use them in a civil disorder and, therefore, Colt would be amenable?

Mr. DINGELL. It is not at all improbable. Particularly if you had, let us say, 40 or 50, or over 10 firearms going to one particular address. Let us say in a particular town the shipment went to a particular address in a downtrodden neighborhood. It might have been addressed as a shooting club. When the firearms arrived they would be distributed and used in some kind of disorder.

Incidentally, it is not in this area—we do not only have to anticipate this is going to be used for Negroes, but we can anticipate that we have extreme rightwingers who will engage in the same practice and certainly the Colt Co., in the manufacture of a firearm, really has one purpose, and that is the discharge of a missile.

Mr. COLMER. Mr. O'Neill?

Mr. O'NEILL. Mr. Dingell, your record for civil rights through the years speaks for itself, and I know particularly of your interest in firearms, but, in your idealistic summation, you hope that it would go to conference.

So, do you think this matter of firearms is so serious that eliminating it from the bill by bringing it to conference could possibly stifle this legislation for the year. I can well see it going to conference and coming back to the floor and the doors are opened in the Senate for another 40 days debate, and no legislation comes forth. If you were to think that were to happen, would you be for going to conference?

Mr. DINGELL. I have to say I do not want the bill stifled. I have to say I feel that this is fundamentally a good piece of legislation. I want to bring to your attention certain facts. The Senate had a whole sequence of issues before it that could have been filibustered under their rules after the original adoption of cloture. However, each of those, after the original decision on cloture was made, was voted on expeditiously. If this committee, in its wisdom, comes to the conclusion that heeding my advice with regard to this section and the hazards that it happens to sustain will jeopardize the bill, then I would have to say that the committee should not jeopardize the bill. I really do not think that the circumstances we face indicate this bill is going to be absolutely foreclosed for consideration. You want to remember there were at least half a dozen provisions that were voted on after the cloture in the Senate was derived at.

Mr. O'NEILL. You have got to remember that people in public life are subject to change without notice and they could fall back in the old ways.

Mr. DINGELL. I am well aware of that. The Senate minority leader changed his position rather rapidly. I am satisfied that, having seen the light, he is not going to lead any filibuster or do anything further that would prohibit the final consideration of H.R. 2516. Perhaps I have too much faith in Mr. Dirksen, but I do not see that he would do this. I do not see that any Member of the Senate would. I would not be here, before this committee, urging the fact that I think it should consider this.

Mr. O'NEILL. That is all.

Mr. COLMER. Mr. Latta.

Mr. LATTA. I want to join in commending you on your presentation and the position that you have taken. I think it is one of the best that I have heard since I became a member of this committee and that is not only because I agree with you 100 percent. This makes my 16th year in

legislative work, on the State level as well as the Federal level. Since I have been in legislative work I have been opposed to firearms legislation and I intend to oppose it in this bill and any subsequent bills that might come before this Congress. I oppose firearms legislation because I think it is another encroachment on the individual liberty of our citizens. I am sure what is written here is not as tough as it might be; I think it is just the beginning. Next year we will come along with another and amend section 231. I think it is well to nip these things in bud, but I would like to have your comments. You have really given thought to this section 231, and what a technique capable of causing injury might be.

As I read this, it could be anything. For instance, anybody that teaches boxing, anything capable of causing injury, could cause criminal liability to be incurred, under the terms of this bill.

Mr. DINGELL. Boxing, karate, judo would involve this. If you were to teach the old English style of single fighting with a staff, conceivably it would apply.

Mr. LATTI. How about archery clubs; about a year ago I bought my son an archery outfit and I was out there trying to teach him how to use it. As I read the bill, I would be teaching him and there is a possibility, if he gets in some involvement with three or more persons, that I could be held. I certainly would have reason to know that this could come about; do you agree with that?

Mr. DINGELL. This is one of the hazards of this section and this is one of the reasons I am here before this committee. As you know, I have indicated I have always supported the civil rights legislation. I have done it at considerable political cost to myself. I feel very strongly that we do have to take the steps necessary to see that all of our people have the rights that they need. This section does trouble me for the reasons you have indicated, and a number of others.

Mr. LATTI. Actually, this is no secret that most of this bill is written to give additional "rights" to the Negroes. Who would really bear the brunt of this particular section if it was to be enacted into law? Certainly we are talking about disorders which often happen in Negro sections of towns. Take Detroit—what if they had a gun club there? Some of the Negroes of Detroit would really have suffered for no good reason.

So, here directly, or perhaps I should say indirectly, we are tying up the Negro population with this type of legislation because they are really going to be affected when these civil disorders come about.

I also want to point out for the record, you stated that the Senate expeditiously handled this bill after cloture was voted and it is my understanding of the rules of the Senate that they had a hundred hours that they could have debated that bill after cloture was voted. They certainly did not debate that bill for a hundred hours, after cloture was voted.

Our constituents expect us to be reasonable individuals and not buy every piece of legislation that comes through the Congress merely because it might bear a label of civil rights. I want to commend you for taking the position that you have. This bill ought to go to conference or back to the Judiciary Committee. I, for one, have confidence in the Congress that it will pass civil rights legislation this session. Certainly we have a responsibility to act reasonably on any piece of legis-

lation regardless of the title. Since they have tied in firearms legislation and Indian legislation under the title of civil rights, we should examine it carefully.

We have the legislation coming over here very shortly from the Senate dealing with taxation. I do not think that the same people who are saying to this committee that we ought to buy this bill because of the title and pass it without amendment would take this same course of action about the tax bill.

Mr. DINGELL. I have always felt that we have two bodies. As I have indicated, I do not want this bill jeopardized. If I felt this bill would be jeopardized by sending it to conference, or back to the Judiciary Committee, I would take strong steps to reappraise my position. I do not think that is a hazard here.

I think we can allow for orderly procedure. It appears that the Rules Committee has an abundance of power, and, if it appears that conference and Judiciary Committee are weak, we can always place another resolution before the House to reconsider this. This would not be the first time the Rules Committee has taken a piece of legislation from a committee—

Mr. LATTA. I would like to stop you at that point and say that you are pointing out something that I think has not been pointed out in the press, which is writing that if we do not pass this bill as it is now, we are going to kill civil rights legislation.

Mr. DINGELL. The Rules Committee has that power and the matter could then be placed before the House or handled in some other fashion.

I am not panicky on that score. I feel for the people of the country that we should have a civil rights bill and I am satisfied that the membership in fairness will move toward that call.

Mr. LATTA. That is all.

Mr. COLMER. Mr. Matsunaga.

Mr. MATSUNAGA. While I appreciate the concern of the gentleman from Michigan over the language in this section 231, is it not true that this is the language which has been generally used in criminal statutes and one which has been given judicial interpretation, being that this is a criminal statute, so that there is no real danger, as the gentleman has pointed out, of this language being too broad to involve an innocent person.

Mr. DINGELL. I would say; one, I have been a lawyer now for about 20 years and I have seen very few criminal statutes that take the language in the form that this one takes. Two, I do not ever recall seeing a Federal statute that is triggered by some subsequent happening. This is unique in that regard.

I said that criminal statutes are usually narrowly construed. This is true. I pointed out something else and that is, while the courts are acting in a more calm and deliberate fashion, it would probably not find people guilty under this. It is still a great device for prosecuting and I would point out, in connection with the riots that we have had in Detroit, that it is a classic case. We had many thousands of citizens who were arrested and detained. We had many thousands, but a much smaller number of those were brought in on some kind of criminal proceeding. But, we had very few who were finally prosecuted to conviction. When you are passing a law that is going to be used in those times of emotional strain, you should have a law that is going

to afford the basis for a meaningful protection of the public order and of the rights of the accused.

I am not satisfied that this kind of device as drawn will accomplish that goal. If you eliminated, "or had reason," or "having reason to know," you will go a long way to eliminate my objection to the section. But, frankly, this section frightens me.

It is going to apply to a hardware store; it applies to persons teaching karate; it is going to apply to shooting clubs, police boys clubs who teach people to shoot with B-B guns at 50 feet.

I would be hard put to tell you, as my good friend, I expect that every prosecutor is going to sit down and discuss the guilt or innocence of a person chargeable under this section, and the pressure is going to be there.

Mr. MATSUNAGA. I might point out to the gentleman that I, myself, have been a lawyer now for some 26 years and I have had occasion for courts to interpret this language in criminal statutes, and I have reason to know that the language is specifically and judicially interpreted to mean, knowing, and I think you will find, going through the cases where such language is known, this is what the courts invariably have interpreted.

I was happy to learn from the distinguished gentleman that if any amendment being offered, would have to be thrashed out in conference it would jeopardize the passage of the civil rights bill—you prefer the passage of the civil rights bill. I have the practical view, as the gentleman from Massachusetts, that if we do not accept the Senate version, as such, we may not get a civil rights bill out this year.

I have no further questions.

Mr. COLMER. Thank you, very much, Mr. Dingell.

The committee will go into executive session.

(Whereupon, at 12:40 o'clock p.m., the hearing recessed to reconvene at the call of the chairman.)

TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

TUESDAY, APRIL 2, 1968

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

The committee met at 10:30 a.m., pursuant to recess, in room H-313, the Capitol, Hon. William M. Colmer (chairman of the committee) presiding.

The CHAIRMAN. The committee will come to order, please.

When the committee recessed last on H.R. 2516, the gentleman from New York, famous chairman of the Judiciary Committee, was being questioned by various members of the committee. If the gentleman will have his seat again at the table, the gentleman from Illinois, Mr. Anderson, would be glad to resume the questioning.

STATEMENT OF HON. EMANUEL CELLER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK, ACCOMPANIED BY HON. JAMES C. CORMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CELLER. Mr. Chairman, may I before this second interrogation make a brief statement on one or two of the matters I did not touch upon in my previous testimony. It is not long.

The CHAIRMAN. Very well, sir.

Mr. CELLER. Mr. Chairman, I understand that the committee has heard testimony concerning criticism of title X of H.R. 2516 and suggesting that it may be violative of rights protected by the second amendment to the Constitution. I should like at this time to amplify my earlier remarks and describe in somewhat greater detail the provisions of title X.

This title prescribes a fine of not more than \$10,000 or imprisonment of not more than 5 years, or both, for whoever teaches or demonstrates to another person the use, application, or making of any fire-arm or explosive or incendiary device capable of causing injury or death, knowing that the same will be unlawfully used in furtherance of civil disorders which may adversely affect commerce or the conduct of any federally protected function, such as the U.S. mails.

Similar penalties are prescribed with respect to transportation in commerce of firearms or incendiary devices knowing that they will be used unlawfully in furtherance of civil disorder. The term civil disorder is defined as any public disturbance involving acts of violence by assemblages which cause an immediate danger of or results in damage or injury to the property or person of any other individual.

In proposing this title, Senator Long of Louisiana stated he was desirous of avoiding the problems of proof attendant upon establishing the intent of persons who crossed State lines. He illustrated his point with the antiriot legislation before the Congress. As a result of his concern, title X is drafted so that the offender need not cross State lines at all to violate its prohibitions. If he teaches or demonstrates the use or making of a firearm, explosive, incendiary device or technique capable of causing injury or death, he will be in violation of the prohibition if he knows or intends that the weapon or technique will be unlawfully used in a riot which would adversely affect commerce or the conduct of a federally protected function.

Mr. Chairman, this title should in no way be considered as a substitute for essential gun legislation for the following reasons:

1. It is limited to riot situations;
2. It operates after fact rather than before;
3. It in no way deals with the every day, general distribution of guns either by mail order or over the counter;
4. It does not afford the Treasury Department necessary discretion in licensing manufacturers, dealers or importers of firearms; and
5. It does not protect the integrity of the borders of the States so that the States may enact and enforce their own firearms laws as they deem appropriate.

Mr. Chairman, I further understand that it has been charged that title X is incompatible with the second amendment to the Constitution. The second amendment provides:

"A well regulated militia, being necessary to the security of a free State, the right of the people to keep and bear arms, shall not be infringed."

I believe that an examination of the relevant Federal and State cases, commentaries on constitutional law, as well as the legislative history of existing Federal firearms enactments, emphatically establish the inapplicability of the second amendment to this legislation. I do not intend to take the committee's time to explore this matter in great detail, however, the citation of one historic decision will make this conclusion clear.

The Supreme Court has held (*United States v. Miller*, 307 U.S. 174 (1939)) that the purpose of the second amendment was to assure the continuation and render possible the effectiveness of the militia subject to call and organization by Congress under article 1, section 8, clauses 15 and 16 of the Constitution. The Court recognized that at the time the Constitution was drafted the militia was considered to be a "body of citizens enrolled for military discipline" and that "ordinarily when called for service these men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time." The Supreme Court upheld the conviction of two men who transported in interstate commerce a shotgun which came within the definition of a firearm under the National Firearms Act and was not registered in accordance with that act. The Court found that the second amendment did not guarantee the right to keep and bear any weapon not having a "reasonable relationship to the preservation or efficiency of a well regulated militia."

Mr. Chairman, the modern tendency among judges and legal scholars is to regard the right to bear arms as existing in narrowly limited circumstances. The present state of the law concedes at the most that

the second amendment only forbids Congress so to disarm citizens as to prevent them from functioning as State militiamen. If this statement accurately reflects the prevailing law, it follows that any act of Congress which does not in fact prevent an eligible citizen from functioning as a State militiaman is not proscribed by the second amendment.

Manifestly, Mr. Chairman, nothing in the Constitution prevents enactment of title X. I hope the discussion by members of the Judiciary Committee of H.R. 2516, as amended by the Senate, has been helpful to this committee. We certainly want to do all we can to aid the committee in the understanding of the intricate provisions of this act.

I am ready for any questions.

The CHAIRMAN. Mr. Anderson.

Mr. JOHN B. ANDERSON. Mr. Chairman, have you or any member of your staff made a summary of the total number of changes in H.R. 2516 as it passed the House?

Mr. CELLER. We summarized the changes.

Mr. JOHN B. ANDERSON. Is it possible to give a numerical value to those changes?

Mr. CELLER. If you wish, we will be glad to submit that to the committee.

Mr. JOHN B. ANDERSON. Am I correct, Mr. Celler, in going back to the act which passed the House in 1966, that title IV of that act was primarily based on the commerce clause of the Constitution? As I recall, in that bill we included an open housing provision that was pretty well tied to people engaged in the business of selling. It was on the basis of commerce that we enacted that provision. Isn't that largely true?

Mr. CELLER. That was correct. In addition, it was based also on the 14th amendment.

May I ask at this point—the gentleman from California at my side has made a study of this particular title—that he be permitted to answer that also?

Mr. CORMAN. I have nothing to add to the answer.

Mr. JOHN B. ANDERSON. I would be happy to hear from either the chairman or Mr. Corman because I have seen some analysis that suggests that there is a considerable difference in these two bills in that the 1966 act was based primarily on the commerce clause, whereas in this bill we include every single dwelling with the exception of the exemptions provided for the homeowner if he does not retain the services of a broker, or if he does not use discriminatory advertising. Other than those exemptions, every homeowner is covered as I understand the provision of title VIII.

Isn't this based entirely, as far as constitutional bases are concerned, on the 14th amendment?

Mr. CELLER. I would say on the 14th amendment and the commerce clause both.

Mr. JOHN B. ANDERSON. How do you bring the commerce clause in?

Mr. CELLER. Because this title is like the public accommodations provision in the 1964 act which was held constitutional in the Federal courts.

Mr. JOHN B. ANDERSON. I am talking about the individual homeowner. You are not relying on the commerce clause to validate the law with respect to him, are you?

Mr. CELLER. Yes. The case can be established on the basis of the commerce clause and on the basis of the 14th amendment.

Mr. JOHN B. ANDERSON. That is what I don't quite understand. If anybody can offer me any enlightenment, I would be delighted to have it.

The CHAIRMAN. I think it would be better if we followed the orderly procedure. Mr. Corman is going to speak later. However, I am not going to object if the gentleman would like to pursue this at this time. Go ahead. The Chair rules that you may.

Mr. CELLER. I would be glad to read a statement made by the then Attorney General, Mr. Katzenbach, before the House Judiciary Committee on the Civil Rights Act of 1966 in reference to housing. Among other things, he said:

These are the human terms in which the Constitution speaks and cries out for quick response. There are also economic terms. The Congress is charged with the protection and promotion of interstate commerce in all its forms. I can not doubt that housing is embraced under this Congressional power. The construction of homes and apartment buildings, the production and sale of building materials, home furnishings, the financing of construction and the purchases, all take place through the channels of interstate commerce. When the total problem is considered, it requires no great problem for the imagination to conclude that interstate commerce is significantly affected by the sale even of single dwellings multiplied many times in such community. It was almost 30 years ago that the Supreme Court faced and received this problem in *Wickard vs. Filburn*. In that case the Court held that the Agricultural Adjustment Act validly applied to a farmer who sowed only 25 acres of wheat, almost all of which was consumed on his own farm. The housing industry last year represented \$27.6 billion of new private investment. This expenditure on residential housing is considerably more than the \$22.9 billion which all American agriculture contributed to the gross national product.

There were other arguments.

Mr. JOHN B. ANDERSON. This is an Attorney General's opinion that you are reading from?

Mr. CELLER. Yes, sir.

Mr. JOHN B. ANDERSON. I am trying to see what the difference is between the 1966 act and the present act as far as constitutionality is concerned, because I was informed by one analysis that I read that you are now relying largely on section 5 of the 14th amendment to reach so-called private acts of discrimination, and that you are not relying on the commerce clause as you did in 1966 when you talked largely in terms of people engaged in selling.

I can understand how you apply the commerce clause to subdividers and developers. But restricting my question to the individual homeowner, what is the precise basis there? The fellow who just has one house to sell, not the developer, builder or realtor, but the fellow with one house to sell who doesn't sell more than one?

Mr. CELLER. Single family owner is exempt in this act, particularly if he resides in it.

Mr. JOHN B. ANDERSON. Not if he hires a realtor?

Mr. CELLER. No. Not if he hires a realtor.

Mr. JOHN B. ANDERSON. So let's take that one case, then. What is the basis? Is it the fifth section of the 14th amendment?

Mr. CELLER. In the building of that one house, as in the building of dozens of houses or in the building of a development, the lumber comes from out of State, very likely; the steel comes from out of State; the furnishings come probably from out of State. Labor may come from out of the State. The architect may live in a different State. The builder may live in a different State, so that commerce is affected. So that I would say that there is no doubt that commerce having been affected in this way, commerce clause having been touched, I think we have an eminent right to legislate.

Mr. JOHN B. ANDERSON. I think the gentleman has answered my question, then. You do rely on the commerce clause. Would the gentleman from California agree?

Mr. CORMAN. Yes, sir, I believe the theory of the bill is that when the individual homeowner turns to the public market, to the realtor, to effect the sale, then the commerce clause would be included.

Mr. JOHN B. ANDERSON. What if he doesn't hire a broker? Then you don't think he would be in interstate commerce?

Mr. CORMAN. I think he would be. He is exempt under this bill. I think the commerce clause is sufficiently broad in housing as it has been interpreted in other areas because of the fluidity of the population, plus the fluidity of the material used in the building. It is somewhat the same question we have on the public accommodations provision in 1964. Yet I think the Congress did rely on both the provisions.

Mr. JOHN B. ANDERSON. Under that, since the decision of *United States v. Guest*, the dictum in that case was being relied upon at least by some people to say that Congress could reach private acts of discrimination under the fifth section of the 14th amendment?

Mr. CORMAN. Yes.

Mr. JOHN B. ANDERSON. You are not saying that now. You are saying you think the commerce clause alone without any reliance on the 14th amendment or that decision is enough to provide a constitutional basis?

Mr. CORMAN. Yes, the proponents of this bill and the Congress that enacts it would not want to limit itself to one of those two constitutional provisions but would rather want to rely on both of them.

Mr. CELLER. The Attorney General in that same opinion mentioned the *Guest* case. He cited other decisions and gave considerable argument which I would be happy to read if you wish.

Mr. JOHN B. ANDERSON. No, that is not necessary.

There is one other section in the bill that provides a little trouble, section 812(b) would permit the Court to appoint an attorney for the plaintiff who brings one of these actions.

As I understand, under section 810, if a complainant files an action under that section, which is the section that requires him to first go to the Secretary of Housing and Urban Development and attempt to enlist that office in conciliation procedure, that if he uses such procedure then the court could not appoint an attorney for the plaintiff if subsequently an action is filed. But if he by-passes the Secretary of Housing and Urban Development, doesn't use the conciliation procedure, but goes immediately into court, then the court could under proper circumstances appoint an attorney.

Am I correct in my understanding of those two sections?

Mr. CELLER. Yes, that is correct.

Mr. JOHN B. ANDERSON. To me this is an awfully funny way to write the law. It seems to me that we ought to provide some positive incentive to the plaintiff in every instances to exhaust the conciliation procedure before filing the suit, but you have got it just backward. You said if you don't use the Office of the Secretary, if you insist on going in and filing the suit without first attempting conciliation, you may be able to get the court to appoint and pay for an attorney. Otherwise, you can't.

Mr. CELLER. Those very provisions were in the 1966 act.

Mr. JOHN B. ANDERSON. I didn't realize that they were in both acts. I can't understand why you would have that provision. It seems to me that the fellow who really ought to have the attorney appointed is the one who used the conciliation procedure and failed; he is going to be penalized in favor of the guy who just rushes into court and files a suit. What sense does that make?

Mr. CELLER. I take it that when he goes originally, and therefore the conciliation process fails and he brings suit, I think he is more or less confined to the issues that would develop in those conciliation proceedings if he takes that route.

Mr. JOHN B. ANDERSON. I don't find anything in the law that says that; the section requires that in his suit he would have to limit himself to the issues developed in a conciliation proceeding.

Mr. CELLER. I think that is what would happen from a practical angle.

Mr. JOHN B. ANDERSON. I still don't see that it answers the question that this fellow ought to be penalized and not have a court pay and appoint his attorney.

Mr. CELLER. If he feels he is penalized he can go directly at any time. He doesn't have to wait at all. He can go to court himself and bring the action.

Mr. JOHN B. ANDERSON. That is my point. Why should he get an attorney in that case, whereas he can't get one under the other section if he employs the conciliation procedure first?

Mr. CELLER. I take it that if he takes the route to HUD, in the event that the conciliation proceedings fail and he starts a suit, HUD undoubtedly will give him every aid, comfort and help.

Mr. JOHN B. ANDERSON. They can't pay for an attorney for him, though. There is no authority in the law that I know of for the Housing and Urban Affairs provisions to go out and furnish people lawyers.

Mr. CELLER. Not furnish lawyers, but advice.

Mr. JOHN B. ANDERSON. He is going to need a lawyer when he gets into court and files his action.

Mr. CELLER. He would have the advantage of undoubtedly the information and all of the matters that HUD may have developed and he could use that. Probably that that would be sufficient and he might not need to have a special counsel assigned to him.

Mr. JOHN B. ANDERSON. He is going to have to hire a lawyer, I would think, when he gets into court. I am trying to see if there isn't a chance that somebody is going to admit that the bill that the Senate wrote, some of it largely on the floor, isn't as wisely drafted as it should be. I don't know why we have to defend everything that they do over there.

Mr. CELLER. We passed a similar provision in 1966, though.

Mr. JOHN B. ANDERSON. Maybe we made a mistake back in 1966.

Mr. CELLER. I hope not.

Mr. CORMAN. If I may respond, with the chairman's permission, on that point. I suppose the philosophy of the bill is that when he goes directly to court there has been nothing up to that point to alter the situation, whereas if he takes the route of conciliation that some substantial effort has been made to resolve the dispute, and in fairness to both him and the defendant, if he is unwilling to accept the efforts of the conciliators that then he ought to proceed from that point forward. That is his own expense.

Further, I would imagine that the court would give careful consideration in attempting to decide whether or not to appoint a lawyer.

As to the efficacy of conciliation and whether he ought not to have gone to conciliation first, because it is entirely discretionary with the judge and I would think the judge would look carefully at the efficacy of conciliation of the particular area involved before appointing an attorney.

Mr. JOHN B. ANDERSON. Would it be too much to suggest that maybe it would be good and correct to write into the law that conciliation must be employed as a procedure before you come in and expect the court to appoint an attorney? You are relying on judicial discretion. I would like to hope that the judge would do exactly what you suggested but I wonder why we couldn't have written a section to provide specifically that this is the procedure.

Mr. CORMAN. Conciliation of course takes a reasonable amount of time. It may well be that practices in some parts of the country would be such that conciliation would——

Mr. JOHN B. ANDERSON. Doesn't the statute limit the time? I thought it was 30 days.

Mr. CORMAN. Yes, sir; there is some limitation. It seems to me in view of the complexity of the problem plus the rather divergent attitudes across the country that the three methods of relief are justified.

I would expect that although in most instances that the conciliation would be the realistic relief and the one most useful for both the respective purchaser and the seller. I think the other two methods of relief are completely justified in view of the experience with civil rights legislation generally, and with the complexity of this particular piece.

Mr. JOHN B. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Delaney, do you have any questions?

Mr. DELANEY. I have one or two.

In the interest of timesaving, Mr. Celler, the original of this bill came before this committee about a year ago when this committee granted a rule. It passed the House, I believe it was in August, and then went to the Senate. Sometime in November, I believe, they started taking it up and it was passed about the middle of last month, or during the month of March.

What is before us is:

That, immediately upon the adoption of this resolution, the bill (H.R. 2516) to prescribe penalties for certain acts of violence or intimidation, and for other purposes, with the Senate amendment thereto, be, and the same hereby is, taken from the Speaker's table, on the end that the Senate amendment be, and the same is hereby, agreed to.

There are certain differences between the House version of the bill and the bill as passed by the Senate. I think it is fair to say that

probably the most controversial is probably the housing section. Would you favor an amendment to this that would give the Members of the House an opportunity to vote on open housing?

MR. CELLER. You are asking whether I favored one course or another.

MR. DELANEY. Would you favor an amendment to this?

MR. CELLER. No, I would not.

MR. DELANEY. Then you were opposed to the amendment of the House having a vote on open housing?

MR. CELLER. I am. The House did approve an open housing provision in the 1966 bill.

MR. DELANEY. That was some years ago.

MR. CELLER. I should think the House's position is the same probably.

MR. DELANEY. Of course this is a different Congress so far, the election and so forth since that time. I think the gentleman has answered my question. He wouldn't favor it. So we have got to take the version of the Senate without giving the Members of the House an opportunity on the open housing if this resolution is passed.

MR. CELLER. You have an opportunity to vote this previous question up or down.

MR. DELANEY. That is all, Mr. Celler.

MR. QUILLEN. Mr. Chairman, the gentleman from New York knows I have every respect for his judgment and his integrity. But let me ask you pointblank who is calling the shots on this bill.

MR. CELLER. I think the Nation.

MR. QUILLEN. I am beginning to wonder. Rev. Martin Luther King came down into my State, caused a riot and murder, and then ran out. Martin Luther King is critical of the President of the United States. Your Senator from New York has the affection of Martin Luther King. Isn't it true that Bobby Kennedy is calling the shots on this bill?

MR. CELLER. As far as I am concerned, he has never mentioned a word to me. He has never conferred with me on this bill.

MR. QUILLEN. I am not asking you if he has or has not; but isn't it true that he is?

MR. CELLER. I don't think so.

MR. QUILLEN. When the President the other night said he wasn't going to run again, Martin Luther King made some derogatory remarks. The Senator from New York said he was going to be a candidate. The chairman of this committee asked from the beginning why the rush. Now if we analyze it we will find that Bobby Kennedy is behind this and the march on Washington. I cannot be intimidated by the threats of Martin Luther King or his ilk, and I am not going to be.

Why does this distinguished gentleman from New York bow down and say "I want this passed before the march"? That was the statement you made in the beginning of this hearing.

MR. CELLER. I don't bow down.

MR. QUILLEN. You said it would have a bearing on it.

MR. CELLER. I certainly don't bow down either to Martin Luther King or to Senator Kennedy. In truth and in fact, I came out in support of President Johnson in most emphatic terms. I made my choice,

so that as far as Senator Kennedy is concerned, I know of no pressure that he is bringing to bear upon anyone, and certainly not on me, with reference to this bill. What his views are is a matter of his conscience, certainly not mine. I have not anything to do with any of his judgments in this regard, if it is in the sense of trying to do any arm-twisting or pressurizing me or any other Member of this House to vote for this bundle, as it were. I want no part or parcel of that.

Mr. QUILLEN. Then I would say to the gentleman from New York that I am connecting Kennedy and Martin Luther King in opposition to the President of the United States, and I know your stand, Mr. Celler, in regard to the President. I am not trying to get that into it. But in reality Bobby Kennedy is calling the shots on this and rushing it through for Martin Luther King and his threatened march on Washington, and you are capitulating to this wish. Would the gentleman from New York hold it over until after this march and let the people of the United States say to Martin Luther King, "We don't bow to you"?

Mr. CELLER. I don't think we should give a tuppence whether there is going to be a march or not.

Mr. QUILLEN. In the beginning, Mr. Celler, in answer to some questions you said it had a bearing on scheduling.

Mr. CELLER. You read my original statement?

Mr. QUILLEN. It is in the record here where you answered a question.

Mr. CELLER. It undoubtedly has its effect, but that doesn't mean that what Martin Luther King says or does not say, or what Martin Luther King does or does not do, should guide us in our judgment as to the merits or demerits of this bill. One has nothing to do with the other, as far as our vote is concerned.

Mr. QUILLEN. It is not going to guide me, Mr. Celler, and I don't think that this Congress should be intimidated and rushed by such an element. My charge today is that Bobby Kennedy is calling the shots on this through Martin Luther King and if the Congress of the United States is going to capitulate, I am not. I think it is time that we here today rededicate ourselves to the principles of freedom, to the principles of right and wrong and open this bill up; it needs honest debate; it needs to go to your committee. I am not going to bow down to a threatened march on Washington, bow down to him and say, "Here, you can have this bill." He said the other night that he was going to come anyway with threats to the Congress.

The two together, Kennedy and King, both critical of the President of the United States. I don't think it is right for this committee to bow down to anyone, or for this Congress even more so than this committee. And to hear you say that you want it passed—I don't care one iota, Mr. Celler. To me it is not good legislative procedure for this country. Why are you afraid to open it up?

Mr. CELLER. It is not a question of fear.

Mr. QUILLEN. Will you then open it up?

Mr. CELLER. No.

Mr. QUILLEN. Then who is calling the shots, Mr. Celler?

Mr. CELLER. I think reason and expediency and the need for developing open housing in this Nation, and the requirement that we give some consideration to the recommendations of the President's Advisory Committee on Civil Disorders should cause us to pause long

before we refuse to grant this rule, or cause you to pause long enough before you refuse to grant this rule.

Mr. QUILLEN. I am from an area that did not secede from the Union. President Andrew Johnson was from my area, a man who had the courage to stand up to what he believed was unconstitutional government, vilified, spit upon, hounded, impeached by the House of Representatives, tried and acquitted by one vote. But while all of that was going on Andrew Johnson said, "I must do what I think is right for my country."

Mr. CELLER. I respect you for your opinion.

Mr. QUILLEN. I respect you. I said that in the beginning, but I want to know who is calling the shots.

Mr. CELLER. I don't know of anybody calling shots.

Mr. QUILLEN. Martin Luther King through Bobby Kennedy, and Bobby Kennedy through Martin Luther King, and the history will be written to that effect. If that is what we want, go full speed ahead, but I am not going to bow down to that ilk.

Do you still want to go ahead with it? You still want to schedule it as soon as you can?

Mr. CELLER. I certainly do, sir.

Mr. QUILLEN. You are not going to agree to anything to open it up for full discussion?

Mr. CELLER. I have indicated that before, and I reiterate it now with all the power within me, we must remember that most of the provisions of this bill have already been passed upon by this House and have been approved by this House. The only exception, as I see it, is the firearms provision. The whole business was, in essence, approved by this House already.

Mr. QUILLEN. Is open housing the same?

Mr. CELLER. Practically the same; not so much different.

Mr. QUILLEN. Were the real estate dealers exempted in the House bill?

Mr. CELLER. There were some differences. I say they are not too great a degree of difference.

Mr. QUILLEN. Speaking of the report on civil disorders, Martin Luther King did not agree with that. I say, if I have raised a point here, I hope it will be loud and clear.

Mr. Chairman, rather than pursue the matter any further, I would like to defer at this point until later.

The CHAIRMAN. Mr. O'Neill, do you have any questions?

Mr. O'NEILL. Mr. Celler, isn't the truth of the matter that legislation always follows the same line? For example, half a dozen or a dozen States passed a minimum wage law and in 1938 the Congress passed the minimum wage law.

Isn't it true, as far as this bill is concerned, there are some 12 or 15 States—

Mr. CELLER. Twenty-two States.

Mr. O'NEILL. So we are only trying to get the remainder of the States to include in their laws exactly what 22 other States already have? Is this any more stringent than, say, the State of New York bill?

Mr. CELLER. The New York bill is probably a little broader than this, a little more stringent, not much.

Mr. O'NEILL. Then I would say the Massachusetts bill is more stringent than this bill, too?

Mr. CELLER. The Massachusetts is broader.

Mr. O'NEILL. That is all.

The CHAIRMAN. Mr. Latta?

Mr. LATTA. I have one or two.

It bothers me, Mr. Celler, about open housing as it affects the individual homeowner, and what it is doing to the rights of property as we have known it historically. You undoubtedly in your younger life have drawn many, many deeds in fee simple where you grant all the rights of title and interest to a certain piece of property.

Now, you are taking away, under open housing or forced housing, as some people call it, the right to grant, to bargain or sell that property because you are denying the seller under this legislation, the right to dispose of his property as he sees fit.

It seems that in all discussion on open housing this point is held in the background. It is trampled upon and not really discussed. I would like to hear a discussion on this point from you.

Has this ever been discussed in your Committee on the Judiciary?

Mr. CELLER. We did when we had the open housing provision in the 1966 act.

Mr. LATTA. How do you pass by it?

Mr. CELLER. We didn't pass by it. We debated on that question whether or not the right of property was interfered with, but you must remember that in many instances the State, municipality, interferes with the right of property, in connection with zoning laws. That, for example, in effect says you can't sell your property whether it is single family or duplex house, or a series of houses. If you violate certain laws concerning building construction, you are limited to the height of the building—

Mr. LATTA. Let me back up. I really didn't mean to say that you can't sell it. You are merely saying that through the police powers they have put on these restrictions on zoning.

Mr. CELLER. That is a limitation on the right of property.

Mr. LATTA. But owners still have a right to dispose of that property?

Mr. CELLER. That is right. But we have certain health laws which limits very severely the right of property. We have various types of welfare laws.

Mr. LATTA. I understand all that, Mr. Celler. Let me direct your attention to the question I raised. On the disposing of property, the granting of a fee simple title to property. I think this bill makes a massive attack on the fee simple interest that a person has on a piece of property and his right to transfer or sell it. This is what I would like to direct your attention to. We are well aware of zoning regulations and so forth.

I am talking about the right to dispose of your title of the property.

Mr. CELLER. There are many, many State laws which have been upheld by the courts which preclude the sale of property, whether it is single-family houses or other types of dwellings, if the seller has discriminated on the basis of race, color, or creed.

For example, Colorado has an open housing statute. In the case, of *Colorado Anti-Discrimination Commission v. Case* (380 P. 2d 34 (1962)), involving the sale of a privately financed house by a realtor-

owner. Also, *New York State Anti-Discrimination Commission v. Pelham Hall Apartments* (10 Misc. 2d. 334, 170 N.Y.S. 2d. 750 (Sup. Ct. 1958)), upheld the validity of that State's antidiscrimination laws that applied to publicly assisted housing. *Martin v. New York* (22 Misc. 2d 389, 201 N.Y.S. 2d 111 (Sup. Ct. 1960)), upheld the validity of the New York City fair housing ordinance as not being a deprivation of landlord's right to exercise discretion in the approving or disapproving applicant for tenancy.

In New Jersey, for example, *David v. Vest Company*, (45 N.J. 301 (1965)), and so forth. There is a whole series of cases. I will be glad to put them in the record covering about a dozen States where the fair housing laws have been held valid exercises of the police power, having the purpose of health, safety, and welfare of the people, and do not deprive an owner of any property rights.

Mr. LATTI. Let me say I am familiar with that. We have State laws. That is not the question. The question is, I want the reasoning behind your position, not the fact that they have passed State laws. We know that. We have a State law in Ohio. I want to know the reasoning behind this. Certainly there ought to be some kind of legalistic reasoning coming out of the Judiciary Committee on this point.

Mr. CELLER. The reasoning would be in that last sentence I read, which comes out of a case decided in Ohio. I will be glad to read the whole case, if you wish. Porter against the City of Oberlin. Upheld the Oberlin, Ohio, city ordinance against challenge by taxpayer alleging unconstitutionality of the ordinance. It was upheld as having "a substantial and reasonable relationship to the health, comfort, safety, and welfare of the city." That is the reasoning of the court.

Mr. LATTI. What does that have to do with this? The health and safety of the community is protected by taking away your right to dispose of your property to whom you see fit? How can you possibly reason that this has got something to do with the health or safety of the community just because they have had riots some place? Is that what you are talking about? You take away a citizen's rights because of riots?

Mr. CELLER. One of the underlying purposes of fair housing is to open the gates of the ghetto. That certainly involves the safety, the health, and the welfare of the community wherein lies the ghetto. You have in addition the question of people's protection. Why shouldn't a purchaser have the same right as any other purchaser? If he is denied that right he hasn't got the equal protection of the law.

Mr. LATTI. Let me just point out something. I can follow your reasoning, legalistically. I voted for civil rights bills. When it comes down to this matter of personal property, you know, I am trying to bring myself to some kind of a reasoned conclusion, maybe to be on your side, on the side of open housing—but you haven't convinced me yet. I can, if you are going to get a license to operate a place of business, it is going to come from the State. I can follow that. I can follow it where you are putting in Federal funds for public housing. But here a John Doe who has had his piece of property for 50 years, not one lead nickel of Federal, State, township, or any other public funds having gone into it. This house contrary to what you mentioned about being built through the medium of interstate commerce, this

house has been built for 50 years. How do you come along and say to this individual that his right to dispose of this property should be controlled?

I can't quite bring myself to see your reasoning. The mere fact that you say that you have got zoning statutes and that you have passed laws in Ohio and other States just does not ring a bell with me. I have got to know the reasoning behind it.

Mr. CELLER. We exempt that particular house that you mentioned.

Mr. LATTA. Beg pardon?

Mr. CELLER. You are speaking of the single family occupied home.

Mr. LATTA. He can't sell it on his own. This man is 80 years old. He can't go out and sell, he has got to use a broker or an agent.

Mr. CELLER. That is what is treated in the bill as a public sale, the public is involved there.

Mr. LATTA. How about an attorney who is settling an estate? Is he going to be covered by this?

Mr. CELLER. No, the attorney is not covered. In other words, there is a provision in the act that lawyers, solicitors, and others who aid in the clearing of title, for example. No attorneys are involved. That is expressly in the act. Of course, if he uses the attorney as an agent, that is another matter.

Mr. LATTA. Certainly he is an agent.

Mr. CELLER. On page 26 you find the exception, line 22, "Nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies, and other such professional assistance as necessary to protect or transfer the title."

Mr. LATTA. You make a point here about the realtor. Mr. Chairman, certainly we have seen that the course of civil rights legislation is the same as other legislation. As soon as you open up the door one year, the next year you are in for something else and later something else again. So next year you can't use that argument, if this legislation passes this year. Isn't that a fair statement? What is going to be left for the next year or the following year when they talk about civil rights and open housing?

Mr. CELLER. Maybe at that time we won't need restrictions.

Mr. LATTA. Maybe an atomic bomb will fall on us and we won't need anything. That is really not the answer to the question. Let me ask you this question: Certainly if you use this elusive reasoning—I haven't yet been able to put my finger on it from a legalistic standpoint—as to real property, why can't you cover personal property in the next civil rights bill? This pencil belongs to me. Why can't you put regulations in there and say that you can't offer it for sale, you can't give it away, you can't divide it, you can't bequeath it, unless you have some kind of open sale provision.

The same type of reasoning that you are using for real property certainly should apply to personal property, shouldn't it, Mr. Celler?

Mr. CELLER. I don't know what this will lead to. We will cross that bridge when we come to it.

Mr. LATTA. The people in the country are interested in knowing where it might lead to. If you can sit here and attempt to reason with this committee and the Nation and say this is the reason that applies to real property and you can't say what it might do as far as personal is concerned, and you don't know what the future might hold, I think

we ought to know to delve into the future and find out whether or not you can apply this same kind of flimsy, shadowy reasoning to personal property.

I might have an automobile. I want to sell it. You come along and say I can't advertise that car. You have got to sell it to anybody who comes along.

Mr. CELLER. The legislation of that would be most impractical. It couldn't be enforced.

Mr. LATTI. I have seen the course of this thing, as you have, too. The question comes right back, what are you going to ask for next year? After you get all of it, let us take all the right of property, the right to dispose of your property is done away with; the next course of action is to go after personal property. Then we are going to say, well, is this really a free country? When you own something in this great country of ours, you can do with it as you like. It is not so. That is the thing down the road that this scares the pants off of me.

Mr. CELLER. I don't think it should scare the pants off you or the panties off a lady in any way. We have laws which restrict the transfer of personal property. We have the Robinson-Patman Act. We have the fair trade laws which deal in personal property and there are very definite restrictions on the sale and disposal of those personal properties. It is a question of what you charge for it.

Mr. LATTI. You are talking about business. You are talking about something else. I am talking about the individual who isn't in business, who doesn't have a license. I can see these things. I am talking about the individual John Doe out there in Albany, N.Y., who wants to go back to Ohio who has something he wants to sell. He is the fellow I am concerned about who has no license, who is not in the business.

Mr. CELLER. On the question we went back to bare principles. The Robinson-Patman Act, the fair trades laws certainly restrict the uses of personal property. We have the old common law rule against perpetuities which certainly restrict the use and the transfer of real property.

Mr. LATTI. You know the reason for the rule of perpetuities and so do I. You are admitting this, however: that, by the mere discussion of this and by raising the things that you have just raised, perhaps this is not so far removed from the civil rights movement, that they want to bring forth these restrictions on personal property as well as real property. I think I have established my point, Mr. Chairman.

Mr. CELLER. We have no desire to do that. I don't think Congress would ever because it would be utterly impossible to enforce anything of that sort.

The CHAIRMAN. Do you have questions, Mr. Sisk?

Mr. SISK. Mr. Chairman, let me say I only have one inquiry. It may have been covered already.

I am sorry I was not able to bear your earlier testimony, Mr. Celler, but I have a question in connection with, or along the line of, that of my friend from Ohio. I find a number of people are asking me questions about what is meant here with reference to publication and posting or mailing, and so forth, with reference to the sale of a personal home. In other words, if an individual wishes to sell his own home, having to do with the sale by an owner of his home, where he is not using an agent. The question was asked of me recently if, for example,

in order to sell a house that a man could advertise. I have been told by the Department of Justice that he could advertise, that is, that he could advertise his home and not be in violation. Is that right?

Mr. CELLER. Yes.

Mr. SISK. In the course of that advertising, of course, he would probably describe the home, say whatever he had in mind, and then say "For sale by owner." Is that right?

Mr. CELLER. I think that would be perfectly proper.

Mr. SISK. I think this will come to be recognized probably as a tagline meaning, that when you go through the ads advertising homes, that a sale by an owner means that in all probability this could have, let's say, certain implications. Let's say that he proposed to discriminate. At some point in legal parlance would that become, let's say, discriminatory advertising?

Mr. CELLER. I don't think so.

Mr. SISK. Do you follow me?

Mr. CELLER. Yes.

Mr. SISK. This is a question that an attorney raised with me.

Mr. CELLER. In other words, you feel if he uses words of that sort, it might be tantamount to something in the nature of discrimination.

Mr. SISK. It would come to be considered by the public as meaning that that advertisement meant that this individual was selling a home in an area where generally, let's say, it was an all-white neighborhood.

Mr. CELLER. This prohibition is against discrimination because of race, color, creed, or national origin, and the burden of proof is upon the man against whom the discrimination is leveled. He has to prove it. The owner doesn't have to prove anything. The man who makes his complaint who has been discriminated against has the burden. I am quite sure that you couldn't say that that practice that you speak of was tantamount of discrimination.

Mr. SISK. As I said, I can see growing up the practice of advertising homes "for sale by owner," or some other terminology. That then becomes the meaning above and beyond what is meant, then in legal terminology, in a situation where that would come to be considered discriminatory by its very use.

Mr. CELLER. I don't think you have any fear on that score because this statute provides for sanctions and will be precisely and exactly construed. There cannot be any inferences as broad as the one you have indicated.

Mr. SISK. That is all, Mr. Chairman.

The CHAIRMAN. Mr. Young, do you have any questions?

Mr. YOUNG. Mr. Chairman, I have questions.

I want to ask Chairman Celler further about a matter that we have been discussing with regard to the authority under this law for an individual owner to dispose of his property as he sees fit.

As I understand it, there is no restriction on the individual selling the property?

Mr. CELLER. That is right.

Mr. YOUNG. I have gotten a great deal of mail—I am sure that other Members of Congress have—completely aside from the question of civil rights, from real estate people who feel grievously offended that they have been selected by definition as the whipping boy in this thing.

In other words, the question they put to me, and I am sure to others, is that all the real estate people are asking is that they have a right to represent the owner to do whatever the owner can do with that property. This is a hard question to answer.

Mr. CELLER. Those real estate people are subjected to these statutes, restricted statutes, that are in 22 States and in almost half the States of the Union. I would say in States with the prepondering number of people, most of the populous States have fair housing statutes.

Mr. YOUNG. That is interesting, Mr. Chairman, but I personally didn't have to face the issues in those States. I don't know what they did nor why they did it. I know if and when this bill gets to the floor that each of us individually is going to have to face that issue. It seems to me that whoever wrote this could have gone further and put it in the category—

Mr. CELLER. I think I said in the earlier part of my statement the effect of the single-housing exemption in H.R. 2516, the exception of single-family housing preserves to the individual homeowner a significant amount of discretion to discriminate if he so chooses in selling or renting his personal dwelling. However, by restricting the exemption to individuals and by prohibiting discrimination by brokers in all cases except the Mrs. Murphy situation, several real advantages are obtained. First, I believe the proposed statute will be more easily enforced since the lines between the exempt housing and covered housing are made more clear. In our 1966 bill discriminations might or might not be authorized by a seller so that even in the case of sales by real estate agents, a potential buyer or lessee could not know whether or not a refusal to deal with him was covered by the statute.

Secondly, H.R. 2516 "authorizes" no discrimination. All it does is to exempt certain types of dwellings. In this respect it resembles State fair-housing statutes far more than did the 1966 bill. This bill prohibits discrimination by real estate dealers in 1970 in virtually all cases because it is believed that when an individual uses the real estate industry to effect a sale the transaction has assumed a public character.

Third, the 1966 bill might have had the effect of encouraging real estate dealers to continue discriminating and to seek "authorization" to discriminate for their clients. Although the 1966 bill did prohibit soliciting such written authorizations there can be no doubt that—covert communication, for example, raised eyebrow, or other indirect means would be encouraged by such a provision.

In other words, the 1966 bill created a loophole.

Mr. YOUNG. That is very interesting, Mr. Chairman, but I still come back to this. I am talking about a hypothetical real estate man who is not interested one way or the other in civil rights. All he wants to do is to be able to do whatever the owner is entitled to do under this act. It seems to me, Mr. Chairman, that the Senate, or whoever wrote this bill, could have come closer to the public character of the real estate man if they had permitted the owner to use a single real estate man and had made the breaking point at multiple listings, or something along that line.

Mr. CELLER. May I just say that upon enactment, and in the year 1969, they can use a real estate man to discriminate. Only afterwards they cannot.

Mr. YOUNG. But the principle is there that after 1969 they can't use the real estate man.

I want to make this prediction, Mr. Chairman, that there are a lot of people, Members of the House, who have voted for civil rights bills. I have always tried to vote for or against on the basis of content of the bill. I predict that this bill is in trouble and it appears to me that it will be in trouble on the floor. It is going to be, not because of the civil rights but because of the discriminatory character of this legislation against the real estate people in restricting them and saying that they cannot do for the individual what the individual can do for himself.

That is all I have to say, Mr. Chairman.

The CHAIRMAN. Mr. Pepper, do you have any questions?

Mr. PEPPER. Mr. Chairman, I noticed that item about the attorney fee. Who pays that attorney's fee? Who puts up the money? The court may appoint an attorney. But I didn't notice that it provided where the money would come from to pay the attorney.

Mr. CELLER. Whatever court funds would be available for that purpose and State courts as well. The courts would pay that. The individual won't pay it. The court would pay the attorney's fee. It is like when you were a youngster, you were assigned cases, you were paid through the court.

Mr. PEPPER. Thank you.

That is all, Mr. Chairman.

Excuse me, one other thing. You being the scholar that you are, didn't Abraham Lincoln say something about the matter of property relative importance of property and people, human rights as related to property rights?

Mr. CELLER. I think he did. I couldn't put my finger on the quotation.

Mr. PEPPER. My distinguished friend from Ohio talked about the laws. He was talking about the law and its relationship to the control of property. I can not sell my whisky that I may own to anybody I want to. I can't sell my marihuana, if I had any, to anybody I want to. I can't sell my property to a man to build a saloon on it or to operate a saloon on it in any given area where saloons are forbidden, and the like. So generally property is held subject to the public interest. It is always a matter to agree where the public interest enters into the matter. To me this is a very, very difficult question.

I know the prevailing public sentiment is probably against this type of legislation. There are many, many people who are very conscientious and patriotic Americans and who feel very resentful about this type of legislation. Since Senator Kennedy's name was mentioned by my good friend from Tennessee, I saw somewhere the other day that the Senator thought the emphasis should be put on rebuilding the good housing in what you might call the ghettos, where the minority groups are already congregating.

For the life of me I don't see how we are ever going to break up the ghettos and eliminate some of the bad conditions unless we can disperse the people who live there so that the areas will not be ghetto areas. If somebody knows another way to do it, I don't know. I don't like very much the fact that we offend the sensibility of so many people. I know it will affect property values in areas. That is a practical fact.

On the other hand, how are you ever going to break up the ghettos and distribute the people around unless you give them the same access to where they went to live as you and I live?

This poses a very difficult problem for all of us.

Mr. QUILLEN. If the gentleman will yield.

I understand this week's Life magazine makes a suggestion to the Senator from New York that he find a good barber. Maybe it would be very helpful if he started cleaning up a little bit himself.

Mr. PEPPER. He may get a trimming of a sort before this matter is over. I just don't know.

Mr. JOHN B. ANDERSON. Would the gentleman from Florida yield?

I think you have made a fair statement, Mr. Pepper, about this problem of dispersing people in the ghettos. My problem is this, on this exemption: It also goes in a way of the question Mr. Young raised. Aren't we by adopting this compromise of what is supposed to be, and I think is a great moral principle by adopting this separate compromise where we say to Harry Homeowner, you go out and discriminate to your heart's content just as long as you don't go and hire a member of the real estate fraternity?

I think we are building subterfuge into that law and making trouble for us. We are going to have to come back in the Congress and eliminate that kind of dichotomy, the fellow who discriminates without any legal sanction of his own. This is what I have not been able to get through my head. I went so far the other day as to draw a resolution that would accept the Senate bill with the single amendment, strike out that exemption altogether that permits an individual homeowner to discriminate as long as he doesn't hire a broker. How would you feel about that?

Mr. PEPPER. Would the gentleman let me answer that, since he commented on my remarks, and then you will get the authoritative answer from the able chairman.

There is a technical justification for the position that the able chairman of the Judiciary Committee takes in the sense that you sort of are using people that are devoted by their protection to the service of the public interest. But, actually, I agree with you that lawyers know the Latin that means what you may do by yourself, you may do by another.

When I tell an agent what my limitations are that he can handle my property in such a way, and give him a specific instruction, it ought to be the same as if I do it myself. We all know as a practical matter here now that the rules being what they are, the other body, if we make one little amendment and send it back over there, no matter how easily they could accept it, we all know as a practical matter that it opens the things up to another filibuster.

They had this bill over there for months. That is another matter, relative weighing of interest. So we take a little something that we don't really like, as against the possibility that we may lose everything if it goes back over there for another filibuster.

Mr. JOHN B. ANDERSON. They voted cloture twice in 2 weeks over there.

Mr. PEPPER. If I could vote for amendment to change this about the realtor, I would do it. If I have to do that and send it back over there

and they have another 4 or 5 months of filibuster, I don't know whether it would be any kind of a bill or not.

Mr. CELLER. May I respond?

One can discriminate, and one cannot discriminate. But it wasn't particularly my choice that that was put in there. That leeway was given to the single houseowner so as to get more support for the bill. That is the reason why that was put in there. There was a tremendous howl that we were hurting the owner of a single house particularly when it was his own residence. That was put in in order to gather more votes in support for the bill. That is the only reason we put that in.

Mr. PEPPER. Then you have got peculiar people like myself that get stuck on that point.

Mr. CELLER. You know if you have a balloon and you press in one direction you enlarge in another direction, and vice versa. What are you going to do about it?

The CHAIRMAN. Mr. Pepper, is that all?

Mr. WILLIAM ANDERSON. No questions.

The CHAIRMAN. Mr. Celler, you have been able to present your side of the argument in a very convincing manner, at least convincing to those who feel as you do about this matter.

There are some grave questions which have been raised here that I think deserve consideration. Finally, you have been before us now 2 days, which illustrates the controversy here about this bill. Although you have been rather firm in your declarations that this House, a legal body of the Congress, should accept all of these changes that have been made in this legislation, as well as the addition of other matters which in the judgment of this humble member are not germane. You still insist that it should go to the floor under a resolution which would agree to the Senate amendments, cut off entirely the opportunity of any Member of this House to offer an amendment and send it on to become the law of the land, even though Representatives of the people who are elected every 2 years have no opportunity to consider it.

Is that your position, still?

Mr. CELLER. That does not state exactly the real facts. We have, as I indicated before, passed upon practically all of these provisions not in *haec verba* but in substance the provisions were the same as before we passed on them. We approve them.

There has been interminable debate on these matters. There has been inordinate delay. I think in the interest of getting action, we should either accept the Senate amendments or vote them down; that is, this resolution that we are asking for would permit me at the certain stage when the debate is over—depending upon how long you will debate—to ask for the previous question.

Those who feel that we should get this thing over and done with, that we have labored long on these matters and that there is a fair degree of understanding among all the members could vote for the previous question. Those who are contrary-minded vote it down. That is all.

The CHAIRMAN. My reply to that is that I don't think the gentleman has stated the question accurately either.

Mr. LATTI. Before you call the next witness, I would like to get the record straight on one thing here. The very able gentleman, chairman

of the committee, has indicated a couple of times during his testimony that the House has voted on this matter. That is a true statement. But I think we ought to elaborate on that. It wasn't the 90th Congress that voted on it. We had how many new additions in this Congress?

Mr. CELLER. I accept that change. I should have said the Congress speaking generally.

Mr. LATTI. We have got a lot of new Members in this Congress who weren't here when this matter was before the House in 1966. Certainly we ought to give these new Members an opportunity to express themselves on these amendments.

Mr. QUILLEN. One observation, Mr. Celler. You said when you push a balloon on one side it pushes out on the other. My question in the beginning, Who is pushing the balloon; is it Martin Luther King or Bobby Kennedy? Johnson is no longer in the race, Mr. Celler.

The CHAIRMAN. Mr. McCulloch? Is Mr. McCulloch here?

He was to be our next witness. I understood that is what he preferred. He may have a different idea now.

Thank you, Mr. Celler.

Mr. CELLER. I thank you and the members of the committee.

The CHAIRMAN. Gentlemen of the committee, we have, as I said a moment ago, practically 2 days and all of the hearings have been on hearing Mr. Celler. Now we have 12 more witnesses. This committee is in a straitjacket. It must decide on this matter on next Tuesday.

We have some very important business on the floor this afternoon. Among other things, we are going to engage in another legislative act of futility by making Members of this Congress honest. I don't know how that is going to be done. But, nevertheless, we are going to engage in it. I imagine we will all vote for it. But the question is that we are going to have to get down and stay in session here the rest of this week, apparently, to come to some conclusion on this matter.

Mr. Whitener, how long a statement would you have?

Mr. YOUNG. If I might ask, Mr. Chairman, are we going to have any time for hearing on other legislation?

The CHAIRMAN. We are going to have to hear some legislation that has already been set down for tomorrow. I omitted to mention that.

Mr. Whitener, how long will your statement be?

Mr. WHITENER. Mr. Chairman, I have no prepared statement.

The CHAIRMAN. Suppose we, in the interest of time, and in the absence of Mr. McCulloch, proceed with you as long as we can before we have to go to the floor.

The Chair appreciates your appearance.

STATEMENT OF HON. BASIL L. WHITENER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. WHITENER. Mr. Chairman and members of the Committee on Rules, I have not heard all of the statement of my distinguished chairman, Mr. Celler. I was privileged to hear the first day of his testimony.

I note that in his statement on the first day of hearings he said that the Senate bill contained "many provisions not in the House bill." Of course, in this day and time, it is hard to pick out the understatement of the year. But that statement by Mr. Celler would be in the contest.

I have here a study made by the Library of Congress, Legislative Reference Service, which is a comparison of the open housing provisions of H.R. 14765, as passed by the House in August 1966, and H.R. 2516 as passed in the Senate on March 11, 1968.

A casual reference to that study will indicate that there is much in the so-called open housing provisions of H.R. 2516 which did not appear in the House bill which we had before us in the 89th Congress.

In view of Mr. Young's question of a few moments ago to Chairman Celler, I think it might be significant to point out that in the bill passed in the 89th Congress which, as Mr. Latta has so well said, was a Congress composed of different personnel to a major degree, the House very specifically wrote into that bill, section 403(e). That section provided:

Nothing herein is to be construed to prohibit a real estate broker, agent, or salesman, or employee or agent of any real estate broker, agent, or salesman, from complying with the expressed written instructions of any person not in the business or not otherwise subject to the prohibitions of subsection (b) or (e) with respect to the sale, rental, or lease of a dwelling owned by such person so long as the broker, agent, or salesman does not encourage, solicit, or induce the restricted instructions.

So it seems to me that the House, if we want to talk about what another Congress did, that the House in the 89th Congress met head on the problem which the gentleman from Texas—Mr. Young—and the gentleman from Florida—Mr. Pepper—have pointed out here.

I certainly concur with the gentleman from Florida that one of the elementary principles that we lawyers have always accepted was that a man could do through an agent what he could do himself.

I think that the attack in this bill upon an almost immutable principle of the law of agency is not justified and that we in this body should not embark upon a program of establishing bad law and bad precedents just because someone thinks that the other body might act differently.

Our responsibility to legislate wisely on any measure cannot be escaped by apprehension as to what the other body will do.

The first title of this bill, entitled "Interference With Federally Protected Activities," is a total misnomer. If we look at the language of the title, it provides that whoever, whether or not acting under color of law, does certain things is in violation of title I of this legislation.

Some of those things are voting or qualifying to vote, qualifying or campaigning as a candidate for elective office or qualifying or acting as a poll watcher or any legally authorized election official in any primary, special or general election.

So, really, what this is saying in this subsection is that the Federal Government is now going to preempt the body of statutory law in every State in this Union which relates to this subject matter.

It further inveighs against persons interfering with, whether under color of law or not, serving or attending upon any court in connection with possible service as a grand or petit juror in any court of the United States.

I take it that that means any local court as well as any Federal Court. I certainly don't recommend that we preempt the right of the States to control interference with serving as grand or petit jurors attending any court in connection with such service.

It goes further. It says whether a person is acting under color of law or not, that he has committed a Federal offense if he interferes with anyone participating in, or enjoying any benefits, service, privilege, program or facility, or activity, provided or administered by any State or any subdivision thereof.

You may say that this is not too important, but then you go on down to page 4 of the bill and it says that whether under color of law or not, if you interfere with anyone serving or attending upon any court of any State in connection with the possible service as a grand or petit juror, you are guilty of a Federal offense. Significantly, title I does not carry with it the usual nonpreemption provision which we refer to around here as the H.R. 3 provision.

So, it seems to me that in that title we may be getting ourselves into the doctrine of the *Steve Nelson* case and having our Federal courts say that no longer can a State protect a proposed juror or a potential voter, an election official, or these other categories that I have mentioned.

I could talk at great length but you gentlemen have heard our contentions on this for many, many years now. It seems to me that the constitutional law that we learned in the 1930's in law school, that the 14th amendment applies to State action and not the action of a citizen who might be walking down the street doing something without sanction or color of authority from the State, is still good law. It should be adhered to.

That being true, as I understand it, title I is alleged to be based upon the authority granted to the Congress by the 14th amendment. I don't see how the 14th amendment could be stretched to include the case of some criminal who might be charged with a crime in a local court, grabbing a prospective juror in the collar as he starts up the courthouse steps. I can't see that such conduct by an individual brings the 14th amendment into play in such a way as to give the Federal Government jurisdiction to punish the offender.

There has been a great deal written by the courts on that. I won't bore the committee with extensive references, except one comment made by Mr. Justice Douglas in *Garner v. Louisiana*, 368 U.S. 175. I use Justice Douglas for reasons which I am sure everyone on the committee understands. He said:

It is, of course, state action that is prohibited by the Fourteenth Amendment, not the actions of individuals. So far as the Fourteenth Amendment is concerned, individuals can be as prejudiced and intolerant as they like. They may as a consequence subject themselves to suit for assault, battery, or trespass, but those actions have no footing in the Federal Constitution. The line of forbidden conduct marked by the equal protection clause of the Fourteenth Amendment is crossed only when a State makes prejudice or intolerance its policy and enforces it as held in the Civil Rights Cases, 109 U.S. 3.

Mr. Justice Bradley speaking for the Court, said: "Civil rights such as are guaranteed by the Constitution against State aggression, cannot be impaired by the wrongful act of individuals, unsupported by State authority in the shape of laws, customs, or judicial or executive proceedings."

That is what Justice Douglas said about the application of the 14th amendment to situations such as title I would relate to in part. Those particular parts being the ones that I have referred to.

Mr. LATA. The gentleman makes a very important point, as far as the 14th amendment is concerned, in pointing out that it applies

to State action rather than to individual citizen action. I am wondering whether or not the Supreme Court had ruled on this question of open occupancy as far as the individual homeowner is concerned.

Mr. WHITENER. My reference is to title I, not to open housing.

I might give you another outstanding authority which I see here before me. In *Peterson v. The City of Greenville*, 373 U.S. 244, a case decided in 1963, the Chief Justice had this to say, and I quote:

I cannot be disputed that under our decisions 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.

That is what Chief Justice Warren says about it. In the light of that, I am wondering how we as Members of the legislative body can contend that for some strange reasons that we should create exclusively a Federal offense if one interferes with, because of color, religion, or national origin, persons serving or attending upon any court in any State in connection with the possible service as a grand or petit juror. Nor do I see how we find authority to say that in a water district election in North Carolina or any other State, that if some individual walks in from the bar, the corner bar, and interfered with the right or the privilege of one to vote, or qualifying to vote, or if he walked in where I was making a campaign speech and said that I was a honky, that I ought to sit down, and that he is going to take some violent action. I just don't believe that the 14th amendment gives the Federal Congress the right to vest exclusive jurisdiction in the Federal courts of that type of offense.

I won't comment about the Indian titles because, frankly, I am not too familiar with those titles. My distinguished senior Senator from North Carolina is the father of these sections of the bill. While I am not disinterested in the Cherokee Indians, Lumbees, Croatans or the others that are in North Carolina, I have not had occasion to know about the problems which Senator Ervin seeks to eliminate by the Indian legislation.

I do understand that some of the members of the House committee which has jurisdiction over the Indian affairs, have expressed some dissatisfaction with this legislation dealing with the Indian, and feel that it is a matter that should be studied by that committee.

The fair housing titles, you have heard a great deal about. I will not try to pose as an expert on them. But basically, I think it is offensive to all Americans to have anyone interfere with their right to own and dispose of property. I think this is offensive equally to persons of different color, religion, and national origin. I don't believe any of us would argue that there is any difference in our feeling about property we own.

In my own community where we have not been as concerned, apparently, about where people live as they have been in some other areas, we recently had an occurrence which pointed out to me members of other races are proud of their property and feel that they should be protected in it. In the past few days the local housing authority has proposed to build some low-cost housing near a subdivision which was developed immediately after World War II by some of our Negro friends. They built very attractive and expensive homes. They are now contending very strongly against the action of the hous-

ing authority to bring low-cost housing into their area where they have large investments.

I don't condemn or approve their attitude, but I merely point it out as a specific bit of evidence that people do like to protect their own property.

In an area of the city in which I formerly lived my neighbors were members of the Negro race. A colored church was within a hundred yards of my house. For as long as I can remember, people of both races have lived in this neighborhood in harmony. It was not a slum neighborhood. They live there now without friction.

But I dare say that if you went to my former neighbor who was a member of another race up the street and told him that under a Federal law he had to sell his house to a member of my race, and he had a son who was willing to pay him just a little bit less or a good friend of his own race, that he would loudly proclaim that any such law as that was a foolish law.

This I think is something that we must remember. There are people other than white southerners and Negroes in this country. There are members of religious groups. I know when I went to Brooklyn in World War II where the Navy had sent me, I was amazed that the social life, residential decisions, and everything else in the community where I went revolved around a Methodist Church.

When I wanted an apartment, living with fine fellow Methodists in their home, and we were looking for an apartment, they helped us find an apartment which they knew another Methodist was about to vacate. It was purely on the basis of my religious affiliation and in that time of great housing shortage we found the place to live. But under this bill, as I understand it, I cannot say if I put my house on the market, I cannot say to you, "Well, I will tell you one thing, I am not going to sell it to a Baptist, I am going to sell it to a Methodist because I think I owe it to my church to look after the Methodists."

If I were an Italian living in an Italian neighborhood, I couldn't say, and I couldn't have my broker go out and say, "We don't want any Polish people here, we want to sell this place only to Italians."

So this bill is a little more than just black and white. I certainly would not be understood here as saying that I favor prejudicial conduct on the basis of race, color, or national origin. But I do think that we are entitled as individuals to discriminate, as the Supreme Court has said we are entitled to, as individuals we are entitled to have our prejudices whether they be commended by the community or not.

If you start applying Federal law to every individual that you know that had prejudice about many, many different matters, the Federal judiciary would be totally inadequate in number to undertake to handle the cases.

The antiriot provision we are all familiar with. I would like to point out a rather interesting thing. I don't know that Mr. Celler has dealt with this, but you have a title X in this bill called Civil Obedience. You have another title, the title on riots. You will note that in the chapter 102 on page 9, it is in title I, I guess, it was rather interesting to me to note that in that title, that section on riots, the other body was very anxious to write into that title at the bottom of page 10, line 25, subsection (e), "nothing contained in this section shall be construed to make it unlawful for any person to travel in or use any facility inter-

state or foreign commerce for the purpose of pursuing the legitimate objectives of organized labor through orderly and lawful means."

A riot as the bill defines it is a public disturbance involving, one, an act or acts of violence by one or more persons, part of an assemblage or three or more persons, which act or acts shall constitute a clear and present danger of or shall result in damage or injury to the property of any other person or to the person of any other individual, or, two, a threat or threats of the commission of an act or acts of violence by one or more persons, part of assemblage of three or more persons having individually or collectively the ability of immediate execution of such threat, or threats, where the performance of the threatened act or acts of violence would constitute a clear and present danger or would result in damage or injury to the property of any other person or to the person of any other individual.

This protective provision for labor organizations in connection with labor disputes is written into this provision with reference to riots.

Now when you get to title X, and you tell with civil disorders which are disturbances of a lesser degree than a riot, you don't find this provision. While I don't advocate civil disorders or any conduct that disturbs the public peace in connection with labor disputes or otherwise, I do think that it is rather significant that title X of the bill would be so restrictive upon people and might subject them to criminal penalty in some rather remarkable ways.

What is a civil disorder, according to this bill? It means any public disturbance involving acts of violence by assemblages of three or more persons which causes an immediate danger of and results in the damage or injury to the property or person of any other individual. Three men walk out of a bar. One of them calls the other a name, a fighting name, and a fist fight ensues and personal injury results to one of these persons.

As I view this definition, that is a civil disorder. Suppose that in connection with a labor dispute this same event occurred among three of the people who were involved in it or maybe two who were involved in the labor dispute and one who was not involved but was friendly to management.

If someone could show under title X that either one of these men the week before had gone downtown to one of these karate training outfits and told them that a labor dispute was coming up next week and he didn't know what may happen but he wasn't very well able to take care of himself, and he needed a little bit of karate training. I say that under this provision the man who ran that training school, who knew that this individual was about to become embroiled in a labor dispute and taught him—and line 14 of page 46—"a technique capable of causing injury or death to persons" could be imprisoned. The same thing could happen if someone had taught another person to use a firearm and had reason to believe that this man was about to go into a labor dispute, because certainly the language on lines 18 through 21 where they use the words delay or obstruct, delay or adversely affect commerce, or the movement of any article or commodity in the commerce, or the conduct of the performance of any federally proteted function could very well be extended to include knowledge that a strike was going to impede the flow of commerce.

It is not only true of labor disputes but if some individual instructed another in the use of firearms or other devices, or a technique capable of causing death or injury if he knew this individual was going to attend some meeting on a public highway. It might and very well could affect some of the very people that the first title of the bill seems to want to protect. It might do the opposite to them. That is, your civil rights workers who are going to an assembled group of more than three people.

I think that this legislation should not be swallowed by the Congress without adequate consideration.

I don't believe that sending it to conference will necessarily accomplish the type of study that I would like to see. I would rather see the bill referred back to the Judiciary Committee where we could look over the legislation and come up with some changes.

We have heard a lot about the history of civil rights legislation. In the 11 years that I have served on the Judiciary Committee, we have had numerous civil rights bills sent to us by the Justice Department. I can tell you, gentlemen, that I don't remember one of them that was not almost completely rewritten when the Judiciary Committee studied it.

I remember many of these bills that have come out of the subcommittee, Subcommittee No. 5 of the Judiciary Committee, I believe it is. In the full committee we have virtually rewritten them. I believe the gentleman from California, Mr. Smith, served with us on the Judiciary Committee during the considerations of some of those.

The committee refined and improved the legislation. I don't believe that it is good legislative practice for us to approve the language of this so-called compromise that somebody wrote one night in the Senate Office Building without subjecting it to the type of study that it should have.

I remember one occasion, Mr. Pepper, when our subcommittee charged with the primary responsibility in civil rights legislation came out with a proposal, reported it to the full committee and then attorney general, the present Senator from New York, Mr. Kennedy, contacted the chairman and asked to be heard in executive session on that legislation.

He said in effect to the committee that he just couldn't conceive of us going as far as the subcommittee had gone in that legislation, that it would create a police state, and he urged that we amend it. We did.

So while there may be some hue and cry for legislation in this field—there will be more, I am sure, at a later date—I don't believe we should place on the statute books without adequate study legislation which all of us will regret in the future.

Thank you.

The CHAIRMAN. Thank you, Mr. Whitener, for your very splendid analysis of this bill as a member of the Judiciary Committee, and a man who enjoys the respect and confidence of his colleagues.

Mr. Whitener, there are so many questions that arise here that I would really like to go into. But time will not permit. I am going to mention just one thing.

When the bill was before the House in the previous Congress, the House on the floor deleted the provision applying to organized labor

by a vote on the floor. The Senate has changed that and just reversed the situation. It has taken the labor union out.

Mr. WHITENER. Out of title I?

The CHAIRMAN. Yes.

Mr. WHITENER. They didn't take them out of title X.

The CHAIRMAN. They took them out of title I.

Mr. WHITENER. Only where they are lawfully engaged. I really don't find any argument with that. I don't see why you need to write that into the law just as I don't see the necessity of one of the other provisions here, and I didn't refer to it in my testimony. They said no law enforcement officer—shall be indicted for doing his duty in a lawful way. How silly can you get?

The CHAIRMAN. Very well, but there was a change made there and, yet, your committee, and the House under the proposal here of sending this thing to the floor and concurring in the Senate amendment, would obviate any opportunity for even an amendment on that to reinstate the House version.

The gentleman made, also, some reference to the burden that would be put upon the Federal courts. There has been a tendency all through the years, and especially for the past several years, to preempt the State laws and concentrate power in the Federal Government and in the Federal courts.

If this is enacted into law as it is now written, you are going to have to have many additional Federal judges, more Federal police power to enforce this, and at a time when we are talking about retrenching, economizing, trying to stabilize the dollar.

But many, many questions could be raised. We are going to have to go to the floor.

The question here before this committee is whether we are going to adopt the version advocated by the advocates of this bill, take it as it is with no opportunity for amendment in a very limited discussion. Of course the discussion amounts to nothing if you can't amend it.

Mr. WHITENER. Certainly 1 hour discussing would not be adequate.

The CHAIRMAN. Even if you had 6 hours, your discussion would be really worthless if you had no opportunity to amend it. So it gets down to the question of what this committee is going to do. That is really the problem that is before us, and the question to be resolved.

Are we going to take it that way, or are we going to send it back to your committee, which you say you prefer and which I think would be the proper procedure?

Mr. WHITENER. Mr. Chairman, if this bill went back to the Judiciary Committee, I can assure you that there are members of that committee who have a record of strong support of civil rights legislation who would be offering key amendments to this language and who would be trying to improve it.

The CHAIRMAN. Since there seems to be no willingness on the part of the advocates of this bill to send it back to the committee, then the least we could do would be to send it to conference, would it not?

Mr. WHITENER. Yes, second to going back.

The CHAIRMAN. For orderly procedure.

Mr. WHITENER. I think in fairness—I am not trying to argue both sides of the case—but in fairness to those gentlemen, and I reiterate

what I said before, that if this bill went back to the Judiciary Committee I would not be at all surprised to see our distinguished chairman of the Judiciary Committee and Mr. McCulloch and others offering key amendments to the bill.

Their contention on the procedural step—and I think we ought to be fair with them—is their apprehension that if the bill goes back through the Senate through the conference route, that there will never be anything except a roadblock created. I don't agree with them on that in the light, as Mr. Anderson pointed out, of the fact that the Senate voted cloture I believe twice in 2 weeks.

I think that bit of history gives more support for the position that we take. This bill should go to the Judiciary Committee for further study and in any event it should go to the conference committee.

The CHAIRMAN. Very well.

Are there any questions?

Thank you very much, Mr. Whitener.

Mr. WHITENER. I appreciate the opportunity to come here. I am sorry I had not prepared a formal statement.

The CHAIRMAN. The committee will recess until 10:30 in the morning. (Whereupon, at 12:45 p.m. the committee was recessed subject to call.)

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