The problem will never be solved, but only avoided, until we reach, by legislation and its effective enforcement into the area that matters most.

If we step back from this position, we merely lend our stamp of approval to the view that the Negro is a second-class citizen.

The 1966 House bill would have established a Fair Housing Board with NLRB powers to enforce the open-housing law. Many thought that it was unwise to administer such strong medicine when a milder form would serve as well.

I find much in that position. The Dirksen substitute takes the milder approach. It would authorize the Secretary of HUD—on request—to conciliate differences. But only a court could enforce the law.

There are some technical problems in the provision, but the overriding decisions are matters of policy. And I am of the opinion that Titles VIII and IX are good policy.

I likewise believe that the open housing provisions are constitutional.

I have listened to much of the testimony during the past week, and thus feel compelled to address myself particularly to the issue of the constitutionality of the open housing legislation. Several perceptive questions in that regard have been asked. Although it would take days to give a complete answer, I would like to add these few comments to the record on that subject.

The question has been asked whether Title VIII can be justified by reference to the Commerce Clause. I believe that it can. I think that the analysis of the question, which many members share, misses the thrust of the Supreme Court decisions interpreting the Commerce Clause.

For example, it is asked whether the single family home owner when he is selling his house, whether or not he uses a broker, is engaging in interstate commerce. Whether or not he is engaging in interstate commerce is not particularly pertinent to the question of whether Congress may regulate that activity.

For the Supreme Court has long ago decided that where Congress acts to cure a national problem which only in part affects interstate commerce, it may also regulate intrastate commerce in order to cure the entire problem.

In *Wickard* v. *Filburn*, the Supreme Court unanimously decided that a small Ohio farmer who grew wheat on his own farm for probable consumption on the farm was engaging in interstate commerce because, in wheat sales, interstate and intrastate wheat serve the very same function and compete equally in the market. The Court pointed out that had the farmer not grown that wheat for his own consumption, he would have had to buy the wheat on the open market and would have thus been forced to engage in interstate commerce.

If we look to the open housing situation in our land, it is evident that some homes are freshly made by developers for sale and rental to the public. I think that we would have to admit that the regulation of these transactions would be supported by the Commerce Clause.

But that, of course, is only half of the problem. If the national program of integration is to be effective, such a half-way measure won't do. Thus, under Supreme Court cases, Congress has the power to regulate the intrastate sale of homes by the home owner because it directly impinges upon the whole problem.

In *Mabee* v. *White Plains Publishing Company*, the Supreme Court unanimously decided that a newspaper, whose interstate circulation is only one-half of one percent, is, in fact, engaging in interstate commerce and may be subject to interstate regulation under the Commerce Clause.

By analogy then, it would seem Congress has the power to regulate both interstate and intrastate open housing as part of one interstate problem.

In *N.L.R.B.* v. *Jones and Laughlin*, the Court observed that, in determining the constitutionality of legislation enacted under the Commerce Clause, one does not look to a particular isolated case, but rather to the general area embraced by the legislation. Thus, the question is not whether Harry Home-owner's sale affects interstate commerce, but whether the potential sale of fifty-five million homes would, if closed to Negroes, have a substantial effect on interstate commerce.

One should note that the President's Commission on Civil Disorders found that the practice of excluding Negroes from some of the housing in the nation serves, under the law of supply and demand, to increase the price of the dwellings for Negroes.

Since *Wickard* v. *Filburn* indicates that Congress may take the necessary intrastate means to establish the national price for a product, it would seem to follow that Congress may likewise take the necessary intrastate means to insure equal prices for Negroes and whites seeking to purchase housing.