Title I: This title purports to punish those who interfere with federally protected activities. I am pleased that the Senate coupled the riot provisions with the sections dealing with other activities. It has been the consistent position of most members of the Judiciary Committee that these two subjects are merely differing aspects of the same problem and should be treated together.

Section 245, dealing with federally protected activities, has been drafted to reach two types of activities; namely, individuals who prevent other individuals from participating in or enjoying certain governmentally sponsored activities—that is voting or jury service—and individuals who prevent other individuals from participating in or enjoying certain nongovernmental activities—that is, obtaining private employment or eating at a private lunch counter.

I concede that the Federal Government has the power—indeed the duty—to prevent discrimination on the basis of color in the conduct of a Federal activity, and under section 5 of the 14th amendment, a State activity as well. I further concede that as a necessary adjunct to this power, it may also regulate individuals who may deny to others the full use or enjoyment of a Federal or State activity.

The issue squarely put by sections 245(b)(2) (C) and (F)—incidentally, gentlemen, (C) is the employment section and (F) is the public accommodation section—however, is whether that power extends to private individuals who, for racially motivated reasons, deny to others the full use of a private facility.

Title VIII: Title VIII deals with open housing. By its language, it covers not only the sale or rental of Government owned or financed housing, but strictly private housing as well.

Again, I concede that this Congress has the power to act to prevent discrimination on the basis of color in any housing owned or financed by the Federal Government, and under section 5 of the 14th amendment, in any State owned or financed housing. But again, this issue is squarely put as to whether or not under this title, the Federal Government may act to prohibit private discrimination in the sale or rental of private housing.

Possible sources of Federal power: Only two sources of power to reach individual acts of private discrimination have been suggested, and I am aware of no others.

(1) As a regulation of interstate commerce under article I, section 8, of the Constitution.

It is now settled that Congress may prohibit private acts of discrimination which tend to burden interstate commerce. This is the thrust of *Katzenbach* v. *McClung*, 379 U.S. 294, and *Heart of Atlanta Motel* v. *United States*, 379 U.S. 241, both upholding the constitutionality of the public accommodations sections of the 1964 Civil Rights Act (78 Stat. 241).

It is also settled that the burden upon commerce may be minimal—*Mabee* v. *White Plains Publishing Co.*, 327 U.S. 178—or not readily apparent at all; for example, *Wickard* v. *Filburn*, 317 U.S. 117.

But it must be taken as equally well settled that for article I, section 8, to serve as the basis of power, interstate commerce must, in fact, be involved to some degree.

Under the 1964 Civil Rights Act, Congress was careful to limit the language of the public accommodations section to only those establishments whose "operations affect commerce"—section 201(b).