TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

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

APRIL 4, 5, 8 AND 9, 1968

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TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

THURSDAY, APRIL 4, 1968

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

The committee met at 10:50 a.m. in room H–313, Capitol Building, the Honorable William M. Colmer, chairman of the committee, presiding.

The CHAIRMAN. The committee will come to order. We will resume the hearings on House Resolution 1100.

The committee will be pleased to hear from you this morning, Governor Tuck.

STATEMENT OF HON. WILLIAM M. TUCK, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE FIFTH DISTRICT OF THE STATE OF VIRGINIA

Mr. TUCK. Mr. Chairman and members of the committee, Mr. Aspinall, I understand, is the first on the list today to be heard, and I have requested him to allow me just enough time to file a statement which I prepared, a rather long statement, and I would have enjoyed expatiating and expostulating and so forth, here before this committee, maybe telling a few stories, but I won't take up your time and I have to go on.

I do think in my paper here I have pointed out ways to stop the riots and I think also to restore the peace and tranquillity that existed between the races in this country prior to the enactment of the very first so-called civil rights bill.

I ask your consent to file this statement as a part of the record.

The CHAIRMAN. Governor Tuck, without objection, of course, your request will be granted. However, the Chair would like to observe that since you were going to tell us, or are telling us in that paper how to stop these abominable riots, and bring about peace and tranquillity again between the races, we would much prefer to have heard from you. But under the circumstances——

Mr. TUCK. I think most of them know how to do it, they just won't do it.

Thank you, sir.

The CHAIRMAN. Thank you, Governor.

REMARKS OF CONGRESSMAN WILLIAM M. TUCK, DEMOCRAT, OF VIRGINIA, BEFORE THE HOUSE RULES COMMITTEE, APRIL 4, 1968

Mr. Chairman, I am grateful to you for allowing me to appear in opposition to H.R. 2516.

On many occasions in the last 11 years I have spoken out in the hope of blocking legislation of this type. That which the Congress already has adopted has done the country tremendous damage. I cannot acquiesce in the reasoning that we should add evil to the already mischievous legislation now on the statute books and thus stir into a maelstrom the seething cauldron of social unrest that already has reached serious proportions and threatens to get worse.

I made the prediction in 1957 that the adoption of the initial so-called Civil Rights bill would be marked by countless future years of irritation and acrimony. I pointed out that, instead of relieving the tensions, it would exacerbate whatever tensions and prejudices were already in existence.

The proponents of the measure contended that the legislation was needed because it would bring peace and tranquility. Where is that peace?

Certainly not in the riots which have rocked our cities during recent years and are forecast to be even worse during the summer of 1968. The situation has become infinitely worse and has reached desperate stages. I think longingly and nostalgically of those years of peace, years free of strife, when we had no civil rights legislation.

I cannot see that the legislation of this nature which has successfully passed through the Congress and which I have constantly opposed has done us one iota of good. On the contrary, in my opinion it has done us grave harm by bringing on boundless trouble, misunderstanding, bitterness and hatred where cordiality formerly existed. And now we are considering a proposal designed to deter and punish interference by force or threat of force with activities protected by Federal law.

This bill has been in the Senate since last year. It was almost completely rewritten, making it a more punitive bill that was approved in the House where it was first considered. New provisions have been added, some not at all germane to the title of the bill, some so drastic and ill-conceived that they constitute the measure's worst features. Despite this, our leadership, with encouragement from the White House, is suggesting that we accept them en toto without further study.

I do not think we need this bill, and I am convinced we will be making a serious mistake to accept even in part the changes which the Senate has made.

My main reason for disapproving of this horrendous measure is my desire to preserve our time-honored American freedom, a goal that has been a guiding light with me throughout my long years in public life. This bill strikes a serious blow at our liberty. Its proponents say that it is aimed at eliminating discrimination, and yet couched therein are flagrant provisions that abet and condone discrimination. Moreover, they would do grave violence to individual rights, the bedrock upon which this nation was built and for which our forefathers struggled for generations to establish and preserve.

It has always been my understanding that the Constitution and the laws of this nation have as their purpose the protection of the right of its citizens to equal justice. I cite this assumption as typical of America and of her form of government. The bill we now have before us is clearly unconstitutional and out of harmony with our American way of life. It extends rights and protections to a limited group. If it is to operate for any, Federal justice should be extended to all. I need not point out to you the dangers of legislation which serves only a few, as our earlier Civil Rights bills have sought to serve.

The most objectionable feature of the bill we now have under consideration is involved in Title VIII, the so-called open housing provision. Herein lies the main reason for the controversy which has developed over this legislation. What its open-occupancy clause does in effect is say to every owner of residential property that he cannot sell or rent his residential property to the person to whom he wishes if some other private individual objects and demands that he himself be permitted to buy.

While we are told its purpose is to wipe out discrimination, this bill clearly permits discrimination in certain instances. You will see that it allows the single-family homeowner to discriminate if he owns three or fewer single-family houses, sells no more than one in any two-year period, sells without the service of a broker, and sells without any discriminating advertising. Also exempt are dwellings occupied by no more than four families living independently of one an-

other, if the owner maintains and occupies one of the units involved. Religious institutions and private clubs also are permitted to discriminate in non-commercial operations.

Banks and similar institutions, as well as brokerage services, on the other hand, are forbidden from discriminating.

I have always understood that every man has a right to trade or refuse to trade with anybody on any ground whatsoever. This bill, however, would give one citizen the right to acquire property from another citizen who does not wish to sell it to him. By this process, we would lose a degree of freedom that is deeply rooted in our traditions and in our common law. It would mean that the Federal Government could give one person a certain right even if, in so doing, another person was deprived of a right.

Economic security of private property is the only dependable foundation of personal liberty. Yet this bill would authorize the government to force a homeowner to rent a room or sell his home to a person with whom he does not choose to execute a rental or sales agreement. It seems to me that to require the owner of a home to enter into a contract with one not of his choice is an affront to our traditions of freedom of contract. We have always in the past felt safe in the thought that we need not, without our consent, become involved in a contract with someone else.

The Constitution grants no such powers. The power to enter into a contract willingly is a fundamental right. I know of no justification in forcing a person to enter into a contract with another person for the disposition of private property against his will.

What we would be doing in effect is converting private homes into public utilities. Public utilities must dispense their services without arbitrary discrimination, which is the main difference between public and private business. This bill would impose the obligations of public utilities on the homeowner, which, according to my interpretation of the law, has no constitutional foundation.

The proponents of this bill base its constitutionality on Section 5 of the 14th Amendment, which empowers Congress to enact laws applicable to private discrimination. They also cite the commerce clause as a constitutional basis for forcing homeowners and rental property owners to contract with persons other than those of their choice. It is true that the component parts of a home may at one time have flowed in commerce, but the finished home has stopped its traveling and is a part of the land. To hold that the rental of a room in a home, or the sale of real estate, is part of interstate commerce is fatuous. The only movement of real estate is the movement of the earth, and that was going on long before anybody heard of commerce.

If private homes fall under the commerce clause, nothing falls outside of it, not even household articles.

Under this bill, any offended party may file a complaint with the Secretary of Housing and Urban Development, who is authorized to devise programs of voluntary compliance. If the Secretary is unsuccessful, the offended party may go into a Federal District Court and seek an injunction or other court order. If proof of discrimination is established, the court may award actual and punitive damages, together with court costs and attorney fees. No reputable attorney or title guaranty company would be willing to certify to the title of any real estate conveyed after the passage of this act for fear that both parties would become involved in expensive and endless litigation. Because of the rank invasion of the field of private rights that this bill involves, the only hope that a sensible person has is that it will not be enforceable. It will serve only, as have its predecessors, to create new sores of unrest and dissatisfaction in a society that is already suffering from nervous prostration and is on the verge of anarchy.

Title I of this bill prescribes punishment for interfering with persons in the enjoyment of certain rights, including voting, enrollment in public schools and colleges, participation in Federal programs, and use of common carriers and facilities. This is clearly aimed at protecting the civil rights workers who go from place to place fomenting strife and discord and stirring up racial violence.

It is obvious that this bill serves to protect agitators and incitors, and I will not offend your ears by calling the names of some of these. If legislation along this line is needed, it should be designed to punish these persons for the heinous misdeeds which they have committed upon society and which have resulted in destruction of property and loss of life.

This bill is a threat to the powers of the states and represents an unwarranted incursion upon the states' authority and responsibility for the enforcement of the law and suppression of public mischief. However, I must commend it for the provision that would impose a fine of $10,000 and a prison sentence of five years upon anyone who travels in interstate or foreign commerce for the purpose of inciting a riot. I introduced similar legislation in both the 88th and 89th Congresses, but failed to get it even before a subcommittee. At that time racial disturbances were confined to Danville, Va. As soon as they spread to New York and Chicago and Detroit and other large cities, the House of Representatives was stirred to pass an anti-riot bill, H.R. 421, by an overwhelming majority.

The focus of any legislation looking toward the stoppage of riots is good, so far as its intentions are concerned. However, I will tell you the best way to stop riots:

The law should be enforced in such a manner that no city should have to cope with mobs gathered on the streets in violation of state and local laws and court injunctions. Those who disturb the peace and break our laws, irrespective of their race, creed, or color, must be dealt with firmly and resolutely and in such fashion as to make them and all others like them know that lawlessness will not be tolerated in any locality in the United States of America. Instead of intimidating, harassing and impeding our police officers, the government at all levels, local, state and national, should let these policemen know that they are expected to use whatever force is necessary to complete an arrest and to subjugate a criminal. At the same time, if help from the state or national government is needed, the local authorities should be assured that it will be promptly forthcoming.

This nation was founded on the principle that observance of the law is the eternal safeguard of liberty. Defiance of the law is the surest way to tyranny. Few laws are generally loved by all citizens, but they are to be respected and not resisted. A man may disagree with the law, but no man may disobey it. We must have a government of laws, not of men.

We must forthwith put an end to the practice of minority group leaders who go about telling the dissatisfied element that they should obey the laws they favor and violate the ones they do not like. These men are a danger to our society. We have too great a country to stand idly by and allow lawless and irresponsible men to encourage lawless and riotous conduct.

The rights of law-abiding citizens should take precedence over the rights of criminals. When a crime is committed, the question in law should be whether or not the accused is guilty and what punishment is merited and not a determination as to whether or not the criminal had a lawyer before he confessed. There are no indications that our law-abiding citizens need further protection from the police, while there is every indication that they need considerably more protection from the lawless.

The claim is made that our troubles can be traced to the ghettoes. I can see little relationship, if any, between impoverished circumstances and criminal behavior. There is overwhelming evidence that poverty does not cause crime and that elimination of poverty will not prevent crime. America has had less poverty in 1967 and 1968 than in any previous years in our history. If the argument of these politicians and sociologists is correct, we would have had a genuine revolution all over the country in the depression years of the 1930's and our present prosperous days would be marked with unprecedented peace and tranquillity.

The most effective method the Federal Government could employ to assist in the suppression of crime would be to support the states and localities in their efforts to enforce the law and to desist from the past practices of hindering and impeding them. Law enforcement is a local responsibility. Without exception, I feel that states are capable and desirous of enforcing the law on a local basis. This can be accomplished if they are protected from the vicious outside influences which snub our laws and ignore our community mores, resulting in the chaos which has occurred in some of our larger cities and just a few days ago in Memphis. Our safety and our liberty depend on the excellence of local and state law enforcement. The anti-riot provision of this bill in no way impedes or usurps local law enforcement, but rather would give force and support to it. I hope such legislation will be voted into law.

As for the other provisions of H.R. 2516, I recognize Title X as worthy of consideration, although the matter taken up therein is one that should be handled by the states and not by the Federal Government.

Rather than concentrate on housing, the Congress would be acting much more in the interest of our constituents if it took steps to protect them from the looters

and rioters and rowdies who have run so rampantly through the streets of our cities in recent months. Therein lies the real danger to our country, rather than in whether or not a person disposes of his real estate without discrimination.

Surveys have shown that much of the crime which results from these enemies to the welfare of our nation goes unreported simply because people feel the police could do nothing about it. We need laws to offset this sense of public helplessness and to arm our law enforcement officers so that they can stop the wave of crime. H.R. 2516, with the exception of the provisions I have cited as worthy of consideration, would place us further within the power of the demonstrators and looters and make us even more their victims.

Let us help the people and the police, not the lawbreakers.

What has happened to our American statesmanship that we have created such conditions as now exist in this country? Recently in an article appearing in the April 1 issue of Newsweek magazine there appeared an article sponsored by a large American industry containing the following passage which I commend to you for your consideration:

"We pamper criminals and hamper police, when the police are all that save us from anarchy.

"We spend billions to pay people not to work—when we need the workers, and haven't got the billions.

"Devoted men in uniform spend their lives, underpaid and in jeopardy, fighting to keep our nation safe. Then, for political advantage, we sweep aside their gravest advice.

"Companies which provide millions of the best-paying jobs in the world were built out of profits made by ambitious men who plowed those profits back, to make more. Now Government and unions call such men selfish, and tax and destroy the profits vital to tomorrow's jobs.

"We spend billions to get to the moon, for some ridiculous 'prestige,' instead of using those billions to reduce our debt and make us safe and solvent again.

"For voters at home we placate our enemies abroad and attack our friends (and how we need those friends!).

"We concentrate more and more power in a central government (too often of little people) and so weaken the local governments—which are the very essence of democracy and freedom.

"We spend billions for foreign aid and let prosperous foreigners who owe us billions spend our money to deprive us of our dangerously needed gold.

"Commonsense used to be the outstanding trait of Americans. In heaven's name, what has happened to it?"

The CHAIRMAN. Mr. Aspinall.

STATEMENT OF HON. WAYNE N. ASPINALL, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE FOURTH DISTRICT OF THE STATE OF COLORADO

Mr. ASPINALL. Mr. Chairman, members of the committee, I appreciate the opportunity of being heard here at this time on the matter that is taking the attention of this committee.

I appear in a somewhat different light than I usually appear. I usually appear in support of legislation coming from my committee and seldom ever take a position against other legislation. I suppose it could be said that I appear here this morning more in a state of frustration and bewilderment than perhaps in any other condition.

It has been my——

The CHAIRMAN. Pardon me, again. There is plenty of that in this committee too.

Mr. ASPINALL. It has been my policy, Mr. Chairman and members of the committee, that those who are engaged and responsible for legislation should follow duly established rules and procedures and that such should not be sacrificed for end goals, no matter how desirable and worthy such goals may be. And if the goals and the methods by

which they are to be attained cannot stand up under duly accepted procedures, then perhaps those end goals are not worthy of consummation in the end.

Now, Mr. Speaker and members of the committee, I oppose the House approval of the Senate amendments to H.R. 2516 and request that the matters in controversy in this legislation be sent to a conference committee of the two bodies as our rules provide.

Titles II, III, IV, V, VI, and VII of H.R. 2516 relate to Indian affairs. The language of these six titles is identical to the language of Senate bill 1843, which has passed the other body and is now pending before the House Committee on Interior and Insular Affairs, of which I am chairman. It was sent there by the Speaker of the House upon the advice, I suppose, of the Parliamentarian.

The inclusion of these titles in the civil rights bill would thwart the orderly and legislative process in our body. They were adopted on the floor of the Senate, without hearings by any committee during the 90th Congress. The explanation was that these titles are the same as S. 1843, which had been considered and reported by the Judiciary Committee of the other body and which had passed the other body on December 7, 1967, during the closing days of the last session.

S. 1843, however, had been reported by the committee of the other body without any public hearings in the 90th Congress. Although predecessor bills had been the subject of hearings in the 90th Congress, S. 1843 is a revised bill and it has not been the subject of any hearings either in the 89th Congress or in the 90th Congress. Therefore, it has never received the respect that is due such legislation by a duly constituted committee.

S. 1843 is now pending before the Interior and Insular Affairs Committee. Hearings on the bill are scheduled to be held by the Subcommittee on Indian Affairs under the leadership of the gentleman from Florida, Mr. Haley. We have already had one session of hearings in fact.

It would be a travesty in my opinion on the legislative process to allow the substance of S. 1843 to be included in the civil rights bill and enacted without any consideration by the House committee that has jurisdiction. I don't want to be understood as raising a jurisdictional issue. I am not. And usually I am found to be one of those who is perfectly willing to cooperate in order to get away from jurisdictional issues.

I am raising a question of orderly legislative process. While this is not the time to discuss the merits or defects of titles II through VII of H.R. 2516, I have satisfied myself that they contain provisions that merit careful evaluation before they are developed by the Members of the House.

The Interior and Insular Affairs Committee has received from some Indian tribes expressions of alarm and requests for amendments and we have already had hearings where the Indians of northern New Mexico, the Pueblo Indians, have expressed their doubts on this legislation. Those Indian groups are entitled to be heard without in any way expressing an opinion regarding the merits of the objections or the merits of the legislation itself, because I believe the formulation of opinions at this time would be premature. I can mention a few of them as illustrative of what I mean.

1. One provision of title II provides that in an Indian tribal court a defendant in a criminal case shall be entitled to the assistance of counsel. In an ordinary court of law, this would of course be a highly desirable provision. A tribal court, however, is not an ordinary court. Neither the judges nor the prosecutors are attorneys. They function in a most informal manner.

The fear expressed, which I believe should be evaluated, is that a defense lawyer in that kind of a court would so confuse the lay judges with formalistic demands that the system might collapse. That fear may or may not be well founded. We should find out. And from the hearings already held, I can state this to this committee, the way they arrive at justice in some of these Indian courts is perhaps more effective than the way some of our own courts arrive at justice.

2. Another provision of title II fixes a maximum penalty that can be imposed by a trial court of $500, and 6 months' imprisonment.

The split of jurisdiction between tribal courts, State courts, and Federal courts is technical and confusing. Some tribes have indicated that the maximum penalty provided by title II may be too low in some cases and might result in serious offenders escaping reasonable punishment.

All I think we have to do is look at our own court process today and read what is happening in some of our courts. And here are some people that are just as much American citizens as any of us, more so than perhaps some of us; they have their own procedures, their own trial courts, and they arrive at justice in their own way.

3. Trial by jury, although embedded in our common law, is foreign to the customs of many tribes. And by our treaties we permitted them to follow their own procedures. Before imposing this requirement in tribal courts, the probable results should be considered.

Other provisions of the bill are completely unrelated to civil liberties, and they do not belong in a civil rights bill. They relate entirely to sound Federal administration of the Indian affairs program.

For example, no question of civil rights is involved in the question of whether Indian laws should be collected and published by the Secretary of the Interior; whether a book entitled "Federal Indian Law" should be updated and republished; or whether secretarial regulations affecting Indians should be published separately or in the Federal Register. Those are administrative matters. They have nothing to do whatsoever with civil rights.

One other provision needs to be noted.

Title IV would substantially amend Public Law 280 of the 83d Congress by permitting States to assume partial jurisdiction over an Indian reservation. The Department of Justice has expressed serious doubt about the wisdom of this action.

Another change would require tribal consent before a State may assume any jurisdiction. Public Law 280 originated in the Interior and Insular Affairs Committee, and it is our intention to consider these two changes when Senate 1843 is scheduled for final hearings before our committee.

For these reasons, Mr. Chairman and members of the committee, I hope that this legislation goes to a conference committee, where it rightfully belongs.

I take no position at this time on the question of housing, on the question of gun law, or on the question of the other civil rights provisions in the bill now before this great committee.

Thank you very much.

The CHAIRMAN. Thank you, Mr. Aspinall.

As usual, you have made a forthright, splendid statement of your position on the matters, and I believe that the history of this committee would reflect that it has sided with you in every instance that you have been before this committee in behalf of legislation. I hope that the record won't be broken in this case.

Mr. ASPINALL. Mr. Chairman, I am very appreciative of the indulgence this committee has shown to me and the reaction that they have had to my presentations. I appreciate it very much.

The CHAIRMAN. Mr. Aspinall, nothing can be gained by a great deal of conversation between you and me, but what you are asking here is that this bill follow the normal, ordinary legislative procedure. Normally when there are differences between the bills as passed by the two bodies, they go to conference. And I think it is a very reasonable request.

As a matter of fact, it is difficult for this humble member of this committee to understand why this should be placed in such an unusual and separate category. You request it go to conference, the normal, logical procedure. It can go to conference any day that those in control of the procedural machinery in this House want it to go, as the gentleman from Colorado knows. A motion can be made on the floor and it will go there.

This committee can, and I am sure it would, without any great debate if conditions were a little different, bring out a resolution sending it to conference. As a matter of fact, I think that as chairman of this committee I would assure you, I think I would be perfectly safe, that if the green light were given, if we had the votes, in other words, in this committee, we could report this resolution out today sending this bill to conference where it ought to go.

I want to thank you for your statement.

Any questions, Mr. Anderson?

Mr. JOHN ANDERSON. Do you feel, Mr. Chairman, that there is some possibility that the provisions of these titles dealing with Indian affairs may actually violate existing treaty obligations that the U.S. Government has with various tribes?

Mr. ASPINALL. I certainly do. And I would say also——

Mr. JOHN ANDERSON. That would be with respect to their right to conduct their tribal councils and judicial processes?

Mr. ASPINALL. Tribal judicial procedures, tribal judges, tribal decisions affecting their own people.

Mr. JOHN ANDERSON. You mean we might actually vote for a civil rights bill and then find out we have violated the civil rights of the Indians by doing that?

Mr. ASPINALL. Of course, this is right, Mr. Anderson. But what difference does it make to some people? Some people, all they want to have is civil rights for themselves. Overall, I think we, all of us, want to have enforcible civil rights that the people can live with. But when you find one minority working against other minorities all of the time, without any consideration whatsoever of the rights, the inherent

and inviolate rights of some of the other minorities, then you are in trouble. And that is what is wrong with some of the legislation we pass here in this House.

Mr. JOHN ANDERSON. That is all, Mr. Chairman.

Mr. BOLLING. Could I ask the chairman: Who added this provision in the Senate?

Mr. ASPINALL. It is my understanding that it was added at the request of Senator Ervin.

Mr. BOLLING. Thank you, Mr. Chairman.

I know this, it was Senator Ervin's committee that held some hearings in the 89th Congress and it was his staff that prevailed upon the Senator to introduce the bill.

I think this is a very kind interpretation of the action taken by the Senate on this particular provision.

The CHAIRMAN. Well, in connection with that it wouldn't make a great deal of difference, so far as the merits of the thing was concerned, who offered it. If my colleague, the chairman of the Judiciary Committee in the Senate, offered it, I would be against it because I don't think his committee had any business in this legislation.

Mr. ASPINALL. Mr. Chairman, may I reply?

The CHAIRMAN. Yes.

Mr. ASPINALL. I was finding no fault with Senator Ervin whatsoever. And I don't mean to imply any criticism of his actions. But I do state this: That the other body saw fit to sacrifice, as far as I am concerned, constructive legislative procedure and they were the ones, I suppose, who were in favor of the overall civil rights bill. All you have to do is look at the vote.

The CHAIRMAN. Well, of course, again, when you are talking about minority groups, one opposing the other one, we have got to remember that, notwithstanding the fact that this whole country at one time belonged to the Indians, we took it away from them, which I think and I have said repeatedly is the greatest blotch upon the history of this country——

Mr. ASPINALL. And it may be, Mr. Chairman, if we consider the bill in our committee, that the majority of the Indians of the United States of America will say we want something like this and they will override the wishes of their own minority. But the committee having jurisdiction should have the right to advise the House upon this kind of legislation. This is the position I take.

The CHAIRMAN. Well, of course, you have to bear in mind that there is something besides merits being considered in this legislation. There just don't happen to be as many Indian votes as there are some other groups. So maybe their rights have to be run over.

Mr. Martin, do you have any questions?

Mr. MARTIN. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Quillen?

Mr. QUILLEN. Mr. Chairman, I want to congratulate Mr. Aspinall for having the courage to speak out as he does. I agree with him. A violation of a treaty, a sacred trust that has been signed between this Government and the Indian tribes and nations is something that should be respected.

The passage of past civil rights measures, in my opinion, has spearheaded the riots, murder, rape, burning, and looting which have been most evident during the past 2 years.

Now we have threats from various minority groups headed by Martin Luther King and others that "if the Congress doesn't act on this measure we are going to show you what we can do"; in so many words, that is the threat.

It seems to me that this Congress has capitulated to these threats.

Now with this going on and no effort to stop them, no effort, really, to control them, but instead rolling out the red carpet, what if the Indians went on the warpath again? What would this country do? They would have a right to do it if these treaties were violated.

Would this Nation roll out the red carpet to the Indians, and say, "Go ahead and use your tomahawks, go ahead and use your bow and arrows, your guns; it is all right to murder, rape, pillage, burn, and loot"?

No, this country wouldn't do that to the Indians, the original inhabitants of this country.

As you say, civil rights is not a right to take away a right from one person and give it to another. It is equal opportunity for all. I don't know where we are going in this country because of the haste, the way this bill is being brought to the floor of the House.

I say that we must depend on our committees to bring forth legislation. In this measure neither the Indian provisions nor the gun provision has been considered by the new membership elected last Congress. And I said here to the chairman of the Judiciary Committee "why the haste?" and he said "all we are asking for is 1 hour on the floor of the House, on such important legislation as this."

What are we coming to? Where are we headed? I don't know. But maybe another good Indian uprising would be what we need in this country. If we let the other minority groups go out and murder and burn and loot, I don't know what is going to happen, unless we can pass measures that will give equal civil rights to all groups.

And I remember my first session of the Congress here, when the first civil rights measure was passed after I was elected. In that deliberation I rather felt that the Indians were being ignored. And certainly I don't think any group should be ignored and no legislation should be passed to pinpoint any particular group in this country. We are all Americans. We are all citizens. We all should love this country and we shouldn't do anything to encourage what is going to take place throughout this land and such as took place in my State last week.

And I want to commend you, Mr. Aspinall, for the courage that you have shown in placing this in the right perspective. This legislation concerning the Indians should be considered by the appropriate committee, and I am hoping that this committee will take action to see that the Members of the House of Representatives who have never even considered any of this language in the bill will have a free and open opportunity to send the bill either to conference committee or back to the Judiciary Committee. That is the way the legislative process is and that is the way it should be.

I wanted to make that statement, Mr. Aspinall, and, Mr. Chairman, I appreciate the opportunity to do so.

The CHAIRMAN. Mr. Young, any questions?

Mr. YOUNG. Mr. Chairman, the distinguished chairman, Mr. Aspinall, did not address himself to the housing provisions, but a great

deal has been said heretofore in this committee about housing. And——

Mr. ASPINALL. If the gentleman from Texas wants my position on the housing condition, I would state first there isn't a single citizen in the United States of America that can point his finger of criticism at me as far as civil rights is concerned. I say that without any qualification whatsoever.

Colorado has a stronger and stricter housing provision than this act provides. It only differs in a few particulars, as far as procedures are concerned. But we have had it for years on our books.

So we are not particularly interested as far as housing is concerned. I am interested as far as gun laws are concerned. I think here is another piece of legislation by a few people who don't even understand what guns are and who don't understand how it is that you murder people. You don't have to have a gun to murder people. Character assassination, by the way, is just as much to be deplored as violent assassination of the individual body.

You don't have to have this kind of legislation. Anybody who knows the fundamentals of our Government knows that is not right. You are not going to settle riots by the matter of guns.

As most of you know, my son is the Governor of Samoa. And just recently they had a riot in Samoa. They didn't have to have guns. They were getting at each other with injuries that were just as deplorable as anything you find in riots. All they did was to take some 2 by 4's and drive twentypenny spikes into the 2 by 4's and rush toward the opposing forces. It is silly. But anyhow, I don't intend to come up here and talk about that.

Mr. YOUNG. I thank the gentleman and I want to say I couldn't agree more with what he said about character assassination being as bad as assassination with guns.

In connection with the housing, there has been a great deal said in this committee before and some emphasis has been laid on the fact that 22 States have open-housing legislation.

Since our last meeting, I have been advised that of the 22 States that do have the open housing, only two of those 22 involve the provisions contained here with regard to real estate dealers.

I am very much concerned about what this legislation does to, what violence it does to the law of agency in connection with real estate people.

That is all. Thank you, Mr. Chairman.

The CHAIRMAN. Well, I believe in that connection that you will find the State laws are preempted under this. I think I am correct about that, I am not sure.

Mr. YOUNG. That may be.

The CHAIRMAN. Mr. Latta?

Mr. LATTA. I too want to add my words of commendation that have been given to the chairman in appearing here in support of the Indians, which he always does. And certainly to point out something I didn't know until you spoke this morning, something I hadn't read in the papers, haven't heard on television, that there is a possibility here you might be violating some treaties which the U.S. Government has signed with the Indians by the passage of this legislation.

Mr. ASPINALL. There appeared before our committee last Friday representatives of the Pueblos in northern New Mexico. Those gov-

ernors carried with them two symbolic canes and they are just as important to those tribes of Indians as the seal is to the United States of America. One was given by the representatives of the Spanish conquistadores, another was given by Abraham Lincoln. Abraham Lincoln's name is engraved upon the head of the cane that was given to them.

Those Indians have their rights stemming from relationships with the peoples who subdued them.

Mr. LATTA. This just points up again what could possibly happen by legislating in haste. And certainly if this committee had been stampeded by the press and by the leadership of the House and by this administration into immediately reporting this legislation to the floor without adequate hearings, this matter would never have come out.

It points up the need to have legislation go to the appropriate committees for thorough consideration regardless of the type legislation when it is passed by the Senate, where they have absolutely no rules as to what is germane.

I hope before too long this House will take some action to amend its rules so we won't be accepting any of those nongermane amendments from that Senate.

I also want to point out the gentleman indicated they had S. 1843 before their committee and you said you have had one hearing on it?

Mr. ASPINALL. We have had a hearing. And we programed the hearing, Mr. Latta, just as soon as we possibly could find time. And we are trying to find more time. Of course the way this is proceeding, we may be overridden and there won't be any reason for us to consider it any longer.

Mr. LATTA. As I understand it, that is the same language in this bill we are now considering?

Mr. ASPINALL. That is right. That is the Senate bill?

Mr. LATTA. Have the Indians appeared in opposition at that one hearing?

Mr. ASPINALL. They appeared in opposition last Friday and we will have other Indians appearing before our committee. But here again, Mr. Latta, there is too much news media operation here. Because some of the Indians, not the Indians themselves, but some people who make their living off of representing Indians, and allegedly speaking for the Indians, have written to me saying that they didn't have any notification of the meeting. They couldn't have been heard if there had been notification, as far as that was concerned. But it was well publicized throughout that we were going to have these meetings. But you find these kinds of people who are driving toward their own individual objectives.

We will have more hearings, if we are given a chance, we will have more hearings and we will clean up the legislation to the best of our ability.

Mr. LATTA. That is all, Mr. Chairman.

The CHAIRMAN. Well, as a matter of fact, Mr. Aspinall, this Indian nongermane amendment was put in on the floor of the Senate, wasn't it?

Mr. ASPINALL. Yes. I understand that it didn't come in from the committee recommendation, as I understand it.

The CHAIRMAN. And therefore there was practically no consideration given or the people affected weren't given any opportunity to present their views.

Mr. LATTA. If the gentleman will yield, let me emphasize that point.

I think it is important in the legislative process, that the people to be affected by the passage of the legislation have the opportunity to be heard. In this case, as you point out, they did not have the opportunity to be heard, because it was adopted on the floor of the Senate. And if we reported this bill they wouldn't have had an opportunity to be heard, even though they are in opposition to the bill.

The CHAIRMAN. I might add that I had a telegram from some of the chiefs, I say some of them, I assume there are more than one, of some Indian tribes who wanted to come up here and be heard. But of course we couldn't hear them before this committee.

Mr. ASPINALL. There are some Indian tribes who apparently are for this legislation.

The CHAIRMAN. They were not the ones who wired me.

Mr. Anderson?

Mr. JOHN ANDERSON. One other question does occur to me.

There was some testimony, Mr. Aspinall, I think, that titles II through VIII were the subject of a bill that passed the Senate by a vote of 88 to nothing I believe in the first session of the 90th Congress. Is that correct?

Mr. ASPINALL. That is correct. I don't know what the vote was.

Mr. JOHN ANDERSON. I don't know. Did the Urban Subcommittee on Constitutional Rights conduct fairly extensive hearings at that time on the substance?

Mr. ASPINALL. There were no hearings held by any committee in the other body during the 90th Congress on this particular matter in the bill that was passed by the Senate and sent over to the House and referred to the committee which I chair. There were hearings held during the 90th Congress on a similar bill, but it had different provisions from the bill which is now before my committee. And most of those hearings were held, Mr. Anderson, without a Member of the other body being present in the committee hearings. They were held by counsel of the committee in charge. And that was the Judiciary Committee.

Mr. JOHN ANDERSON. They better do something about the attendance on the other side of the Capitol.

Mr. ASPINALL. Here we are.

I was going to say something to Mr. Latta, we can't make rules apparently that interfere with their operations, even though it displeases us a great deal. And the same thing is true over there on the question of hearings.

Mr. JOHN ANDERSON. Thank you.

Mr. QUILLEN. Mr. Chairman, I would like to make this observation: Here we have the Indian chiefs wanting to come and testify in an orderly fashion before your committee, Mr. Aspinall. On the other hand, as the main impetus of this measure, we find this other minority group headed by Martin Luther King coming into Washington, using threats and intimidations.

I would just like to point out the difference of the character of the two groups, both Americans, one by force, the other by coming in

peacefully, not on the warpath, but wanting to be heard. And the others coming with threats.

Mr. ASPINALL. Mr. Quillen, in reply I would simply state this: There isn't an Indian reservation in any part of the United States upon which any person, regardless of his color, I don't care whether he is yellow or red or brown or black or white, couldn't go without any fear of any kind of disturbance at all, as long as he conducted himself as a gentleman.

Mr. QUILLEN. Fine.

The CHAIRMAN. Thank you again, Mr. Aspinall, for your very splendid, forthright statement.

We have Mr. Mathias here, gentlemen. We will be glad to hear from you.

STATEMENT OF HON. CHARLES McC. MATHIAS, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE SIXTH CONGRESSIONAL DISTRICT OF MARYLAND

Mr. MATHIAS. Mr. Chairman and members of the committee, I appreciate the opportunity to discuss this problem with you very briefly. I don't want to dwell at great length on the merits of this legislation. You have all heard my views on this general subject in previous years. I don't have to expound them all over again.

As far as the question of Indian titles is concerned, I understand that you are going to hear the views of one who is personally and immediately affected, Mr. Reifel, our distinguished colleague, who I believe is going to testify here.

I have discussed his views on the Indian titles, and I think you will find them very helpful as being the sentiments of one who is personally affected and who has an unrivaled experience in that field. I am here to request the adoption of the Madden resolution, House Resolution 1100.

I am sure the precedents for so doing have been cited to you many times. I won't plow over that field again. In your wisdom, I think you have done the House a great service here. I was inclined to be somewhat disappointed originally when the committee postponed action on this matter until the 9th of April.

But I think perhaps you were right and I was wrong, because this interim period in which you have been conducting your hearings has been a time in which the membership of the House at large has been able to become much more familiar with this legislation than we would have been had we voted immediately after the Senate action.

And we have had time to reflect, and we have had time to consider. And I believe that the House, composed as it is of mature Members who have thoughtfully considered this legislation, will be ready to vote up or down on April 9 or as shortly thereafter as the bill can be brought forward.

I have sat through some of these hearings and I have heard the question raised as to "why the haste, why the haste?" I don't like to fall back on cliches and proverbs, but certainly there is a phrase that comes to mind here that "justice delayed is justice denied."

And I think we have to consider that and ask ourselves whether we are afraid to put this to the test. There is a paradox in this legis-

lation, because, as I see it, the changes that may evolve under it will be very gradual changes, as gradual in their effect as the act of 1866 has been.

And yet there will be, paradoxically, an immediate benefit if this act is adopted; the immediate benefit of establishing certain moral values, of establishing the moral question of whether we are going to enforce the principles of the act of 1866.

And I think if we can be given the opportunity to ask that question in the House forthrightly as soon as possible, there will be a moral benefit to the country. If the House decides otherwise, other routes can then be pursued. But I think the procedure should be as our distinguished colleague from Indiana has proposed, that we should go ahead and vote this straight up and down at the conclusion of the period for deliberation that you gentlemen will set for us.

The CHAIRMAN. Does that conclude your statement?

Mr. MATHIAS. Yes, Mr. Chairman.

The CHAIRMAN. Mr. Mathias, I will be as brief as you, I hope.

Mr. MATHIAS. The chairman's words, whether they are brief or otherwise, are always very well worth listening to.

The CHAIRMAN. Well, that is a matter of opinion.

Mr. MATHIAS. That is certainly my opinion.

The CHAIRMAN. And I appreciate your opinion.

Mr. MATHIAS. That is my opinion.

The CHAIRMAN. Mr. Mathias, you just heard the very able and distinguished and highly respected member of this body, the chairman of the Interior and Insular Affairs Committee. Do you think that his views on the consideration of this provision respecting Indians is entitled to any weight when his committee, which has jurisdiction over this matter, is now engaged in consideration of that rather perplexing question?

Mr. MATHIAS. Well, Mr. Chairman, let me be frank. I have only known the distinguished gentleman from Colorado to be wrong in one case. I have a very important bill for establishing the C. & O. Canal National Historical Park, and he has not yet seen fit to grant me a day's hearing on that bill in the 8 years I have been in Congress.

Now, as I say, that is the only time I have known the distinguished chairman of the Interior and Insular Affairs Committee to be wrong. And I would hesitate to say he is wrong in his views on this subject. However, if we stub our toe once, maybe we can do it twice. But let me say that I have gone over the matters that he discussed very carefully with our distinguished colleague, Mr. Reifel, who as I say has a personal and immediate interest, whose experience and background in this matter is so compelling, and I would be inclined to believe that Mr. Reifel's position was the right position here.

And I won't forecast or predict what he will say, because he will say it for himself.

The CHAIRMAN. Well, then, I go to another question, the question of guns, which has been agitated around here for the past several years, which is another provision that was put into this bill by the other body and which has been under consideration in this body for some time.

Do you think that the House should just accept that, because the other body in its wisdom saw fit to tack it on as an appendix to this so-called civil rights bill?

Mr. MATHIAS. Well, I think that it is as germane to the bill as was the Cramer amendment germane to the civil rights bill of 1965 or 1966, whatever the year was. The Cramer amendment was ruled germane, the ruling of the Chair was upheld in the House, and I think it has that same kind of a relationship here.

As far as calling it a gun bill, or a gun law, it is a pretty pallid kind of a gun law. But I think it is germane and I don't think that it is a serious problem in this bill. I really don't, sir.

The CHAIRMAN. Don't you feel that the appropriate committee considering that legislation is entitled to conduct the hearings and report it to this body for consideration?

Mr. MATHIAS. Well, I think the testimony which you gentlemen have heard from the distinguished chairman of that committee charged with that jurisdiction, Mr. Celler, would be influential on that subject and he seems to be agreeable to this procedure.

The CHAIRMAN. Well, I don't want to put words in the mouth of the gentleman from Maryland, but I didn't know he always followed the gentleman who happens to be chairman of the——

Mr. MATHIAS. Well, the distinguished chairman asked me about the jurisdictional question and the chairman of the House Judiciary Committee has been here and I speak for myself as a single member of that committee that I feel this is very pallid language with regard to guns. I don't think it seriously affects this legislation one way or the other.

And I don't think it invades the area of gun control legislation which is now pending somewhat fitfully in the House Judiciary Committee.

The CHAIRMAN. Then finally, Mr. Mathias, don't you feel that your Committee on the Judiciary is entitled to consider in committee these far-reaching amendments? Here is a bill that has practically been rewritten on the floor of the other body. I don't know just how many changes have been made.

I estimated over 20 changes have been made. Don't you think that your committee is entitled to some consideration of these changes and some hearings on it and then have it considered on the floor with the benefit of your hearings?

Mr. MATHIAS. Well——

The CHAIRMAN. Isn't that the ordinary procedure?

Mr. MATHIAS. I appreciate the chairman's solicitude for the jurisdictional prerogatives of the House Judiciary Committee.

The CHAIRMAN. That is one of the things that this committee always takes into consideration.

Mr. MATHIAS. Well, that is certainly a very important consideration. Legislation, and I say this with great diffidence and humility, because certainly the chairman and the other members of this committee have had much more experience with legislation than I have, but legislation is seldom the creature of some stereotyped proceeding.

The important legislation in the brief time that I have served in the Congress, important legislation finds it way into the statute books certainly according to the rules, but situations, events, circumstances, I think play their part in the manner in which we consider legislation.

What we are proposing, what I am requesting here today, is not without precedent. It has been done before when the conditions have

been deemed appropriate and in my judgment, for what it is worth, uninformed as it is, I would say that these circumstances today were circumstances when it would be appropriate to follow the precedents which led us to this procedure.

The CHAIRMAN. If I recall correctly, Mr. Mathias, you were the author of an amendment to the 1966 act on housing?

Mr. MATHIAS. I believe, sir, I was the author of the language affecting housing in the entire bill.

The CHAIRMAN. How does this Senate version of it compare with yours?

Mr. MATHIAS. It is not as rigid in its enforcement provisions. It is milder in its enforcement provisions. It is a little broader in its coverage.

The CHAIRMAN. Now you are speaking of the Senate version?

Mr. MATHIAS. Yes, sir.

The CHAIRMAN. I wondered if the gentleman wouldn't like to have the opportunity in his committee to consider his version of the bill and let the House also have an opportunity to pass upon that provision?

Mr. MATHIAS. Well, Mr. Chairman, of course I guess most of us who are in public life in one form or another are always glad to make speeches and expound and expostulate. I like it as much as anybody else. But it does seem to me that this is a subject that we have talked about, and talked about, and talked about.

Now, I personally am not afraid to put this to a test in the House as it is. I think, as I say, you gentlemen have given us the time for reflection and consideration. And I think it has been valuable. I was wrong and you were right. You have given us that time. Now I think you ought to give us the right to vote.

The House can then make the decision as to whether they want to accept the bill with the language as it is and if they don't, then some other considerations can be brought into the matter.

The CHAIRMAN. Well, may I express my appreciation to the gentleman from Maryland for the compliments he pays this committee, because it is now obvious that the only hearings so far as this body is concerned on the Senate version of this far-reaching legislation will have been in this committee, and if the proponents of this legislation had had their way, we would never have had any consideration in this House, we would have just taken it up and in a few minutes, 60 minutes, or less, disposed of it on the floor of the House.

So I thank the gentleman for his compliments.

Mr. MATHIAS. I hope that the time that has been spent so fruitfully, as the chairman recounts, will lead us to a very prompt opportunity to vote.

The CHAIRMAN. I wonder if I might just make an observation here and let the gentleman comment on it if he sees fit.

Mr. MATHIAS. Mr. Chairman, I always enjoy hearing your observations.

The CHAIRMAN. You are most gracious. I hope you don't exceed me in that respect.

Mr. MATHIAS. Well, you know they have always said the only thing that separates the State of Maryland from the solid South is the Potomac River, so——

The CHAIRMAN. Well, I pass that one, because I don't think this is a sectional matter. This is something that affects not only the people of Maryland and New York and Ohio and California, but even Mississippi. It is a question, as I view it, Mr. Mathias, of taking away from the people one of the few last privileges or heritages we have, and that is the right to dispose of his own property without the Federal Government looking over his shoulder.

It is the right to acquire, enjoy and dispose of it. Now, and this is my observation and the gentleman may comment on it if he sees fit, I am not the wisest man, and of course that is an understatement of the year, in this Congress. Maybe I haven't traveled around as much as some other people.

But I have an idea, Mr. Mathias, that the politicians—and this is what we are in the final analysis, and I don't think that is a stigma exactly either—are really not aware of the thinking of the people of this country.

And that is one of the reasons that we thought it might be well to defer this thing a little bit, to slow it down a little bit and give the politicians an opportunity, possibly during the Easter recess, to go home and see how the people feel about it.

I think that we have been reading only the mail that we get from certain people. I am not and I cannot be convinced, at least up to this point, that the people want to surrender this heritage to which I just addressed myself. And I am going to make a little prediction here for whatever it is worth.

I think that you are going to find as a result of this issue which is going to be disposed of one way or the other here, that there are going to be a lot of political heads rolling in the dust as a result of the November election because of this pushing that is going on in favor of a certain minority group.

In fact, I wonder sometime who is the minority now.

Mr. MATHIAS. Mr. Chairman, you very graciously invited me to respond.

The CHAIRMAN. And I very graciously give the gentleman the opportunity now.

Mr. MATHIAS. I would say, I won't take issue with the Colmer poll one way or the other. But I would say on the question of whether we are doing anything fundamental that I hope this committee has before it constantly the language of the act of Congress of April 1866——

The CHAIRMAN. The 89th Congress?

Mr. MATHIAS. 1866.

The CHAIRMAN. Oh, 1866. All right.

Mr. MATHIAS. Which established the fundamental law of this country on this subject, the law which has been enforced by many Chief Executives through executive order in matters and in areas where executive orders are effective. And that when we think of the heritage of America, we realize that the act of 1866 is a part of that heritage and that what we are doing today is not disturbing any fundamental settlements made under the act of 1866, but in effect implementing it in accordance with the practices of our time.

This is the heritage of America, Mr. Chairman, I believe.

The CHAIRMAN. Any questions?

Mr. Anderson.

Mr. JOHN B. ANDERSON. Mr. Chairman, I too want to take the opportunity of expressing my deep appreciation to Mr. Mathias for his complete candor this morning in acknowledging that he, and I might add quite a few others, were wrong in initially condemning this committee for its decision to hold some hearings and to get into some of the matters involved in the 10 titles of this bill.

I have been the recipient myself, and I know other members of this committee have, too, of some very angry, outraged letters, some of which just reached my desk this morning. I think of one from a clergyman in particular, saying "How dare you bottle up that bill in the Committee on Rules after the Senate debated it for 8 weeks?"

Well, of course, what the Senate talked about for 8 weeks really has very little to do with our function and our responsibility on this side of the Capitol. So I appreciate this public acknowledgment that the committee has served some function and purpose.

Maybe ultimately it will prove beneficial, who knows, to those who are urging a particular procedure in this case. Sometimes those who in their zeal promote their cause do themselves, I think, some damage by not having a decent respect for orderly legislative procedures. So I think the gentleman has performed a real service this morning with his mea culpa, if that in fact is what it was.

Mr. MATHIAS. If the gentleman would yield at that point, my feeling that the committee was proper in providing the members this time for reflection will, I feel, be disappointed if the committee doesn't go forward now with the logical sequence to this period for reflection, which is action.

Mr. JOHN B. ANDERSON. That is of course a matter for another day.

Mr. MATHIAS. I just wanted the gentleman to realize that my thought was a comprehensive one, which didn't stop with reflection only.

Mr. JOHN B. ANDERSON. I understand that. I have only one other question, and that is, the gentleman has emphasized his conviction that title VIII of this bill represents the implementation of a great moral principle, far more than the fact that it may have some practical effect in moving people out of the ghettos.

And I think he realizes the limitations of this title in that regard, that it does represent anchoring into the law a great moral principle. Does he agree with me, however, that we have rather sadly compromised that principle in the language that was adopted by the other body, which gives the individual homeowner complete freedom to discriminate as long as he does not retain the services of a realtor?

It seems to me if it is immoral for the homeowner to employ a broker to sell his property, does it suddenly become moral if he undertakes to engage in selling his property himself without an agent and in doing so discriminates?

Mr. MATHIAS. Well, let me say that again I don't feel that this bill anchors any moral principle into the statute books. I think that was done in 1866, 102 years ago. All we are doing is——

Mr. JOHN B. ANDERSON. Obviously that hasn't been very effective, or we wouldn't be here today worrying about the problem.

Mr. MATHIAS. No. The enforcement provisions of that act are 102 years old, and this is what this is all about. But let me say this, the

chairman of the committee very kindly recalled that I had some small part in the formulating of the language of the previous bill on this subject, and our thought in the language that we adopted in the Judiciary Committee at that time in the last Congress and which was subsequently adopted by the whole House was to analogize this problem to the problem of wage and hour laws, that if a person was in business to the extent that they become a part of the stream of commerce affecting the whole economic structure and social structure of the country; then you have to pay a certain minimum wage.

And on that same kind of a theory, we believed that if you were enough in business to have an appreciable effect upon the commerce of real estate that you could be covered by the act. Now, obviously this is not an arbitrary matter. I think this is a matter of judgment. It is like a question in the wage and hour field.

I supported the old Kitchin-Ayres amendment which went to the question of what constitutionally affected commerce rather than a dollar standard. But honest men can disagree with this, and I simply analogize this to that particular situation. I think you can develop standards without being moral or immoral, without making this cutoff.

The CHAIRMAN. Mr O'Neill?

Mr. O'NEILL. No questions.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. No questions.

The CHAIRMAN. Mr. Quillen?

Mr QUILLEN. If your bill in 1966, your housing provision, was right and now the Senate has modified that language, do you admit that you were wrong before?

Mr. MATHIAS. I think what I have said to Mr. Anderson about that is it is a slightly different pegging of the point at which you start your coverage.

Mr. QUILLEN. Under your measure the real estate dealers were excluded?

Mr. MATHIAS. Under the House-adopted bill, the individual who did not engage in more than two real estate transactions within a given period of time could act without the coverage of the law, whether he acted personally or through an agent.

Mr. QUILLEN. I certainly don't want to question your judgment. But let me ask you this question: What is the percentage of Negro population and Indian population in your district?

Mr. MATHIAS. It is appreciable, but not large. In one of my counties, there is not a single resident. In the next one—if you want me to go through it county by county, I will.

Mr. QUILLEN. No. Do you have any Indians?

Mr. MATHIAS. I am sure there are a few around, yes. We have the Piscataways in Maryland, and the Patuxents, and some others.

Mr. QUILLEN. Do you think their treaties, treaties executed by this Government with the Indian nations, should be respected?

Mr. MATHIAS. Well, as I say, I am very much influenced by our friend and colleague Mr. Reifel, who is coming before you, and I would really like to defer any questions on that to his testimony.

Mr. QUILLEN. In your statement in the beginning you said that the passage of this measure would do a lot of good. But on the other hand,

I got from your statement that it would take another 100 years before it could be properly implemented.

Why do you think instantaneously it will do a lot of good?

Mr. MATHIAS. I think that, as I said, there is a paradox here. I think that the change, the actual practical change, will be very gradual. The laws of economics, whether we like it or not, are still superior to the laws of Congress. There will be change, but it will be gradual and not frightening.

But I do think that this will reaffirm the moral standard which our predecessors raised 102 years ago with the act of 1866. And that this will be, as the chairman referred to, the American heritage. I think this will be an important reaffirmation of the American heritage.

Mr. QUILLEN. One other question. In complimenting this committee for holding hearings and delaying the action originally——

Mr. MATHIAS. And in anticipating the action of the committee in bringing on a vote.

Mr. QUILLEN. You also said you thought quick action should be taken to bring it to the floor. You were not inferring that the instantaneous advantage of this measure would be the coming of Martin Luther King, who has threatened to march on Washington and threatened the Members of Congress?

Mr. MATHIAS. I can assure the distinguished gentleman that my interest in this subject has predated, and I hope will outlast, the events that are scheduled for April 22.

Mr. QUILLEN. In other words, having the measure on the floor of the House after Easter would serve just as useful a purpose as before his march?

Mr. MATHIAS. I said I think justice delayed is justice denied.

Mr. QUILLEN. I would like to look up the definition of "justice" in the dictionary and then apply that formula. I don't think it is right to take away a right of one person and give it to another. To me that is not justice.

Mr. MATHIAS. The question of the rights here was settled by the Congress in 1866. So when you talk about taking away something, the fundamental law on this subject has been settled for 102 years.

Mr. QUILLEN. Do you mean to say we could have operated this country without any succeeding Congresses? Doesn't this Congress have a right and duty and obligation?

Mr. MATHIAS. And I hope it will discharge it.

Mr. QUILLEN. I think it will. I think the Congress of 1866 had a duty and an obligation. But I do think that we also as Members of the Congress——

Mr. MATHIAS. When the gentleman talks about altering, changing, or adding or subtracting rights, I say on this particular subject the question of the fundamental rights was fixed by that act, and we are not changing anything this year. We may change some of the procedures by which the rights are enforced. But as for the rights, we are not altering them. Read the act of 1866. That is where the rights are spelled out. We are not doing anything novel or innovative in this bill. Or wouldn't be. As we didn't in the bill that the House passed 2 years ago.

There is nothing novel or innovative there.

Mr. QUILLEN. I remember from my district, Andrew Johnson represented this particular district in the Congress of the United States, and I remember when he became President how he worked to create equal rights and equal opportunities.

So I don't speak from the Deep South. As the chairman of this committee said, this is not a North or a South proposition. What I dislike, and I will say this in closing, what I dislike is that this minority group can burn down parts of big cities, can murder and rape, and get by with it and then can threaten the Congress and the Congress capitulates.

I think it goes much further than the saying about justice delayed is justice denied. And I say that in closing, Mr. Chairman.

The CHAIRMAN. Mr. Young, any questions?

Mr. YOUNG. No questions, thank you, Mr. Chairman.

The CHAIRMAN. Mr. Latta?

Mr. LATTA. Only one question, and that is on the matter of procedure. You indicated—I think the chairman was asking you a question about the procedure being used in this case—that your chairman had testified that he didn't oppose the procedure being used, meaning the taking of bills out of committees like the gun control bill out of your committee, and the Indian bill out of the Interior Committee and putting it in another bill and passing it without those committees having an opportunity to act on the legislation before their committees.

You responded that your committee chairman agreed with this and you agreed with your committee chairman. Now, let me pose this question to you. Forgetting about civil rights, forgetting about any other bills, would your answer have been the same if you were appearing here now if this committee, while your Judiciary Committee was considering gun control legislation and had been considering it for a long time, had taken it from your committee and heard it without your committee acting on it—and we have the power to do that—would your answer have been the same and would your committee chairman's answer have been the same, or would you and your committee chairman be up here yelling like squealing pigs?

Should I restate the question?

Mr. MATHIAS. No, I understand the question very clearly. And I don't want to be redundant, but I would say again that important legislation follows certain channels. They aren't always the same channels. I believe that in this case this is appropriate.

Now, when the gentleman puts to me a hypothetical case, I can't give him a hypothetical answer and I don't propose to do so.

Mr. LATTA. I asked about gun control legislation. Now, this is the procedure you would like to have this committee follow and this Congress to follow. There is a lot of legislation in your committee and a lot of these other committees that we could order up here while you are considering it. I can hear you and the other committee members and especially committee chairmen and your committee chairman up here opposing that procedure.

Mr. MATHIAS. I would think, if the gentleman considers it in this case, I would think that would be a very important consideration for the Rules Committee to weigh in the balance, whether or not the members of the substantive legislative committee did or didn't object—I

think that that would be a very important consideration, and I am glad the gentleman has been persistent.

And I think that whether or not the members of the substantive legislative committee felt they were being ousted of their jurisdiction and whether they were violently opposed to that ouster would be an important consideration before you acted here.

Now, in this case you have the feeling on the part of the Judiciary Committee, or many members of the Judiciary Committee—I know it is not unanimous—but on the part of many members of the Judiciary Committee that this is the appropriate way to proceed in this matter at this time.

Mr. LATTA. I am not talking about this matter at this time. I gave you a hypothetical case dealing with your gun control legislation which your committee has had for months and months and has not reported to the floor of the House.

Now you have gun control legislation in this bill by the devious methods employed by the Senate and the question is whether you would act the same if you were testifying before us on that legislation?

Mr. MATHIAS. I would have to read the words, and before I read the words I am not going to give a hypothetical answer, and you wouldn't either.

Mr. LATTA. I know you are doing a good job evading that question. But your position would not be the same, I know, and your chairman's position would not be the same, had we done that to the gun control legislation that your committee was considering and is now considering. If we called it before this committee for consideration you would be up here objecting to this procedure. Now you come before this committee and say, "We agree with the procedures used in this case," when you wouldn't have agreed to do it in connection with the gun control legislation.

That is all I have, Mr. Chairman.

The CHAIRMAN. The committee will stand in recess until 1:45.

(Whereupon, at 12:08 p.m., the luncheon recess was taken.)

AFTERNOON SESSION

The CHAIRMAN. The committee will come to order.

We resume the hearings on House Resolution 1100. We will hear Mr. Sikes, the gentleman from Florida.

Mr. Sikes the committee will be glad to hear you.

STATEMENT OF HON. ROBERT L. F. SIKES, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE FIRST DISTRICT OF THE STATE OF FLORIDA

Mr. SIKES. Thank you Mr. Chairman. Mr. Chairman and gentlemen, I am opposed to H.R. 2516, the bill which you are considering. I feel that it should go to conference where hopefully a better product can result than the measure now before you.

There is much I would like to discuss in this bill, but because of the pressure of time which affects all of us, I shall touch only on two sections which I consider particularly objectionable. One of these is the open housing section.

As proposed, its far-reaching provisions would ban discrimination on racial and other grounds in the sale or rental of 75 percent of U.S. housing. It will involve builders, developers, brokers, apartment house owners, makers of real estate loans in all categories, and many owners of individual homes.

Instead of banning discrimination, its language is, in itself, discriminatory, in that it strips away constitutional rights of a very substantial majority of the people in the management and disposition of their own property. It is another instance where the Federal Government would take additional jurisdiction over the lives of the people. A case where one more of the slipping list of rights guaranteed to the individual by the Constitution will be taken away.

The firearms provision of the civil disorders at this time will represent a hastily conceived and ill-prepared approach to the problem of overall firearms legislation. The police and enforcement problems involved in strengthening Federal controls and in the use of firearms are far too complex for the summary and ambiguous treatment given in this bill. It is this ambiguous language which gives rise to serious concern about the use to which it could be put if it were to become law.

I must consider it a bureaucrat's dream. It can be interpreted in almost any way an enterprising administrator might deem desirable for his purposes. It could be used for persecution of the innocent just as well as it could be for prosecution of the guilty.

I think all of us concur with the basic purpose of the amendment, but it is feared that some of the language pertaining to firearms could open a Pandora's box of unintended and serious consequence.

We have before us a criminal situation predicated on vague, broad, and elastic terms. This language poses a threat of prosecution for legitimate activities, unfortunately and unintentionally brought within its scope.

This could be a mockery of law resulting from a statutory monstrosity. There are many objections to the proposed language.

In the discussion in the Senate it was indicated the langauge covers situations in which kind of disorder is anticiapted and includes any dealer who has not assumed due care in selling firearms to persons who incite riots or use firearms in disorders.

Obviously this covers the waterfront. Under this, I wonder if we are to assume that both the man who purchases a weapon to defend his own household against destruction, looting, rape, or other violence, and the dealer who sells him the gun could be hauled into court and punished if violence erupted in the neighborhood.

Please consider the language and impracticability of phrases such as "or having reason to know or intend," or "any way or degree."

I don't think the House should concur in or support vague and extremely loose wording which could make a completely innocent person criminally liable with heavy penalties, and that is what could happen under this bill.

There is even a provision against teaching and demonstrating which would make any person who teaches marksmanship or safety in hunting liable to prosecution. This could be true in a city like Orlando, Fla., where good work has been done in an organized way to teach housewives marksmanship for their own protection, and the result

has been a very great drop in crime, particularly crime against women.

Efforts such as these could run counter to the law and the consequence of enforcement could create a field day for the criminal who would not be so restricted.

The language of the bill is far too dangerous to become law. It should be stricken in its entirety. The question of gun control legislation is proceeding in an orderly manner in the Congress, and this should be allowed to continue. Subcommittees in both House and Senate have reported favorably on gun control legislation.

In the meantime, the purposes of the gun control amendment can be properly served by strict enforcement of the present firearms acts, both National and State, and by a more realistic attitude toward crime control and prevention at all levels of government.

To me, the most creditable part of the bill is the riot control language included at the last moment. If endorsed, this language would help to prevent a recurrence of last year's violence.

Bills containing riot control provisions twice have been passed by the House and generally disregarded in the Senate, but presumably there is now sufficient interest in this type of legislation to help insure action without taking riot control language on to civil rights legislation. I don't think a bill that is bad as a whole should ride on the merits of one good section.

The CHAIRMAN. Does that conclude your statement?

Mr. SIKES. Yes, Mr. Chairman.

The CHAIRMAN. Thank you, Mr. Sikes. In the interest of time, I won't ask any questions. I just want to congratulate the able and distinguished gentleman from Florida upon a very good statement.

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

The CHAIRMAN. And one that bears out previous testimony on the gun question as well as on the housing question by other witnesses who have appeared here.

Any questions Mr. Smith?

Mr. SMITH. No questions.

The CHAIRMAN. Any other questions?

(No response.)

Mr. YOUNG. I have no questions. Thank you, Mr. Sikes.

The CHAIRMAN. Mr. MacGregor.

STATEMENT OF HON. CLARK MacGREGOR, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE THIRD DISTRICT OF THE STATE OF MINNESOTA

The CHAIRMAN. We will be glad to hear from you, Mr. MacGregor.

Mr. MACGREGOR. Thank you, Mr. Chairman.

Mr. Chairman and members of the Committee on Rules, I deeply appreciate the opportunity to appear before this distinguished committee. My statement will be very brief. I will be pleased to endeavor or to respond to such questions as the chairman and members of the committee may have.

I believe that the House should adopt the Senate-passed civil rights bill of 1968, H.R. 2516. On two previous occasions, one occurring before my congressional service started, and one in 1964 in which I was

pleased to play a part, the House without requesting a conference adopted significantly altered versions of House-approved civil rights bills. I am convinced that this measure approved in the Senate by 29 Senators of my party and 42 Democratic Senators is sound and just legislation.

I also fully recognize, Mr. Chairman, that like most complex bills, H.R. 2516 in its present status is not perfect in every detail. It does, however, seek to protect certain fundamental rights and to assure equality of opportunity for all of our citizens.

Members of this committee earlier today have expressed the thought that the passage of this bill would result in the deprivation of certain existing rights to dispose of property. I would like to put the converse of that observation.

Mr. Chairman, to me it must be a very deep affront to human dignity for any American to find that even though his bank balance is ample, his credit rating good, his character and that of all members of his family above reproach, he still cannot buy or rent better housing in a better neighborhood because of the color of his skin.

I recall in history reading of societies where a certain class of people were not permitted to own certain properties. Those societies were sick societies in my opinion.

Some questions have been raised regarding the various new sections incorporated in the Senate bill. Title I, the antiriot section, embraces areas covered in H.R. 1516 and H.R. 421, both of which passed the House in 1967. Members of my party serving on the Judiciary Committee of the House expressed the view that these measures should be combined. And the Senate has adopted this approach.

With respect to the sections added by the Senate dealing with the rights of American Indians and with certain limited control of firearms, I fully appreciate that appropriate bodies of the House have not completed their consideration of these areas of legislation. And that the procedure which I advocate is in many respects an unusual procedure.

I do share the reservations of many of our colleagues with respect to the draftsmanship of the Senate bill. But, Mr. Chairman, I also have the deep conviction that it is urgent for our Nation that effective open housing legislation be passed promptly.

This matter of simple justice in my opinion has been too long denied to some of our American citizens.

Mr. Chairman, weighing all considerations in the balance, it is my judgment that the open housing bill should not be exposed to further delay and further uncertainty which in my judgment would occur were the bill to be submitted to a joint conference of the House and Senate.

I thank you, Mr. Chairman.

The CHAIRMAN. Mr. MacGregor, isn't that the ordinary, the usual procedure when the two bodies pass different, divergent bills, they send them to conference?

Mr. MACGREGOR. I am sure it is, Mr. Chairman. And yet the procedure that I advocate is not unique. It has occurred before and it has been deemed to be appropriate in those circumstances on previous occasions.

The CHAIRMAN. I know you are a very fair man, as well as a very able man.

Mr. MACGREGOR. I thank you, sir.

The CHAIRMAN. And I say that with all sincerity, I assure the gentleman.

Does the gentleman think it is quite fair to take a thing as controversial as this gun bill and not give the House an opportunity to consider it, or even the gentleman's own committee which has jurisdiction over that subject to bring out a bill?

Mr. MACGREGOR. May I respond in this fashion, Mr. Chairman?

I have been a Member of the House of Representatives for a little more than 7 years. I have been on the subcommittee in the House considering gun control legislation for more than 3 years. That subcommittee, as the chairman knows, wrestled with the question of gun control legislation during much of 1967. Toward the end of the year we endeavored to reach a resolution in the subcommittee. The subcommittee is constituted of seven Democrats and six Republicans and this was a Democratic bill and we divided seven to six.

The chairman of the Judiciary Committee has not seen fit to consider in the full committee either the Democratic bill which gained seven votes or the Republican substitute which gained six votes. I don't think it is likely to expect that we are going to see further progress on either of the two existing approaches to firearms control legislation. Whether it is relevant or not, Mr. Chairman, the provisions in H.R. 2516 which the Senate added relating to firearms control are much less comprehensive in scope than either of the two bills that I referred to that have been pending before our subcommittee.

The CHAIRMAN. Well, what the gentleman is saying in substance is that although your committee has had this and the subcommittee had it for better than a year—what did the gentleman say?

Mr. MACGREGOR. We considered it during most of 1967, Mr. Chairman.

The CHAIRMAN. For most of 1967, and your committee couldn't come up with any agreement on it. And yet does the gentleman now advocate that this full House should take it without an opportunity to even offer an amendment?

Mr. MACGREGOR. I advocate the full House be given the opportunity to take it or reject it as a part of a very complex bill.

The CHAIRMAN. Very well, sir. I don't want to argue with the gentleman. But would the gentleman say when the bill was introduced in his committee that the chairman of that committee should have called it up and said, here it is, you vote it up or you vote it down? Would that have been a good procedure?

Mr. MACGREGOR. Not in my judgment.

The CHAIRMAN. No, sir. Then I find it a little difficult to arrive at how the gentleman feels, that the whole House should take it up without any consideration.

Mr. MACGREGOR. Well, Mr. Chairman, it is true we do have some freshmen. Members who were not present in 1966. I have in my file the full text of the House debate in 1966 on the then pending House civil rights bill. I think we spent some 3 long days in the House, perhaps longer than that, debating the open housing title in the 1966 civil rights bill. And it does seem to me, Mr. Chairman, that with the exception of those freshmen who were not here in 1966 and thus not given an opportunity to fully participate and to consider, participate in and

to consider the debate on the legislation relating to open housing, that it is hardly a matter that has not received attention in this body.

The CHAIRMAN. Well, I wasn't talking about the open housing. I was speaking of the gun control legislation.

Mr. MACGREGOR. Mr. Chairman, if I may respond to that again, I appreciate I was not perhaps responsive to the chairman's question. I don't know whether my mail is indicative of the mail of the other Members of Congress. I suspect it is true of those of us who live in the upper Midwest area, where hunting and fishing is popular. But I suggest, Mr. Chairman, my mail has been heavy on this issue for years, and the mail of other Members have and probably all of us have given it a good deal of study and have taken a position with respect to firearms control legislation.

The CHAIRMAN. And, of course, that goes for housing and the other phases of the bill too?

Mr. MACGREGOR. I believe so.

The CHAIRMAN. Well, since the gentleman made that observation, I might say in response that although I live in another section of the country that I get mail, volumes of it, as the chairman of this committee, from all over the country, very little from my State, on this whole question. And it is preponderantly opposed to these provisions, the facets of this bill. And I just—well, I won't bother about repeating what I said this morning, but I am just wondering if our politicans are aware of the true thinking of the people of this country about having this business rammed down their throats, as it were, to use an archaic expression.

Mr. MACGREGOR. Mr. Chairman, if I might respond, and I believe the example I am now going to give you, sir, is relevant to the principal thrust of what you just said, even though we may profoundly disagree on some of these matters.

I had the opportunity to serve about a year ago as one of nine Members of this body on a select committee determining what recommendations we should make to the House of Representatives regarding the disposition of an errant Member-elect of this body. And my mail from all over the country, Mr. Chairman, ran 100 to 1 or 150 to 1 against the position that I recommended and that I felt to be right and constitutionally sound. And I feel, Mr. Chairman, that we are elected not only to represent the transitory majority of popular opinion, but we are elected to profoundly do what we deem to be right. And I so acted a year ago and I don't mean to assume a heroic pose which would be in any sense false, but I believe myself to be in the same position here today.

The CHAIRMAN. Well, I congratulate the gentleman. Let's say I just wish that all legislators, not confining it to this body, would approach it on the same ground. If the gentleman feels that way about it, that is fine and I would certainly applaud him for it. I rather congratulate myself that I approach these things on that basis. And I think I do, I honestly think I do. And I sleep well at night. My conscience doesn't bother me on these things, nor does it bother me what somebody else thinks about it, whether it be the President of the United States or the leadership of one party or the other.

But I still think that we have a duty here in this body to proceed in an orderly and proper legislative basis.

Any questions?

Mr. Smith.

Mr. SMITH. One question, Mr. MacGregor. You mentioned you strongly objected to a person because of the color of his skin not being able to rent or buy a house of his choice. In your congressional district, does that exist?

Mr. MACGREGOR. We have in the State of Minnesota, as a result of action by the 1967 legislature, an open housing provision that is thought to be as broad in scope and as helpful in enforcement to one claiming discrimination as any State law in the country. So the answer to your question is, in my State and in my district, we have had open housing legislation at least since I have been an adult and was aware of existing legislation. And in 1967 the Minnesota State Legislature broadened the then existing legislation.

Mr. SMITH. So in your district, Negroes can rent or buy any house they wish; you don't have any discrimination in your district?

Mr. MACGREGOR. We have some occasional complaints that the law is not being lived up to. The State commissioner of human rights in Minnesota—and he is a Cabinet officer in our Governor's Cabinet and holds the same status as the department of agriculture in Minnesota—tells me that under the State law in the last year we have had four actions, four claims in which his office took action. One of those was in my district. It happened to be in my home village. But the action was conciliated within a matter of weeks after the complaint was raised.

Mr. SMITH. How about in your district, as to the color of the skin, what is the makeup of your district?

Mr. MACGREGOR. It is very small. I think I have less than 3 percent nonwhite. We had a number of Japanese-Americans moving in after World War II, they settled in my home village; we have some Indians in my home village, American Indians, and a few Negroes, but very few.

Mr. SMITH. Have you heard from any of your real estate people as to whether they approve or object to this section on selling private homes?

Mr. MACGREGOR. The mail I received in the last 2 weeks from realtors who are constituents of mine and friends in the Minneapolis-St. Paul area object to the provision that would permit an individual to discriminate if he meets the conditions set forth in the Senate bill, doesn't advertise, doesn't use a realtor, and so forth.

Mr. SMITH. That is all. Thank you, Mr. Chairman.

The CHAIRMAN. Any other questions?

Mr. ANDERSON. They are objecting, of course, not really in their own interests then, are they, because they certainly are covered by the Minnesota statute that you described?

Mr. MACGREGOR. That is correct.

Mr. ANDERSON. They are speaking for the larger fraternity of realtors throughout the country who might be in jurisdictions where laws of that kind are not available.

Mr. MacGregor. Yes; and those that I deem to be individually written, other than just taking the phrases that may be in the national trade publication, say to me, "Clark, we would prefer to see the bill expanded so as to cover individual sales by individual owners."

Mr. Anderson. I have raised that point a number of times, I don't want to belabor it, but I have raised that very point with a number of witnesses, Mr. MacGregor, that we have a moral principle involved here and are seeking to implement it.

It seems to me very inconsistent on moral grounds, and I would think maybe on legal grounds, if we in effect exclude the private homeowner who discriminates providing he doesn't sell with the services of a realtor, and goes ahead and discriminates with complete impunity.

Mr. MacGregor. I agree wholeheartedly.

Mr. Anderson. But you don't feel a conference committee would do much to solve that difficulty?

Mr. MacGregor. No; I do not in light of our 1966 debate in the House. I take the same position here that I took then.

Mr. Anderson. You think I may be a little naive to cherish any illusion of that kind, that we could work out a provision whereby we could make it across-the-board?

Mr. MacGregor. I think it is unlikely, Mr. Anderson.

Mr. Anderson. This section on preemption, on the last page of the bill, section 233 of the chapter on civil disorders, that section applies only to chapter 12, doesn't it?

Mr. MacGregor. That is my understanding.

Mr. Anderson. Then I am a little bit concerned on this subject. Where do we get the notion that if a State or a village or municipality has a law that is as broad or broader than the Federal statute, that by the doctrine of preemption, those statutes will prevail over any Federal statute. Is this just some general doctrine of preemption we rely on? There is nothing in the law itself that says that, is there?

Mr. MacGregor. Let me review once again page 42, section 815:

> Nothing in this title shall be construed to invalidate or limit any law of a State or political subdivision of a State or of any other jurisdiction in which this title shall be effective that grants, guarantees, or protects the same rights as are granted by this title, but any law of a State, a political subdivision, or other such jurisdiction that purports to require or permit any action that would be a discriminatory housing provision under this title, to that extent would be invalid.

Mr. Anderson. I see. Section 815.

Mr. MacGregor. Yes. The principal thrust here is similar to the thrust of our 1966 House bill, in which we wished to indicate that State and local law shall be given predominant attention, unless that State or local law permits or compels discrimination.

Mr. Anderson. Let me go back very quickly, Mr. Chairman, and ask one more question.

I know there are many in the real estate fraternity who would like very much to see a conference committee come up with a provision in this bill which would provide, as I believe was done in the 1966 title IV of the Civil Rights Act, that an individual homeowner could avail himself of the service of a realtor and then proceeed to issue orders that that realtor discriminate with respect to the sale of that housing providing that such instructions were in writing. This I believe was in the 1966 act. Am I correct?

Mr. MACGREGOR. I would say that is a fair analysis of the Mathias proposal in the 1966 act.

Mr. ANDERSON. What do you think the Supreme Court of the United States would decide, assuming that a case could be—and I think it could be—brought to adjudicate the constitutionality of a section of law like that? What do you think the Supreme Court would say?

Mr. MACGREGOR. I wouldn't presume to hazard an opinion as to what the Supreme Court might do. I would be pleased to give you my own view.

I expressed opposition in the Judiciary Committee in 1966 during committee deliberation and later in the House of Representatives to the very points you now raise in connection with the Mathias proposal, or the 1966 open-housing section of the House bill. I had serious reservations on the constitutional question at that time. But I will say to you that my principal objections had to do with a distinction which I put on moral grounds.

Mr. ANDERSON. But don't you really feel on the basis of *United States* v. *Guest* and other cases that have indicated the scope of the 14th amendment is now sufficient to reach private acts of discrimination, that on the basis of that language in that case, it is almost a certainty that the Supreme Court would invalidate statutory language which purported to put a legislative seal of approval on that kind of discrimination?

Mr. MACGREGOR. I don't know that it is a certainty. I would think it is a likely possibility.

Mr. ANDERSON. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Madden.

Mr. MADDEN. Well, I have no questions outside of the fact that so much emphasis has been—by the way, I want to commend the gentleman for his statement which he made here today.

Mr. MACGREGOR. Thank you, Mr. Madden.

Mr. MADDEN. So much emphasis is put on the mail you are getting from the real estate fraternity. Had this bill been disposed of when it first came in before the Rules Committee, the real estate fraternity, which is probably one of the most highly organized and well-financed organized lobbies in the United States, in my State had the telephones burning, having everybody they could get to write a letter to their Congressman and other Congressmen. I know in my areas there is a special office set up just to send mail in and it is fed by propaganda and urging from the real estate people, who are hand-in-glove with the real estate organizations, to defeat this bill.

So, as far as mail is concerned, even with the lobby, I have probably gotten more mail to get this bill disposed of and signed into law, 2 to 1, than the real estate lobby in Indiana have been able to get into my office, and they sent in quite a few letters.

So the real estate lobby just got to work on this bill when they saw there was a possibility that finally after a year or more delay, inexcusable delay, the bill finally is coming to the threshold of passage. After this long wait.

And when you talk about unfairness, don't you think it is unfair when a bill, after it passed this House, went over to the other body and practically through unfair legislative tactics, filibusters and delays, and all the unfair impediments possible did not come back to

the House until after a year? Now we have this real estate lobby trying to tie the thing up and send it to conference. Any way to make some kind of change so it will get back in the other body.

And I don't know of a legislative body in the world that is more unfair as far as legislation is concerned than the other body because of the undemocratic, unlegislative, disreputable, technical tactics they use to delay legislation and to prevent the legislative processes from operating.

It is not only civil rights. We passed, my State passed, the repeal of 14(b) 4 years ago, and it is not what you would call a super liberal State. It is a conservative State. And this Congress, this House, passed the repeal of 14(b) by 19 votes and it went over to the other body—now speaking about unfairness—and seven or eight Senators absolutely refused to allow the other 92 Senators, or 90, to vote on that bill. And then we pretend to be a legislative functioning Congress with unfair unreasonable impediments to the legislative processes where eight or nine men can get up and hamstring the other 90 and refuse to allow them to vote on a piece of legislation.

Now all of this that is going on here is through the influence of the real estate lobby and the power that they have to put this thing in another legislative barrier or unfair, unreasonable, unjust legislative tailspin in order to get it back into that other body, and it will be as dead as a door nail if that happens.

And I can just imagine the repercussions over the country on this, in spite of all of the propaganda, the well-financed propaganda, that is being directed against this legislation. And when the country knows what has happened, if this bill is defeated by this legislative trickery and manipulation, God help some of the Members when they go out before the people and when the processes are exposed.

And I hear about isn't it unfair to do this and that. Why, if some of the new countries in Africa would have a legislative process where eight or 10 men could tie up the whole legislative body like is done in the other body on legislative proposals, time without number in my memory, they would laugh and say, my gracious, that is not democracy, that is not a representative government, not to give the elected legislators an opportunity to vote.

So this thing that is going on right now is just laying the groundwork to get this bill back into that other body again in order that it can be massacred and crucified. And I want to commend the gentleman from Minnesota for his testimony.

Mr. ANDERSON. Will the gentleman from Indiana yield?

Mr. MADDEN. Yes, I yield.

Mr. ANDERSON. You are not suggesting by what you just said that you feel this committee in conducting these hearings is the willing tool——

Mr. MADDEN. This committee knows just as well what will happen to this bill if we send it to conference——

Mr. DELANEY. That is your opinion. Why did you put this resolution in?

Mr. MADDEN. I put the resolution in in order to bring this bill to a vote of the House.

Mr. DELANEY. Don't think because you shout around here, five or six pages, and you want to bypass everything—don't accuse everyone here.

Mr. MADDEN. They can vote it up or down.

Mr. DELANEY. You say well-financed lobby. I have received, I think, four letters from real estate people, none of them within my district. Three or four. And you keep repeating real estate lobby, well financed.

Mr. MADDEN. Absolutely. I still repeat it.

Mr. DELANEY. Then you speak of fairness.

Mr. MADDEN. I still repeat it. This is nothing more than a process to defeat this bill. Congress can vote it down when it gets on the floor of the House. What is more fair than that? The Congress can vote it down if it is unfair. I think it is time to put it out and let them vote it up or down on the floor of the House.

Mr. DELANEY. This is the same old record.

Mr. MADDEN. Yes. By God it is time somebody did something for the people——

The CHAIRMAN. Gentlemen, gentlemen.

Mr. DELANEY. I don't like the accusation about the real estate lobby.

Mr. ANDERSON. I don't like it either, Mr. Chairman.

Mr. MADDEN. I will show you my mail. I know what the real estate lobby is doing on it.

The CHAIRMAN. Well, we know you gentlemen like to make these speeches.

Have you finished?

Mr. MADDEN. I am getting sick and tired of that body over there and they are manuevering to get it back in that body to kill it. Let this House vote it up or down on this resolution. That is fair.

Mr. DELANEY. Take the regular procedure and deny one thing one way or another. There are 436 men elected here——

Mr. MADDEN. Let them vote this up or down.

Mr. DELANEY. They have not voted. Why don't you give them a chance?

Mr. MADDEN. I am trying to get the resolution out and let them vote.

Mr. DELANEY. You are making accusations here you can't substantiate. I don't like it.

Mr. MADDEN. I am not making accusations. I am telling you what the real estate lobby is doing. I am not referring to this committee.

The CHAIRMAN. Thank you, Mr. MacGregor.

Mr. Reifel.

STATEMENT OF HON. BEN REIFEL, A CONGRESSMAN FROM THE STATE OF SOUTH DAKOTA

Mr. REIFEL. Mr. Chairman, this is my first opportunity to appear before your illustrious committee.

The CHAIRMAN. It is the first time you have honored us with your presence.

Mr. REIFEL. Mr. Chairman, I don't know how you proceed. I would like to read my statement if that would be satisfactory.

The CHAIRMAN. If the gentleman will pardon me, we usually proceed a little differently. But the gentleman can use his own judgment and make his statement like he would prefer to make it.

Mr. REIFEL. Thank you, Mr. Chairman.

I want to express my appreciation to you and to the members of the committee for giving me the opportunity to testify today with respect

to this very important legislation. This bill, which was passed by the Senate on March 11, 1968, contains several amendments to the original bill passed by the House of Representatives last August.

If I might here skip over the first page, because this has to do with the body of the civil rights bill, which we have under consideration, that has already been commented on and I am in full support of it, I do want to go directly then to the Indian sections with which I am most familiar, about which I have been asked several questions from Members of the House and I felt that I should make my remarks directed to those sections of the bill. So I will proceed from there.

The other significant amendment in the Senate bill is the material contained in titles II to VII relating to the rights of American Indians. These titles are identical in the provisions of S. 1843, which also passed the Senate last December and which is now before the House Interior and Insular Affairs Committee. I want to address my remarks today primarily to these provisions. I do so because I am particularly interested in these matters both because so many of the tribes with whom I have worked over a period of 20 years in the Bureau of Indian Affairs will be affected by these provisions and also because I myself am an enrolled member of the Rosebud Sioux Tribe of South Dakota. I was born and raised on the reservation and know from long experience what the effects of these titles will be on our Indian citizens.

I think it is in this area that I might best contribute to the work of this committee and the deliberations regarding the entire bill. I might state at the outset that I sympathize with the position of my distinguished colleague from Colorado, the chairman of the Interior and Insular Affairs Committee, Mr. Aspinall. Through the years he has been a wise and great friend of American Indians and has greatly influenced the course of continuing relations between the Indian tribes and the Federal Government. Under almost any other set of circumstances I would support his position that these titles should be given separate consideration through the normal proceedings of his committee. However, for three reasons I think that this committee nevertheless should submit the entire bill for the vote of the membership on concurrence with the Senate version without amendment. First, I think we are presented with an opportunity which may not arise again to enact into law two extremely important provisions, the open housing bill and the civil rights protection bill. If this action is not taken soon by this body and the bill is sent to conference for amendment, it may be many weeks before we can vote on a conference version of the bill, after which it will have to be returned to the Senate, where I am very much afraid that those Senators who have so consistently opposed both of these provisions would make passage of the revised version virtually impossible.

The politics of a presidential election year, the emotions of this summer, may well conspire to block the bill. Secondly, even though the titles affecting Indians have not gone through all of the usual hearing processes of this Chamber, the legislation in fact has been the subject of extensive hearings over a 5-year period before the Senate Subcommittee on Constitutional Rights.

During 1961, 1965, the Senate subcommittee held three sets of hearings in Washington, D.C., as well as field hearings in the States of

Arizona, California, Colorado, New Mexico, Washington, North and South Dakota. At the last of the Washington hearings I believe the subcommittee received the testimony and statements of some 79 witnesses including representatives from 36 tribes located in 14 States and including in particular a spokesman for the only Indian tribe which I understand is seeking further hearings before this body.

Equally significant, following such hearings, the Indian titles were greatly revised to meet all of the more important suggestions and objections then raised by the executive departments, tribal leaders, and their attorneys. And the proposals as so amended and now a part of H.R. 2516 have been strongly endorsed by the very same groups. In other words, we have here a case where the hearing process in a larger sense has already been thorough and effective.

Lastly, while bearing in mind my sympathy for the jurisdictional position of my good friends, the Chairman of the Interior and Insular Affairs Committee, I nonetheless must conclude that the Indian titles deal with such fundamental rights and are so extremely welcome amendments to existing law affecting Indians that further delays can not be justified.

In my mind, myself an Indian, I consider these provisions to be among the most important and best provisions of the entire bill. It would be one thing if your committee was asked to bypass the normal hearing process of this Chamber in order to pass bad legislation. But it is an entirely different thing when we are given an opportunity not only to enact much-needed civil rights laws but, in addition, to enact a bill which would grant to the American Indians many of the rights presently denied them.

Titles II to VIII are designed to accomplish two major purposes: First, to create a bill of rights for the protection of Indians tried in tribal courts and to improve the quality of justice administered by tribal courts; and, second, to provide for the assumption of civil and criminal jurisdiction by States over Indian country within their borders only with the consent of the tribes affected.

Taking up the second point first, this committee should know that virtually every Indian tribe which has commented on this legislation is 100 percent in favor of the provisions in this bill which would change the entire jurisdiction allocation presently as provided by Public Law 280, passed by the 83d Congress. As you know, Public Law 280 granted to six States immediate and comprehensive jurisdiction over almost all of the Indian country within their borders with respect to both civil and criminal matters. These States are Alaska, California, Minnesota, Nebraska, Oregon and Wisconsin. In addition, Public Law 280 provided that thereafter any State acting without any consultation whatsoever with the tribes to be affected could assume such jurisdiction at any time. Five States have done this since 1953. These were Florida, Idaho, Montana, Nevada, and Washington. Three of these States, as I understand from inquiring about it, did so without consultation, indeed over the objection of many of the affected tribes.

In my own State of South Dakota we experienced a major battle over this arbitrary power given to State governments. In 1963 the Legislature of South Dakota enacted a bill which would have assumed total jurisdiction over all of the Indian country within that State

pursuant to Public Law 280. The bill was bitterly opposed by virtually every tribe in the State who united with one another in a well-organized campaign to repeal the legislation through the referendum process. I am proud I have played a substantial role in that effort. And I am pleased to report that in the November 3, 1964, election, that law was defeated by a vote of 4 to 1.

Mr. Chairman, I know of no Indian tribe in this country which does not support the amendment to Public Law 280 that would be accomplished by the enactment of title IV of the Senate-passed bill. Not only would this provision assure the tribes of a voice in the determination of whether they will be regulated by the State or Federal law, but also as provided in the bill, any movements toward increased State jurisdiction will be done in an orderly and gradual fashion. Many States are well prepared to handle some aspects of the responsibility, but unwilling or unable to handle all responsibilities properly. Under the provisions of Public Law 280, our experience of the last 15 years has shown instances where States failed to give adequate protection to members of the tribes because the States are unwilling to commit the necessary resources to properly enforce their laws.

For example, at the present time, many of the Quinalt Indians in the State of Washington are sharply critical of local authorities there for this reason. One of the attractive features of the proposed title IV is that those States, which previously acquired jurisdiction which they are not able to handle properly, may now retrocede the jurisdiction back to the Federal Government. Moreover, in States where some tribes are more suited for State regulation than others, this bill will permit the State to assume jurisdiction of some Indian territory, without having to assume jurisdiction of all Indian territory.

Similarly, if a State is particularly well equipped in a particular field, such as mental health or facilities for juvenile delinquency, the State would assume jurisdiction in these areas without having to assume jurisdiction in all fields.

Finally, in the area of State assumption of jurisdiction over civil relations, I would like to point to the provisions of section 402(c) which require that any tribal ordinance or custom which had been adopted by an Indian community would continue in full force and effect to the extent it was not inconsistent with the applicable civil law of the State.

One of the major themes of the legislation is to encourage movements of Indian tribes and members of tribes into the mainstream of American life without unnecessarily disrupting the values, traditions and customs of these people. That principle is behind the provision of section 402(c).

The second most important aspect of this legislation is the provision in title II of the bill of rights for Indians. Having been born and reared on the reservation, where I made my home with my family until I was 19 years of age, I am painfully aware of the limitation of the tribal system of maintaining law and order.

I well remember when a younger brother of mine was arrested by the Indian police for allegedly taking part in a brawl in my community. The arrest occurred the day after the alleged brawl, but there was no warrant issued, no written charge was given to my brother; he was held in jail for several days without a hearing and without

being advised by counsel or family. Through a friend of mine, I obtained an appointment with the reservation superintendent, a Federal official, not a tribal official. The situation was explained to him, whereupon the official caused my brother to be released.

In 1932 I received an appointment with the Bureau of Indian Affairs to work on the Pine Ridge Indian Reservation in South Dakota and continued to observe the inadequacies of the law and order programs there. The Congress passed in 1934 what is known as the Indian Reorganization Act.

In 1935 I was appointed as a field agent to assist tribes in Nebraska, Minnesota, North Dakota, Montana, and Iowa, and my home State, to consider the reorganization act and its provisions and to explain to them what was contained in it.

I helped set up elections either to reject or accept the act as it applied to each of them. Where the tribes agreed to have the provisions of the act apply to them, I then worked with the leaders to develop and adopt constitutions and bylaws for limited self-government. Following the adoption of the constitutions and bylaws, I then worked with their leaders to adopt ordinances establishing tribal courts.

One of the weaknesses, however, of the establishment of these courts was that there was no way under the law and the recognition of sovereignty of tribes as individual nations to prevent the tribal courts from existing as courts of last resort. Most of the tribal leaders recognized this weakness, but since the Federal Government's jurisdiction extended only to certain major crimes, the States had no jurisdiction at all in most instances, the tribal courts became the only method of maintaining some semblance of law and order or having none at all.

As a consequence, since these law and order codes empower the tribal government to exercise jurisdiction over certain defined offenses, and these apply to all members of the tribe, I or any other person as a member of such a tribe can be illegally arrested, tried in the tribal court, found guilty, fined a maximum of $500 or imprisoned up to not more than 1 year, or both, with no right of appeal or review.

Although an Indian who appears before the State court or a Federal court is given the full rights of the Constitution, when that same Indian appears before the Indian tribunals, he has no assurance of receiving such protections. Although many Indian tribunals are extremely fair in their processes and have enjoyed considerable success in orderly enforcement of their laws, there have been serious instances of denial of rights, which all Americans have always considered fundamental. And under present law as I understand it, when such a denial occurs, there is no power in any Federal court to review the matter and set things right.

I am particularly anxious to see enacted the provisions authorizing the writ of habeas corpus against imprisonments pursuant to tribal order. Although some Federal courts have now held that they have the power to issue such a writ, the grounds for issuance of that writ are extremely limited in nature and are not clearly defined. With the enactment of this bill, those grounds would be clearly set forth in language very comparable to the Bill of Rights in the U.S. Constitution, and when those rights have been violated the accused will now have access to a Federal court to determine the facts of the case and get appropriate redress.

The bill not only establishes a number of fundamental rights for the protection of fundamental rights for the protection of Indians, but requires the Secretary of the Interior to draft a model code for Indian courts and offenses to be recommended to the Congress. It is too early for me to comment on what such a code might or should contain. But I certainly think it is a healthy step for attention to be paid to this critical area. In particular, I welcome the provisions in title III for the establishment by the Secretary of the Interior of proper qualifications for office of judge of the court of Indian offenses, and to establish educational classes for the training of judges.

Mr. Chairman, to my knowledge virtually every Indian tribe in this country, with one exception, supports the provisions of the Indian bill of rights. The one exception involves some of the Pueblo Indians in New Mexico, who recently became concerned that such a bill of rights might alter their traditional organization. I do not know personally all of the causes for concern by these people. However, I would point out that they object only to titles II and III, and they strongly support all of the other provisions of the legislation including particularly the amendment to Public Law 280. This makes sense, since the very existence of Public Law 280 represents a far greater threat of interference with their tribal traditions than anything that might be contained in titles II and III of this bill.

It is difficult for me to understand why the Pueblo Indians would object to title III, which provides for preparation by the Secretary of the Interior of a model code to govern the administration of justice by courts of Indian offenses on Indian reservations. Title III applies only to so-called courts of Indian offenses, of which the Bureau of Indian Affairs tells me there are only about five in the entire country and thus has no application to any of the Pueblos of New Mexico, which have their own tribal courts.

The basis of the objection raised in title III therefore seems to lack any merit.

With respect to title II, the legislation guarantees individual Indians, in relation to their tribal governments, those fundamental rights such as freedom of speech, and the press or freedom from unreasonable search and seizure which are essential to the maintenance of a free and democratic society. It is difficult to see how such a provision would interfere with legitimate tribal interests. The bill is drafted in many instances with a view to permitting the greatest leeway for traditional systems of Indian tribes that is consistent with fairness.

For example, there is not included in this bill of rights any prohibition on the establishment of religion, such as that contained in the first amendment to the Constitution of the United States. This omission was deliberate and was designed to recognize the legitimate interests of tribes like the Pueblo in maintaining a religiously oriented government.

The Pueblo Indians constitute a very small percentage of all of the Indians in the country, Mr. Chairman, and they object to only a small part of the pending legislation. We should not risk loss of these vital provisions for all of the other Indians of the country, or risk loss of the important provisions regarding this fair housing and protection of persons solely to accommodate the interests of this one group. If they require special treatment, then that should be handled

through special legislation based on a full investigation of the circumstances.

The remaining portions of the bill, titles V, VI, and VII, are essentially technical in nature. To my knowledge none of the tribes objects to any of these titles and I think on the whole they would be useful provisions.

In concluding, Mr. Chairman, I would like to emphasize again and urge this committee to report favorably on House Resolution 1100, which would permit the House to vote to concur with the Senate-passed bill. I do so not only because I think the housing and protection titles of this bill are critically important throughout the country today, but also because I affirmatively support the provisions of the bill as they affect Indian tribes.

I join with President Johnson, who in his message to the Congress on March 6, 1968, entitled "The Forgotten American," strongly endorsed both the Indian bill of rights and the requirement of tribal consent to State assumptions of jurisdiction.

In this connection, I also would like to remind the committee of President Eisenhower's concern back on August 15, 1953, in regard to the provisions of Public Law 280, and I quote:

> Although I have grave doubts as to the wisdom of certain provisons contained in H.R. 1063, Public Law 280, I have today signed it because its basic purpose represents still another step in creating complete political equality to all Indians in our Nation.
>
> My objection to the bill arises because of the inclusion in it sections 6 and 7. These sections permit other States to impose on Indian tribes within their borders, the criminal and civil jurisdiction of the State, removing the Indians from Federal jurisdiction and, in some instances, effective self-government. The failure to include in these provisions a requirement of full consultation in order to ascertain the wishes and the desires of the Indians and of final Federal approval, was unfortunate. I recommend, therefore, that at the earliest possible time in the next session of the Congress, the act be amended to require such consultation with the tribes prior to the enactment of legislation subjecting them to State jurisdiction, as well as approval by the Federal Government before such legislation becomes effective.

As I have stated, almost without exception, Indians throughout the country support this legislation and Mr. Chairman, I want to thank you for this opportunity to appear before you today.

At this point I would like to submit the statement of the National Congress of American Indians on S. 1843 and related bills before the Indian Affairs Subcommittee of the House Committee on Interior and Insular Affairs, March 29, 1968:

STATEMENT OF THE NATIONAL CONGRESS OF AMERICAN INDIANS

I am John Belindo, Kiowa-Navajo, and Executive Director of the National Congress of American Indians. The National Congress of American Indians is the only private national organization of the Indian people themselves where the voting and programming is limited to legally recognized Indians and Indian tribes. We are responsible for speaking up for the Indian people on a national scale. Close to 87 Indian tribes including Alaska native villages are represented in our organization. We are in close contact with these various tribes and Alaska Native groups which represents a major cross-section of the Native population of our nation. I am honored to appear here today before this Committee to make a statement indicating the position of the National Congress of American Indians with respect to the Senate approved Bill S. 1843 and related legislative proposals.

Our membership requirements entitle us to assert that we represent a point of view which is vertically Indian. The size and diversity of our membership drawn from the larger Indian Community also entitles us to feel confident that we represent the collective sentiment of that Community more so than any other organization purporting to serve the same interests. It also commits us to serve the collective interests of our membership and pursue policies which are oriented to answer the wants of the majority on those occasions where such wants may be at cross purposes with the desire of individual segments within the membership. We are governed by democratic parlimentary procedure as much as the Honorable body to which this statement is addressed.

We of NCAI have had considerable history of concern with the percursor conditions which have led up to and prompted the items of legislation which is the subject of this hearing. This concern has been consistent and the policy statements of NCAI reflecting this concern have been equally consistent.

The Tribes support S. 1843 and H.R. 15122 which are identical. The Tribes are opposed to H.R. 15419 by Congressman Berry since it deletes the most important feature of the proposed legislation, mainly amendment to P.L. 280, whereby, States would assume Civil or Criminal jurisdiction over Indian Reservations, but only with the consent of the Tribes concerned. The "consent" provision is the most significant feature of the bills and presents the only real chance Indians have for obtaining amendment to P.L. 280 in the foreseeable future.

In our National Convention of 1953, our membership passed Resolution 3, which reads as follows:

Whereas there was adopted in the 83d Congress, Public Law 280, an act to transfer civil and criminal jurisdiction to any State in which an Indian reservation is located, without the prior knowledge and consent of the Indian tribe or tribes; and

Whereas the National Congress of American Indians is opposed in principle to the adoption of legislation affecting the lives and welfare of the Indian without consultation and consent of the Indians, a principle which the Founders of this Nation so strongly voiced in their relations with the British Parliament; and

Whereas the President of the United States, on the occasion of signing Public Law 280, on August 15, 1953, called attention to sections 6 and 7 of that law, which had been included without prior consultation with the Indians who might be affected, and recommended that "at the earliest possible time in the next session of Congress, the act be amended to require such consultation": Now, therefore be it

Resolved by the National Congress of American Indians, in convention assembled in Phoenix, Ariz., December 9, 1963, that this organization record its opposition to Public Law 280 in its present form; urge the recommendation of President Eisenhower be acted upon; request that Indian tribes be given full opportunity to be heard in connection with the proposal to transfer to the States civil and criminal jurisdiction over Indian lands; and request that Public Law 280 be amended to provide for the consent of Indian tribes affected by the legislation; and be it further

Resolved, That copies of this resolution be transmitted to the President of the United States, the Secretary of the Interior, the Commissioner of Indian Affairs, and to the Indian Committees of the House of Representatives and the Senate of the United States.

In 1966, in Oklahoma City at our 23rd Annual Convention the membership's continuing concern in this area prompted the passage of Resolution No. 7, which reads as follows:

Whereas the National Congress of American Indians has since the enactment of Public Law 280 requested that the act be amended to provide that the consent of the tribal governing body be obtained before a State could assume civil and criminal jurisdiction on the reservation; and

Whereas legislation in the past Congresses has been introduced to carry out the foregoing; Now, therefore, be it

Resolved by the National Congress of American Indians assembled this 13th day of November, 1966, that it again respectfully request and urges the 90th Congress to amend Public Law 280 to provide that asumption of States of jurisdiction in civil and criminal acts on Indian reservations shall only be after negotiations between the Indian concerned and the State and consent given, and only to the extent, from time to time, as agreed upon by the Indian tribe and the State; and be it further

Resolved, That the copies of this resolution be forwarded to the congressional committees concerned and other interested parties.

In 1967, at our national Convention in Portland, Oregon, the increasing concern of a simultaneously increasing membership prompted the passage of two resolutions No. 4 and No. 7. Resolution No. 4 reads:

Whereas the National Congress of American Indians has since the enactment of Public Law 280 requested that the act be amended to provide that the consent of the tribal governing body be obtained before a State could asume civil and criminal jurisdiction on the reservation; and

Whereas legislation in the past Congresses has been introduced to carry out the foregoing: Now, therefore, be it

Resolved that NCAI, the convention assembled at Portland, Oreg., October 2–6, 1967, that it respectfully requests and urges the 90th Congress to amend Public Law 280 to provide that assumption of States of jurisdiction in civil and criminal acts on Indian reservations shall only be after negotiations between the Indian tribe concerned and the State and consent given, and only to the extent, from time to time, as agreed upon by the Indian tribe and the State; and be it further

Resolved that copies of this resolution be forwarded to the congressional committees concerned and other interested parties.

Resolution No. 7 reads:

Whereas there is a pressing need for redefinition and clarification of the jurisdiction and procedure of the several courts concerned with Indian affairs and Indian persons; and

Whereas law and order codes of many organized and unorganized Indian tribes are under revision and reconsideration or require such revision and consideration in the light of changing socioeconomic and security needs of said tribes; and

Whereas desirable uniformity and diversity of civil and criminal legal procedure and substantive law affecting Indian tribes and persons can be derived by and through the united consideration and deliberation of all persons and agencies concerned: Now therefore, be it

Resolved that NCAI, in convention assembled at Portland, Oreg., October 2–6, 1967, that the Secretary of the Interior is hereby requested to draft a model law and order code; also to consult with all appropriate Indian legal and tribal courts, Members of Congress which he deems necessary to effectuate as far as practicable, a workable and equitable uniform law and order code for Indian reservations that would assist Indian, State and Federal courts, and Indian and non-Indian law enforcement agencies in the proper administration of law and order affecting both reservation and non-reservation Indians; and be it further

Resolved that before the code becomes effective on any reservation, the tribe involved shall consent to and approve the same.

More recently, at our annual Executive Council meeting in Washington, D. C., on March 4–5, 1968, the membership sustained its concern by passing Resolution 2 which reads as follows:

Whereas the National Congress of American Indians, in executive council, representing 87 American Indian tribes, assembled at a duly called and convened session, at the Willard Hotel, on March 4–5, 1968, in Washington, D.C., goes on record as supporting S. 1843, with the understanding that the wording of the definitions of subsection (3) of section 101, and as written and stated in section 201, apply only to the Court of Indian Offense: Now therefore be it

Resolved, on this 5th day of March 1968, that the executive council of the National Congress of American Indians goes on record as being in support of S. 1843 with the above understanding.

We of NCAI, speaking for the majority of our membership feel that the Senate approved bills, S. 1843 and H. R. 15122, both possess long awaited answers and solutions of the concerns reflected in these resolutions which have accumulated over the years. Our position has been most succintly, accurately, and emphatically delineated by a letter written by Mr. Wendell Chino, Mescalero Apache, President of NCAI to President Lyndon Johnson on December 27, 1967. The portion of the subject letter pertinent to S. 1843 reads as follows:

"Shortly before the first session of the 90th Congress was adjourned, the U.S. Senate passed S. 1843, referred to as the Indian Rights Bill. This action by the Senate is lauded by many Tribal leaders as marking a very important milestone in Federal and Indian relations in this country.

"In my opinion, there is no other omnibus Indian legislation pending before the Congress that will erase the apprehensions of our Indian people than to see an enactment of Indian rights measures as proposed in S. 1843. Passage of Indian Rights legislation would do more for Indian Tribes in assisting them to initiate and engage with greater efforts, ways to improve social and economic conditions in our Indian communities.

"In view of the fact that Senate approved S. 1843 needs the support of the U.S. House of Representatives. I respectfully request. Mr. President. that you encourage the second session of the 90th Congress to enact Indian rights legislation. The recent Civil Rights legislations have never been explicit in including a comprehensive Indian rights legislation. The opportunity to pass such a legislation is now at hand with S. 1843. I trust that the House will pass Indian rights legislation that is needed and long over due. This is important to the first citizens of this Country."

We would like to reiterate a point lightly touched upon earlier in this statement. The size and diversity of the membership of NCAI, its rapid growth over the past decade and its comparatively unique requirement that its membership be Indian, all attest to its capability in providing a genuine comprehensive and synoptic representation of the concerns of the larger Indian community. Its success in achieving this end arises out of the membership present and growing size and the organizational commitment to seek policies which will *collectively* benefit the membership. To maintain this capability NCAI seeks to encourage legislation which has a collective effect. To pursue legislation in a manner which is selectively oriented to accommodate the desire of specific Indian groups could entail a proliferation of small fragmented efforts whose multiplicity would clutter the legislative calendar to an extent which would protract the execution of legislation which benefits only a few Indian groups with the capability and privileges to get on the legislative agenda first. Should this happen, the Indians of this country would be right back where they started in achieving their rights as citizens with their relative impotency as small segmented groups each seeking what is in effect an individual treaty.

We Indians have been this route before and it has certainly not gotten us very much or we wouldn't be at this hearing today nor would there be a need for the legislation presently being considered. Moreover, we feel such fragmentation of efforts by its very nature would generally serve to impede the programs and processes with which we seek to better integrate the disadvantaged Indian into potential advantages of the American Society. It would establish a precedent which could lead to policies in application of any general governmental program in the areas of economic opportunity, health, education, welfare, et al., where it could be required that these programs submit to individual legislation and negotiation to meet the tailored desires of every particular Tribal group. This conjecture may be excessively negative, but it reflects an alerted concern on the part of NCAI about legislative procedures and philosophies which appear to lean in this direction. As an organization, NCAI feels that it honestly represents the interests of its membership and that its membership, in turn, honestly represents the interest of the larger American Indian community. We also feel that our capability in this dimension is the most legitimate and comprehensive of any organization in this nation.

Speaking from this position NCAI strongly recommends that the Honorable members of this Committee endorse S. 1843 and/or H.R. 15122, for subsequent passage to the House of Representatives.

Submitted by:

JOHN BELINDO.
Executive Director, National Congress of American Indians.

[Telegrams]

ONEIDA, WIS., *March 28, 1968.*

JOHN BELINDO,
Executive Director, the National Congress of American Indians,
Washington, D.C.:

Copy of following message sent Congressmen James Haley: The Oneida Tribe of Indians Wisconsin Inc., are aware of the House opposition to Amendment No. 430 of the civil rights bill. Please support this amendment which clarifies the constitutional rights of American Indians.

LORETTA V. ELLIS,
Oneida Tribal Secretary.

HAVRE, MONT., *March 28, 1968.*

JOHN BELINDO,
Executive Director, NCAI:

National Congress of American Indian 1346 Connecticut Ave., Washington, D.C. requesting your support civil rights bill for the American Indians Amendment 430.

JOE DEMONTINEY,
Chairman, Chippewa-Cree Tribe.

METLAKATLA, ALASKA, *March 27, 1968.*

CONGRESS OF AMERICAN INDIANS,
Washington, D.C.:

Metlakatla Indian Committee fully support Amendment 430 to civil rights bill to clarify constitutional rights of American Indians. We urge your support on this amendment at this time.

Mayor HENRY S. LITTLEFIELD,
Town of Metlakatla.

MISSOULA, MONT., *March 26, 1968.*

NCAI,
Washington, D.C.:

The Confederated, Salish and Kootenai Tribe of Flathead Reservation, Montana, urge favorable action on provision of S. 1843 and H.R. 15122 which would modify Public Law 280 and thereby secure to tribes the right to govern themselves, and if that right has been taken from them to permit the state to return it to them.

TRIBAL COUNCIL, CONFEDERATED SALISH AND KOOTENAI TRIBES,
Flathead Reservation, Montana.

EUREKA, CALIF., *March 26, 1968.*

JOHN BELINDO,
The National Congress of American Indians,
Washingon, D.C.:

The Hoopa Tribal Business Council, representing over 1,200 Indian members urges immediate passage of Amendment No. 430 to American Indians Civil Rights bill.

CHAS. J. MOON,
Chairman.
ELSIE RICKLEES,
Legislative Committee.

SCOTTSDALE, ARIZ.,
March 28, 1968.

JOHNNY BELINDO,
Executive Director, National Congress of American Indians,
Washington, D.C.:

Appreciate your wire. Have sent wires to Congressmen Aspinall, Haley, Udall, Rhodes, and Steiger 2 days ago, Endorsing S. 2516 as it came out of the House. quiets the fears of P.L. 280.

FILMORE CARLOS,
President, Salt River Indian Community.

ROOSEVELT, UTAH,
March 27, 1968.

JOHN BELINDO,
Executive Director of National Congress of American Indians,
Washington, D.C.:

Your T.T. received. We believe S. 1843 needs amendment and special consideration. We oppose amendment in housing bill. We are preparing our own amendments for hearing.

UTE INDIAN TRIBE U. & O. AGENCY,
FRANCIS WYASKER,
Chairman, Tribal Business Committee.

OMAHA TRIBAL COUNCIL,
Macy, Nebr., April 3, 1968.

Hon. JAMES A. HALEY,
U.S. House of Representatives.
Senator ROMAN L. HRUSKA,
U.S. Senate.
Senator CARL T. CURTIS,
U.S. Senate.
Hon. ED EDMONDSON,
U.S. House of Representatives.
Hon. ROBERT V. DENNEY,
U.S. House of Representatives.
Hon. JOHN P. SAYLOR,
U.S. House of Representatives.
Hon. GLENN CUNNINGHAM,
U.S. House of Representatives.
Washington, D.C.:

We understand congressional opposition to Indian amendment to civil rights bill is mounting. Amendment 430 and S. 1843 contain identical provisions which clarify constitutional rights of American Indians. Request your full support of these provisions.

ALFRED W. GILPIN, *Chairman.*

BELLINGHAM, WASH.,
April 1, 1968.

JOHN BELINDO,
Executive Director, National Congress of American Indians,
Washington, D.C.:

Following wire sent to Lloyd Meeds: The Lummi Indian Business Council is strongly in favor of Indian amendment to civil rights bill. Your support on our behalf is needed.

VERNON LANE,
Chairman, Lummi Indian Council, Marietta, Wash.

HUALAPAI TRIBAL COUNCIL,
Peach Springs, Ariz., March 27, 1968.

ROYAL D. MARKS,
Title & Trust Building,
Phoenix, Ariz.

DEAR MR. MARKS: This is what I have sent to the following: Wayne Aspinall, James Haley, Morris Udall, John Rhodes and Sam Steiger.

The Hualapai Tribe through its governing body the Hualapai Tribal Council endorses and prefers that the Civil Rights Bill be passed as it came out of the Senate. Indian Tribes have been trying for fifteen years to get P.L. 280 amended to provide for Indian consent.

Sincerely,

RUPERT PARKER,
Chairman, Hualapai Council, Peach Springs, Ariz.

[Telegrams]

FORT YATES, N. DAK., *March 26, 1968.*

Hon. E. Y. BERRY,
House of Representatives,
Washington, D.C.:

In response to your letter of March 21, 1968, concerning S. 1843, we had full hearings on S. 1843 and all other bills to amend Public Law 280. The standing Rock tribe is very pleased with S. 1843 and urges that you keep it in the main civil rights bill. We see no reason for treating Indians different from other citizens so far as civil rights are concerned. The features in S. 1843 will be very helpful.

A. J. AGARD,
Tribal Chairman, Standing Rock Sioux Tribe.

FORT YATES, N. DAK., *March 26, 1968.*

Hon. WAYNE ASPINALL,
Chairman, House Interior and Insular Affairs Committee,
House of Representatives,
Washington, D.C.:

The United Tribes of North Dakota strongly supports including the provisions of S. 1843 in the general civil right bill as passed by the Senate. We do not want the Indian civil rights knocked out of the main civil rights bill. We are satisfied with the provisions as now written. We have had at least two hearings before the Senate Judiciary Committee in Washington and hearings were held in North Dakota. We see no reason for further hearings.

UNITED TRIBES OF NORTH DAKOTA,
LEWIS GOODDHOUSE, *Chairman.*

MARCH 25, 1968.

Hon. E. Y. BERRY,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN BERRY: I want to thank you for sending a report on S. 1843, which I understand passed the Senate on December 7, 1967, and for the opportunity to give the views of the Cheyenne River Sioux Tribe.

The Cheyenne River Sioux Tribe were opposed to S. 1843 for the reason it took away authority granted to them under the Act of June 18, 1934 and violated the Constitution and By-Law and the Law and Order Code of the Cheyenne River Sioux Tribe.

At the meeting of the Executive Council of the National Congress of American Indians at Washington, D.C. on March 5, 1968, I drafted a Resolution for the consideration by the Council and it was unanimously passed going on record of approving of S. 1843 with the understanding that as the wording in Section 201 only applied to the court of Indian office and not to the Indian tribal court. In writing the Resolution, or the copying of it, a mistake was made, as the Resolution shows Section 102 instead of Section 201. I am enclosing the Resolution for your information. I am also sending a copy of this letter to Mr. John Belindo, Executive Director of the National Congress of American Indians. As to the mistake made in line 6 of Resolution No. 2, after the word Section, 102 should be changed to 201. Also enclosed for your information is the Constitution and By-Laws of the Cheyenne River Sioux Tribe. See page 5, Subsection (k) under Article IV—Powers of Self Government, Section 1. Also see page 16 of the By-Laws, Article V—Tribal Courts (Judicial Code).

Thanks again for giving the Tribe this opportunity to voice their views.

Sincerely,

FRANK DUCHENEAUX,
Chairman, CRSTC.

WINNEBAGO TRIBAL COUNCIL,
Winnebago, Nebr., March 29, 1968.

CHAIRMAN, INTERIOR AND INSULAR AFFAIRS,
House of Representatives,
Washington, D.C.:

Winnebago Tribe of Nebraska urges passage of Amendment 430 to Civil Rights Bill to protect Constitutional Rights of American Indians.

GORDON BEAVER,
Chairman, Winnebago Tribal Council.

COUNCIL ANNETTE ISLANDS RESERVE,
Metlakatla, Alaska, November 13, 1967.

NATIONAL CONGRESS OF AMERICAN INDIANS,
Washington, D.C.:

This is to follow up on our telegram supporting Ervin Amendment H.R. 2516.

Our Violators (liquor, Misdemeanor, Vehicle traffic violations, Crime) answer to the State Police and Magistrate. We are not happy with this because:

1. We have to fly in a State Trooper from Ketchikan and sometimes also a Magistrate. Ketchikan is 16 miles from here and by water.

2. They cannot answer our call sometimes because they have other areas to cover. Sometimes weather does not permit them to come in even when they are drastically needed.

3. This way a lot of things lag. Witnesses sometimes don't show up or change their minds about a given case after some time has elapsed.

4. We used to pick up $1500.00 to over $2000.00 on fines here when we had our own Magistrate. Our Constitution provides that our Magistrate can fine violators up to $360.00 and/or sentence them to so many days free labor. This has become ineffective since the advent of Public Law 280.

5. We cannot jail sentence anyone. We can hold them in confinement until the State Police arrives.

6. Misdemeanor—breaking windows, marking up posters, stealing bicycles, ignoring curfew, breakins and pilfering, shoplifting, and the like has been hard to curtail and more or less rampant since Public Law 280. The State Police and Magistrate at Ketchikan do not want to, or do not have time for these cases.

7. Violations of all our Ordinances and disrespect of special rules on Good Conduct has been at a high peak.

8. A steady flow of liquor is in progress now, and bootleggers are plentiful. Our local Police according to State Officers are not empowered to make arrests; in fact our local Policemen are not as effective as they once were.

Respectfully yours,

METLAKATLA INDIAN COMMUNITY,
HENRY S. LITTLEFIELD, SR., *Mayor.*

NOVEMBER 8, 1967.

Mr. JOHN BELINDO,
Executive Director, NCAI,
Washington, D.C.:

Your attention is respectfully called to the amendments to H.R. 2516, the Civil Rights Bill, proposed by Senator Ervin.

The Indian rights amendment would repeal the provisions of Public Law 280 which allow states to assert civil and criminal jurisdiction over Indian country without the consent of the Indians. The Quinault Tribe has repeatedly objected to this aspect of P. L. 280 on the grounds that it is both impractical and unjust. In my report to Robert Bennett, Commissioner of Indian Affairs on October 17, 1966 I made the following statement, which is the official stand of the Quinault Tribe on this problem:

"Because of the special status of Indian Reservations and the provisions of the treaties with Indians, state governments, have neither the political capacity nor the legal structure to administer jurisdiction over them in a manner which satisfies treaty rights. Neither do the state and local law enforcement agencies have the funds, the personnel, nor the facilities to do the job, by their own admission."

I am submitting herewith documentary evidence of the truth of the above statement in the form of recent newspaper articles. These illustrate the inability of Grays Harbor County government to meet its present obligations to the non-Indians of this area. Grays Harbor County is being criticized for its level of taxation, while, at the same time the County sheriff's force is threatened with disruption due to their inability to provide adequate salaries for officers. At the same time, Westport, at the south end of the county apparently suffers from inadequate law enforcement, with alcoholism a greater problem in Grays Harbor County than elsewhere in the state, and with inadequate financing to maintain their present program, it is quite evident that Grays Harbor County is not ready to provide even normal protection to the Quinault Indian Reservation.

The Quinault Reservation is now policed by four full time officers. If this protection were removed through state assumption of full jurisdiction it is very clear that we would be left without any protection at all.

Even if these problems did not exist we are sure that the State cannot do a competent job on the Quinault Indian Reservation. Their officers neither understand nor recognize the fact that the Quinault Tribe must have a jurisdiction which is capable of protection hunting, fishing, and land use rights guaranteed to Indians by their treaty.

It is at this point that we feel that the Congress acted in an irresponsible manner in giving states the rights to assume jurisdiction without safeguards to avoid hopeless Complications. Senator Ervin's amendment, if passed, would provide long needed relief from an extremely distressing problem.

Your support is earnestly solicited.

Yours very truly,

QUINAULT TRIBAL COUNCIL,
JAMES JACKSON,
Chairman.

The CHAIRMAN. Thank you, Mr. Reifel. Because of the fondness I have for the gentleman who just testified, the very friendly relations I enjoy with him, I am pleased to note that he made a very able statement in behalf of this provision of this bill.

And I judge, as the committee I am sure must judge, that the gentleman would like to see this particular legislation affecting Indians enacted into law.

Mr. REIFEL. That is correct, Mr. Chairman.

The CHAIRMAN. Now with that I have no quarrel, and I'm sure this committee has no quarrel. The question before us, Mr. Reifel, that this committee must decide and the House, eventually, is whether we are proceeding in an orderly, legislative fashion here. As the gentleman says, he has a very high regard for the chairman of the Interior Committee, as I do. I certainly share that. He says that they are considering this legislation in an orderly way, and he doesn't want to see it handled in this fashion. And I am sure that—I believe you said he had been a great friend of the Indians of the country. So that is the question involved. It is not the merits of the particular legislation as it affects Indians.

Any questions, Mr. Smith?

Mr. SMITH. Just one. When you say most of the Indian tribes are for it, is that because of communications on S. 1843, have they seen this, or do they write to you, or what? I'm trying to figure this out. I have never heard from an Indian tribe, so I don't know.

Mr. REIFEL. Well, you hear in several ways. First, through their attorneys who may be here in Washington or out in the field. For instance, the Pine Ridge Sioux Tribe has an attorney here. My own tribe has an attorney here. I have had telegrams from tribal members, and I was to receive some telegrams from the president or the executive secretary of the National Congress of American Indians. They are not on my desk, but by letter, telephone calls, by visits with them as they come, since I'm the only enrolled member of an Indian tribe in the Congress, they feel some feeling of rapport with me, so many of them stop by the office and visit with me. It is in those ways I have gotten the information.

Mr. SMITH. How many Indian tribes are there, approximately?

Mr. REIFEL. It is difficult; I would say there are somewhere around 100 tribes. This is not exact, because take my own tribe, which is a Sioux Tribe, they are a part of a larger group, which is Rosebud. Cheyenne River, Standing Rock, and so on, each of these is recognized as a separate tribe, but they are Sioux.

Then you get to the Chippewas, and they are White Earth, Red Lake Chippewas, and these are again considered separate tribes.

But to answer your question, we generally say around 100.

Mr. SMITH. About how many Indians are there?

Mr. REIFEL. For those for which the Federal Government assumes responsibility for the tribe, for instance, like my own, it would be something in the neighborhood of 450,000 to 500,000. Now as to Indians in the United States, this is something else. It is estimated that west of the Mississippi River there are probably 2 million people of Indian descent.

Mr. SMITH. Did you have an Indian name?

Mr. REIFEL. Yes; my Indian name was Lone Feather.

Mr. SMITH. Thank you, Mr. Chairman.

The CHAIRMAN. Anything further?

Mr. MADDEN. I want to commend the gentleman for his statement. That statement you made is the most illuminating statement as far as so-called civil rights justice is concerned to a great segment of our population that I have heard in all of the testimony that I have heard on this bill.

Mr. REIFEL. Thank you, Mr. Madden.

Mr. MADDEN. In other words, this legislation, if enacted into law, would be more or less a kind of Magna Carta for the Indians. Isn't that right?

Mr. REIFEL. That is right.

Mr. MADDEN. Now, don't you think it is fair—the chairman mentioned Mr. Aspinall—why is it that the committee that Mr. Aspinall is chairman of didn't take up legislation that would cure these injustices 1, 5, 10, or 15 years ago, or his predecessors on that committee?

Mr. REIFEL. I wouldn't be able to answer that question. There has been, of course, recognition, as I mentioned in my statement, of the Indian tribes as separate nations, being dealt with as separate nations, and they had sovereignty, and on that basis these tribes were organized and the tribal courts came along and these courts became courts of last resort, and not too much of a problem arose. Now the Indian leadership finds it a problem to deal with. In the programs supported by the Federal Government, for instance in education, we are not having the number of young men and women finishing high school, going to universities and colleges, coming back as lawyers; they are beginning to understand that there is this limitation in our present system.

Mr. MADDEN. In other words, the people are becoming more educated?

Mr. REIFEL. That's right. I think this is now being surfaced.

Mr. MADDEN. Now don't you think it is very fair, legislatively speaking, with the wonderful statement you have made regarding the part of this bill pertaining to Indian rights, and with the almost unanimous endorsement of the Indian population over the Nation and the tribes, don't you think it is fair that if there is anything so devastating that Chairman Aspinall or any other Member of Congress would think that this legislation pertaining to the Indians should not be passed in this way, don't you think that the fairness of 435 Members of Congress when this resolution gets down there can vote it down, if there is something so devastating that will hurt the Indians?

They have the privilege under this resolution you are supporting to vote the resolution down. So don't you think that is the legislative process that is working?

Mr. REIFEL. Mr. Madden, as I mentioned in my statement, under almost any other circumstance I would support Mr. Aspinall, a very dear friend of mine, a great champion of Indian rights, that this should go to his committee.

But this is a part of more basic legislation which is the rights to be protected for every American citizen, or at least expanded.

Mr. MADDEN. Of course we have had educational bills in the past that got tied up in this legislative log jam that I just narrated a few minutes ago, technically speaking, and now considering the fact that we, finally you might say, have come out of the darkness and passed some real educational legislation in the last few years in the Congress where millions of youngsters heretofore never had an opportunity to get an education, don't you think as long as we are this far along with legislation to help this great minority group of Indians, that it is just good legislation to let the membership vote on this resolution on the floor of the House?

Mr. REIFEL. That is the point I attempted to make in the statement, that there is nothing bad in this legislation. It is good legislation. It does protect the individual and his civil rights.

Mr. MADDEN. Could I get a copy of that statement of yours?

Mr. REIFEL. Certainly.

Mr. MADDEN. Would you give me permission to put it in the Congressional Record?

Mr. REIFEL. I certainly will.

The CHAIRMAN. It will be recorded in the hearing.

Mr. MADDEN. Yes, but the Members won't get to read it, you see.

The CHAIRMAN. I just called that to your attention.

Mr. MADDEN. I think it may be well to have the Members get brought up on this Indian question, so when they vote on this resolution, which I hope they will get an opportunity to do, they will have the knowledge about it.

Mr. REIFEL. Thank you very much.

The CHAIRMAN. Mr. Anderson?

Mr. JOHN B. ANDERSON. Mr. Chairman, I merely want to join in commending my colleague for a splendid statement. He certainly speaks from a great background of personal experience and knowledge. And I think his statement perhaps more than any other today has served to underscore the fact that these hearings, far from being the vehicle for the real estate interests to merely prolong and delay a decision on this matter, are serving to illuminate the bill and to educate the members of this committee and I think Members of the House on how important and how fundamental some of these provisions of the bill are.

I think you have made a great contribution.

Mr. REIFEL. Thank you, Mr. Anderson.

The CHAIRMAN. Mr. Delaney, any questions?

Mr. DELANEY. No; except to join with the rest of my colleagues in saying that legislation for the protection of the Indian rights is long, long overdue.

Mr. REIFEL. Thank you, Mr. Delaney.

Mr. DELANEY. I have supported what little legislation has been proposed, and I certainly will go out of my way on every occasion to support legislation giving them the rights they are entitled to.

Mr. REIFEL. Thank you.

The CHAIRMAN. Mr. Latta.

Mr. LATTA. I want to say, Mr. Chairman, that this is one of the finest statements we have heard made to the committee. Did you hear Mr. Aspinall's testimony before this committee this morning?

Mr. REIFEL. No. sir.

Mr. LATTA. He indicated not one, but he said tribes of Indians were opposed to this, that there was more than just one. Perhaps you would want to check this out with him and see whether or not there are other tribes that he has knowledge of who are opposed to this, other than the one tribe in New Mexico.

I would also like to ask you how the crime rate on an Indian reservation compares to the crime rate generally in the United States?

Mr. REIFEL. The minor offenses that are covered by the tribal courts, I suppose, would—I am just going back over my experience—would be not too unlike any group of disadvantaged, distressed people in a community, because, as you are probably aware, up in Alaska we have as high as 80 percent unemployment among the Alaskan natives.

And generally on the Indian reservations throughout the United States, something like 40 percent of the people are unemployed. And when you have this kind of depressed economic situation, you have social conditions that deteriorate accordingly.

So you will have a pretty high incidence of minor law violations. Now, the major crimes that are covered by the Federal Government are probably no greater or no less than the general public. That is murder, rape, and assault with a dangerous weapon and so on.

Mr. LATTA. As a matter of fact, you really don't know.

Mr. REIFEL. That is right.

Mr. LATTA. I don't know either, and that is the reason I asked the question. I heard the major crime rate on the Indian reservations was lower than it was generally in the United States, and I would just like to know.

Mr. REIFEL. I would agree with that assumption, but it would just be an assumption.

Mr. LATTA. And just one further question, Mr. Chairman. You indicated that you are glad to see the matter of prohibiting the freedom of religion stricken in this bill? Did you make a comment like that?

Mr. REIFEL. I said the provision was made definitiely for some of the tribes—take the Pueblos, for instance—it is in the nature of a theocracy. To the extent that they would legislate in the area of religion they may do so, because of the deference that is paid these tribes that still practice this.

Mr. LATTA. The only question I raise now is on page 13. The language reads "No Indian tribe in exercising powers of self-government shall: (1) make or enforce any law prohibiting the free exercise of religion," et cetera.

I just wondered whether or not that might conflict with the statement you just made?

Mr. REIFEL. This is in the section that——

Mr. LATTA. This is in the Indian section.

Mr. REIFEL. It is my understanding that, not being a lawyer, the law enforcement body of the tribe may permit a religious type of government.

Mr. LATTA. But that is pretty clear there, isn't it?

Mr. REIFEL. This is clear, yes. "No Indian tribe in the exercising of power of self-government shall make or enforce any law prohibiting the free exercise of religion."

Mr. LATTA. That is all, Mr. Chairman.

The CHAIRMAN. Anything further?

Mr. YOUNG. Mr. Chairman, I want to say likewise Mr. Reifel made an eloquent and persuasive statement. The only comparable statement for its eloquence and persuasion I think the gentleman also made in support of the cultural center bill recently on the floor.

And I commend the gentleman.

Mr. REIFEL. Thank you very much.

Mr. PEPPER. Mr. Chairman, I too want to join in commending the eloquent and very sincere presentation made by the able gentleman. Congress in 1964 passed, I think, a landmark law to authorize claims on behalf of tribes or groups of Indians for wrong done in the past history of our country.

I think that was a landmark piece of Indian legislation. This is another one, perhaps even more significant. But I just want to ask the gentleman one question. Is it too soon in what we might call the evolution or the modernization of the Indian people of the country—and we have many of them of whom we are very proud in my State—to be considered just like other citizens and not have any special laws or anything, just be subject to the same laws that other people are, not have special Indian courts, and have the same kind of courts that all the rest of us have?

Mr. REIFEL. As I understand your question, is it too soon to bring say, an Indian tribe, with all of its cultural values directly into the legal mainstream of the country?

Mr. PEPPER. Just forbid—I can't have any kind of a special court. I am a Baptist of Anglo-Saxon descent, but we don't have a special court. We have the same kind of courts that the Jews and the Catholics and all other people have.

But there has been a legacy of the Indian courts. I have been out in the Everglades and heard a good bit about how they hold their own courts and some of the judgments they render and the like.

As I understand it, they can be tried either in an ordinary American civil court or in their own court. I say is it too soon yet, or would it be an injustice to the Indian to no longer treat them as a separate group of people, but just treat them like other citizens, they are just people, citizens.

Mr. REIFEL. The gentleman is correct. It is too soon.

The CHAIRMAN. Excuse me. I want to get a consensus of the committee about who would be available for a meeting tomorrow.

Mr. PEPPER. I have commitments tomorrow, Mr. Chairman.

The CHAIRMAN. How about Tuesday?

Mr. PEPPER. I will be here Monday or Tuesday.

The CHAIRMAN. Mr. Anderson?

Mr. WILLIAM R. ANDERSON. I will be here tomorrow; yes, sir.

The CHAIRMAN. Mr. Latta?
Mr. LATTA. I will be here.
The CHAIRMAN. Mr. Madden?
Mr. MADDEN. I will be here.
Mr. JOHN B. ANDERSON. I will be here.
Mr. SMITH. I am always here.
The CHAIRMAN. Thank you. Pardon me, Mr. Reifel. I didn't mean to cut you off.
Mr. PEPPER. That is all right. He has so much knowledge of the subject——
Mr. REIFEL. The question Mr. Latta asked with reference to this provision with regard to prohibiting the free exercise of religion has to do with the person. And in the legislation itself the bill has to do with any prohibition on the establishment of religion on the reservation, which is different than the one that applies to whether I want to belong to any church or no church at all. I think the two are different orders of things.
Mr. PEPPER. Could you give a word of answer to my question?
Mr. REIFEL. I say the gentleman is correct, we can move too rapidly in this direction. And this legislation as it is written admirably provides for a gradual movement into the general stream of legislative machinery that we all recognize the need for.
Mr. WILLIAM R. ANDERSON. I have no questions, but I want to commend Mr. Reifel on an outstanding contribution.
Mr. REIFEL. Thank you.
The CHAIRMAN. Thank you, Mr. Reifel. The committee will stand in recess until tomorrow morning at 10:30.
(Whereupon, at 3:38 p.m., the committee was adjourned, to reconvene the following morning, Friday, April 5, 1968, at 10:30 a.m.)

TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

FRIDAY, APRIL 5, 1968

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

The committee met at 10:52 a.m. in room H-313, Capitol Building, Hon. William M. Colmer (chairman of the committee) presiding.

Present: Representatives William M. Colmer, Ray J. Madden, Thomas P. O'Neill, Jr., William R. Anderson, H. Allen Smith, John B. Anderson, and Delbert L. Latta.

The CHAIRMAN. I am very sorry to announce that we are unable to muster a quorum today. So we can't function without a quorum, as much as I would like to go ahead with this thing and finish up the hearings, we just can't function. I am advised by my colleague, Mr. Smith here, also, that the witnesses haven't shown up. So the committee will remain in recess until 10:30 Monday morning.

(Whereupon, at 10:53 a.m., the committee was recessed.)

HOUSE RESOLUTION 1100 (RULES), PROVIDING FOR CONSIDERATION OF H.R. 2516

Taking the Bill From the Speaker's table and Agreeing to Senate Amendments

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HOUSE RESOLUTION 1118 (RULES), PROVIDING FOR CONSIDERATION OF H.R. 2516

Disagreeing to Senate Amendments and Sending the Bill to Conference

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MONDAY, APRIL 8, 1968

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

The committee met at 10:40 a.m. in room H-313, Capitol Building, Hon. William M. Colmer (chairman of the committee) presiding.

Present: Representatives William M. Colmer, Ray J. Madden, Richard Bolling, Thomas P. O'Neill, Jr., B. F. Sisk, John Young, Spark M. Matsunaga, William R. Anderson, H. Allen Smith, John B. Anderson, Dave Martin, and Delbert L. Latta.

The CHAIRMAN. The committee will come to order.

The committee will resume its hearings on House Resolutions 1100 and 1118.

(The documents follow:)

[H. Res. 1100, 90th Cong., second sess.]

RESOLUTION

Resolved, 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, to the end that the Senate amendment be, and the same is hereby, agreed to.

[H. Res. 1118, 90th Cong., second sess.]

RESOLUTION

Resolved, 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, to the end that the Senate amendment be, and the same is hereby, disagreed to and a conference is requested with the Senate upon the matters in disagreement between the two Houses.

The CHAIRMAN. We have a number of witnesses scheduled this morning—Congressman Hays, Congressman Waggonner, Congressman Haley, Congressman McCulloch, Congressman Watson, and Congressman Wiggins.

Mr. Watson, you seem to be pretty far down the list, but you seem to be the only one here this morning, so we will be glad to hear from you.

STATEMENT OF HON. ALBERT W. WATSON, A REPRESENTATIVE IN THE CONGRESS OF THE UNITED STATES FROM THE SECOND DISTRICT OF SOUTH CAROLINA

Mr. WATSON. Thank you, Mr. Chairman and members of the committee. I did have a prepared statement. I had it prepared prior to the tragic events of Thursday evening. However, I only appear now seeking your consideration of three things.

First, if I may respectfully suggest to this committee that we try to have an open rule on this measure because of the extensiveness of it. Because of the many provisions involved we would be hopeful that this committee in its wisdom might give the House an open rule so that the matter might be thoroughly debated, and the House might have the opportunity to work its will.

Second, if the committee does not see fit to give the House an open rule, we would suggest respectfully again that the committee give us such time as is possible under the rule so that the House might be able to debate the issue as far as it can within the limitations of the rule.

I appreciate the fact that this matter has taken on a new degree of urgency in the light of recent developments, but I hope in the wisdom of this committee that we will not see fit to allow legislation to pass under a sense of recrimination or retribution or reward, but that we will have adequate time to debate the issue.

And, third, I thought it most appropriate to suggest, in view of the emotionally strained situation, that this committee in its wisdom might see fit to postpone action on this matter. I am sure that in past years every piece of legislation has been handled without the emotional impact that we would have on this.

Certainly we have tried to do so, we have tried to take matters dispassionately, intelligently, and certainly I hope that that is what will result in the handling of this bill. So, thirdly, I would respectfully suggest, Mr. Chairman and gentlemen of the committee, in light of the impact that we have upon the Nation now, that we postpone this matter until later, when all of us, both the proponents and the opponents, will be able to discuss it in an intelligent, calm, dispassionate, and deliberate manner.

So I shall not go into the merits and demerits of the bill as I proposed to earlier, I only come here to respectfully suggest that the committee might consider one or all of these suggestions.

I will be happy to answer any questions that you, Mr. Chairman, or any member of the committee might have.

The CHAIRMAN. Well, Mr. Watson, you haven't given us much to question you about. But I would observe that I think the gentleman's suggestion that this is a bad time to legislate in this atmosphere that

prevails in the country and in the Congress—it could very well bring about ill-advised legislation.

Insofar as the Congress is concerned, and this proposed legislation is concerned, it is difficult for me to understand how the Congress, made up of people certainly of average intelligence who are supposed to be statesmen, could have their judgment changed by either an unfortunate and cowardly assassin of a leader on one side or the rioting and murder and pilfering in defiance of the law on the other.

It would seem that this would be the time for a very full and ample consideration. Mr. Smith, do you have any questions?

Mr. SMITH. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Madden?

Mr. MADDEN. Well, the only thought I have on the matter is that our committee has had it here now for about 3 weeks and the bill passed the House last August.

Several days it was on the floor, then it went to the other body, and under all of the ordinary sensible processes of legislation the bill could have been legislated on over there last fall and brought back to the House.

But for some mysterious reason the bill was delayed and postponed. Even this year I think it was over there on the floor of the other body for about 3 weeks. And a handful of the Members tied the matter up under a rule they have over there that is so antiquated that it should have been abolished a long time ago to give the Members over there an opportunity to legislate.

And I think that the time has come when this Congress should legislate on some of their legislative processes and rules. Even some of the backward countries that are just trying to form a government, if they were called upon to have a legislative body where eight or 10 men could tie up 90 of their colleagues and not allow them to vote on a piece of legislation, why, even these inexperienced countries in democracy would laugh in a situation like that.

And here we have a piece of legislation that should have been passed last fall, in my mind. And now it has been watered down and some of the Members over there, the distinguished minority leader and others, who never carried any flags in the civil rights parade that I know of, voted for this bill in a watered-down situation. And this section pertaining to the Indian civil rights, we had the Congressman from South Dakota, a native Indian, testify before this committee on Thursday and, by the way, I placed his testimony in Friday morning's record, I think it is, and I hope all of the Members read it, where he thinks that that is the greatest piece of legislation for the Indian, American Indian, that has ever been passed.

So I don't see why we should relegate this bill back into the Judiciary or in conference and have the bill returned to the other body and have the same performance repeated over there. It has not only been repeated on this bill in that body, but on other pieces of legislation, like 14(b), that passed this House by a 19 majority, and went over there and eight or 10 men refused to have the rest of the body vote on 14(b).

Now, if that is legislation, why, we better go back into the days before the Constitution so that the people's representatives can vote

on legislation. And why this should be delayed, this bill, at this particular time, I don't know. It has been delayed and redelayed.

And if there ever was a time to do something for civil rights and for the people of this Nation who have been crying for legislation like this, now is the time to report this Resolution 1100 out and let the 435 Members of Congress vote it up or down.

And I think that would be democracy.

Mr. MARTIN. Will the gentleman yield?

Mr. MADDEN. Yes.

Mr. MARTIN. You made the statement that the Senate bill was watered down from the House version. If that is correct, and I do not agree with the gentleman's conclusions on this point, but assuming that is correct, don't you think the House should have the right to amend this bill and then make it stronger than the Senate bill?

According to the provisions of resolution, we won't have that opportunity.

Mr. MADDEN. In my opinion, it might be watered down, it has been watered down, but in other Members' opinion it might not be. But nevertheless democracy functions by this resolution coming on the floor of the House and let the Members be counted up or down.

If this bill has been amended by the Senate in such a way that it is not acceptable, if this resolution is reported out tomorrow, or Wednesday, democracy can function, the Members can vote it up or down.

But let's give the other 435 Members an opportunity to legislate.

The CHAIRMAN. Will the gentleman yield to me at that point?

Mr. MADDEN. Yes; I will be glad to.

The CHAIRMAN. I certainly have no desire to get into an argument with the gentleman, but it is difficult for me to understand the gentleman's definition of democracy. If we send this bill down under your resolution, isn't it true that the House would have no opportunity to do anything except vote on it?

Mr. MADDEN. Under the previous question, they can reject it and then control goes over to the minority Member, and they can move to have it sent to conference, or even sent to the Judiciary Committee.

The CHAIRMAN. That is rather a rare occurrence.

Mr. MADDEN. There is nothing rare about it. I think it was done on two former occasions that I know of where the Rules Committee did the same thing.

The CHAIRMAN. Wouldn't the gentleman agree with me that the more democratic way to handle this legislation would be to follow the usual course and send it to conference with all of these many amendments?

Mr. MADDEN. By past performances that wouldn't be very democratic, because it would land right over there where eight or 10 men can tie it up and bury it for this session. That is not democracy. Democracy is to send this resolution down here tomorrow and let 435 Members representing the people of the United States vote here up or down. That is democracy.

The CHAIRMAN. Well, my people sent me to the House of Representatives and I have to function under the House rules.

Mr. MADDEN. Maybe we should have a filibuster, a rule 22, like they have in the other body, where democracy does not function. But thank

God we have a legislative body on this side where the Members can vote by majority. And that is the way I think the people of this country decided to have their legislative problems settled, not by two-thirds of a majority, but by a simple majority.

And this resolution can be voted up or down by a majority of the House if this committee reports it out tomorrow. That is all I have to say. I admire my chairman because he is not affiliated with a crowd that filibusters. We don't filibuster; we act; we are a legislative body.

The CHAIRMAN. Mr. Anderson, any questions?

Mr. JOHN B. ANDERSON. I was just going to say, Mr. Chairman, my good friend from Indiana, Mr. Madden, has made so many derogatory remarks this morning about the other body, how they legislate and how they arrived at this decision, that he may change my mind before the morning is over, and I am sure he wouldn't want to do that, about accepting their bill.

So you had better take it a little easy on our brothers on the other side. The only comment I have is: the gentleman from South Carolina said we should not abdicate our responsibility to arrive at a decision on a sound and reasonable basis, even though we are laboring under a great stress of emotion.

I thoroughly agree with him. The gentleman does appreciate that as far as this committee is concerned, the fact that we will vote tomorrow on this legislation represents the fulfillment of a decision that was taken in this committee on the 19th of March, when we voted to hold these hearings, to give everybody like yourself a chance to come up here and be heard on the bill, and then, in the normal and due course of events, vote on the 9th of April on the question of reporting out Mr. Madden's resolution.

So I hope the gentleman doesn't suggest that in any action that the committee takes, we are doing anything that is not in the normal course of orderly legislative procedure.

Mr. WATSON. Mr. Anderson, let me say and underscore the fact that the way you have handled it, the deliberate manner that you have conducted the hearings thus far, I believe is commendable. I did not intend, if such were inferred, to impugn the motives of this committee.

I do not. In response to my friend's position from Indiana, and it might relate to your position now, things have transpired since this committee first made that determination to report this bill out tomorrow.

Most traumatic things have happened. I think the American people of all persuasions would appreciate the fact that so traumatic have been these things that it would warrant further discussion and consideration of the matter, so as to not let it be debated at a time of emotion and stress.

Now, had the events of Thursday evening not developed, then I am sure that the House expected you gentlemen to report it out tomorrow as you said you would, and that would have been deliberate speed, to be sure. But I am sure that my friends would understand that things have happened since you earlier made that commitment that I believe reasonable people on all sides of this question would say that Congress now should hestitate in this hour of emotional strain and stress and provide for more calm, deliberate, and intelligent consideration of this matter.

Certainly, Mr. Martin responded to the gentleman from Indiana about our responsibility as Members of the House and not to just blindly follow whatever the other body does on this particular matter. To be sure, they debated it at length, but the House has not had that opportunity.

So the point that I am trying to make is, in the light of recent developments, I believe the American people of all persuasions would want us to postpone a decision until we could have a time of calm. What would be the consequences in the House if it were voted up or down?

I hate to see comments or hear comments as we have heard, and I am sure you have, that this is the hour to take this step in order to reward someone, or to take this step in order to show our repulsion at this dastardly act down in Tennessee. But we as intelligent Representatives of the people, we are not to be persuaded by those things.

And as much as we should try now in this committee, as much as we should try to remove these things from our minds and forget about them, I don't believe it is humanly possible for anyone to do so. And that is why I am disturbed about the matter, and say to my good friend from Indiana, I don't want to block the will of the House and the will of the House will be expressed whether it comes on Wednesday, Thursday of this week, or whether it comes 2 weeks from now.

I am sure the will of the House will be expressed. And the matter of timing is not going to deny the will of the House at all. And I am sure the people of Indiana, when they elected you, intended for you to have your influence and to cast your vote and work your intelligence and will into legislation and not just say it has been adequately debated, because the Senate, the other body, deliberated some several weeks on this particular matter.

And that is why I am urging and pleading with you at this time that we might wait until further things have transpired which would allow the situation to calm down.

The CHAIRMAN. Mr. Bolling, any questions?

Mr. BOLLING. No questions.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. No questions.

The CHAIRMAN. Mr. O'Neill?

Mr. O'NEILL. No questions.

The CHAIRMAN. Mr. Latta?

Mr. LATTA. Just one question, Mr. Chairman. After President Kennedy's assassination the House passed a piece of legislation that was supposed to be passed as a memorial to President Kennedy. We acted then in a time of stress, strain, and emotion.

We are now in the same position as you pointed out. And many people, as you have indicated, are saying that we should pass the legislation not on the merits—forget the merits—but as a memorial to the great individual who died by an assassin's bullet.

I have been in deep thought about this matter over the weekend as to what the possible consequence might be for the future. Must some great leader of this country die to pass legislation on the basis of emotion rather than on the basis of merit?

If so, every great leader of this country, whether he is black, white, or whatever color he might be, is in jeopardy, because there are a good many people that might get to thinking, "Well, it's the only way to pass

legislation, to kill somebody and stir up emotion in this country to the extent that the Congress will act, not on the basis of merit, but on the basis of emotion."

And, frankly, this worries me if we are going to take this course of action. And I feel if a piece of legislation was meritorious before this man died, it is meritorious afterward. And if it is not meritorious before he died, it is not meritorious afterward.

And the same thing applied to President Kennedy. And I certainly fear for the future of the legislative process if we take this road blindly on the basis of emotion, on the basis of the fact that a great man died.

I can see many other great men in this country dying just to see legislation passed in the future. And I fear this type of process.

Mr. BOLLING. Mr. Chairman, could I make a brief comment?

The CHAIRMAN. Mr. Bolling.

Mr. BOLLING. I think it is necessary for somebody to say, at least an opinion, that in my opinion on Thursday last, before the event the gentleman refers to, this bill was going to come out of this committee and was going to be passed by the House of Representatives.

And I think the gentleman is right, we shouldn't obscure it. In my judgment this legislation was going to pass anyway. Congress has to act in times when there is great emotion involved and we do constantly, in matters like Vietnam and all foreign policy, and the notion that an event controls what Congress does is beyond my comprehension on the basis of the history of the Congress.

Mr. JOHN B. ANDERSON. Would the gentleman from Ohio yield for a further comment?

Mr. LATTA. Yes.

Mr. JOHN B. ANDERSON. I think it is terribly important to emphasize that point as far as the American people are concerned. The decision by this committee to vote tomorrow was made before the tragic assassination. The decision, I am sure, on the part of the Democratic leadership, their desire to schedule this for the 10th, or the day after, was made long before Dr. King was assassinated.

So we are not altering the legislative calendar, we are not doing anything in acting on this bill at this time that we would not have done in the normal course of events had Dr. King not died. And I think the American people should know that, because we don't want the false impression to go out that we in Washington are simply turning cartwheels or doing anything else that we wouldn't have done before the death of Dr. King.

Mr. LATTA. Well, I couldn't agree with the gentleman more. But in emphasizing the point that this committee had agreed to act, many weeks ago, on tomorrow—we are not being rushed or steamrolled into acting today; we did not act last Friday.

I certainly didn't intend to infer that. But there is some question as to whether or not the votes are down on the floor to pass the Madden resolution or to pass the Smith resolution to send this to conference. And that is what I had reference to, not the question of whether or not this committee is going to act, because this committee is going to act.

The CHAIRMAN. Will the gentleman yield?

Mr. LATTA. I will be pleased to yield.

The CHAIRMAN. Of course there has really never been any question since these hearings began but what a resolution would be reported out

of this committee. It was just a question of what form it was going to take.

Mr. LATTA. That is correct.

The CHAIRMAN. And while we are expressing opinions, I would like to express mine further, for whatever it is worth. I went home Thursday evening with the conviction that we had the votes to send this bill to conference in an orderly fashion, the form that legislation usually takes.

But after what happened in Memphis I must confess that I had some doubt in my mind whether that action would be taken. I could be mistaken. But that was my opinion about it after having put in quite a little time to that end.

Mr. BOLLING. Will the gentleman yield to me?

Mr. LATTA. Yes.

Mr. BOLLING. I would not want to enter into a contest with my chairman on this matter, but I have been counting votes in the Rules Committee on these matters, I think, as long as he has, and I just want to reexpress my opinion that I think we had one extra over the necessary number on Thursday.

The CHAIRMAN. Well, the gentleman possibly read into my statement something—if the gentleman would yield to me further—that I didn't say. I didn't say whether it was in this committee or on the floor. I am not so sure now that, in spite of all this emotion and hysteria, the House will take a bill that has been rewritten and many, many foreign matters added to it without giving some consideration to the orderly process of sending it to conference.

Mr. BOLLING. The events will prove who is right.

The CHAIRMAN. Well, that always happens, even at a horse race, you know.

Mr. O'NEILL. I am sure you have been around here long enough to know the administration and leadership have taken many head counts, and have been mistaken. So we are dragging the old flag across the trail again.

The CHAIRMAN. Well, we are getting into another field now. That was my understanding.

Mr. LATTA. I think maybe we are conducting a filibuster now, so I refuse to yield.

The CHAIRMAN. You go ahead and finish.

Mr. LATTA. I am through.

The CHAIRMAN. Mr. O'Neill?

Mr. O'NEILL. No questions.

Mr. CHAIRMAN. Mr. Sisk?

Mr. SISK. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Matsunaga, we welcome you back.

Mr. MATSUNAGA. Thank you very much. Mr. Chairman, I am sorry I wasn't here Friday.

The CHAIRMAN. We understand you have been ill.

Mr. MARSUNAGA. I might just reemphasize that the action taken to vote on this measure was taken long before the nightmarish weekend we had, and I wish to join the gentleman from Illinois, Mr. Anderson, in emphasizing and reemphasizing the fact, lest some misunderstand-

ing be gotten from what has been said earlier. Thank you very much. That is all.

Mr. MADDEN. Mr. Chairman?

The CHAIRMAN. Yes, Mr. Madden?

Mr. MADDEN. I want to clear up possibly some of the statements made regarding this being such an exceptional procedure, which it is not. Many times a bill is sent over by the Senate that has been changed in a major or minor way, that has been passed on the House floor by unanimous consent.

And many times it is sent to conference, and on several occasions that I know of, bills that have been sent over by the Senate have been sent to the Rules Committee. Now, for the record, I would just like to read this:

In the civil rights area alone, this identical procedure has been used twice in recent years. Both in 1960 and in 1964 civil rights bills were amended by the Senate and then returned to the House.

The same as this bill.

In both instances backers failed to obtain unanimous consent to vote on the Senate amendments without a conference. In both instances a Rules Committee resolution was obtained—

The same as here—

bringing the bill directly before the House for an immediate vote and in both instances the House agreed to accept the Senate amendments.

Now, I refer you to the Congressional Record of April 21, 1960, page 8497, and July 2, 1964, page 15869. That is all.

Mr. WATSON. Mr. Chairman, may I make a final statement here?

The CHAIRMAN. Yes.

Mr. WATSON. Perhaps I can restate my position. In the light of the fact that there will apparently be a move to press forward under the present schedule and ignore the conditions that presently exist, I would urge that we get together with Mr. Madden, since he has pleaded the democratic process, and that you give us an open rule so that the House might work its will on this particular measure.

I am sure that is the most democratic process that we can have. And I am sure that the gentleman from Indiana would support that, in that his basic position is to support the great democratic process, and allow us sufficient time to debate the issue.

If it runs into Good Friday or over into Easter, we are willing to stay around and do that. I just thought perhaps under the shocking trauma we have experienced over the weekend, that perhaps it would justify some change in the procedure or the schedule for the handling of this bill.

But apparently it does not. So my only request is, in the great democratic processes, allow the House to work its will through an open rule and give us adequate time to debate the extensiveness of this legislation.

Mr. MADDEN. Would the gentleman yield?

Mr. WATSON. Certainly.

Mr. MADDEN. We have already given an open rule on this last July or August. We gave an open rule on this bill, and it was debated on the floor of the House.

Mr. WATSON. If I may stand corrected, not on this particular measure. I understood it just came over from the Senate a short time ago.

Mr. MADDEN. Yes, but it is in essence the same bill, with a few modifications.

Mr. WATSON. Of course the gentleman will agree it is a far cry from the earlier version.

Mr. MADDEN. Maybe watered down a little, but it is in essence the same bill.

Mr. WATSON. I guess insofar as the Cadillac and Model T Ford are cars, we would be in accord—they are both automobiles.

Mr. SMITH. Mr. Chairman, I didn't intend to get into this, but I think the statement Mr. Madden just made should be clarified from the standpoint that at earlier times the rules of the House permitted one Member to object, and if so, the House could not proceed to send a bill to conference. So when we came up here to give the rule, it was pro forma. But that is no longer the rule.

We did that year in and year out on many measures, and I voted to send it out each time. But that rule was changed at the beginning of the 89th Congress, so one Member cannot now object and keep the bill from being heard.

Mr. MADDEN. Would you yield?

Mr. SMITH. Certainly.

Mr. MADDEN. This bill doesn't operate under the new rule. It came in under the old rule, so we don't want to rob this bill of the privileges of the old rule.

The CHAIRMAN. Would you suggest what you mean by "the new rule?"

Mr. MADDEN. We don't want to be unkind to this bill and be technical. We should give it the privilege of operating under the rule that it came in under a year ago. And I think we should not be unfair to the bill by making a new rule on this particular bill.

Mr. SMITH. I am not talking about being unfair. But in January 1965 we changed the rules so that one Member could not do that. We have time and again sent things down to the floor and one person would object and the House couldn't go ahead. So the two instances, in referring to that civil rights bill and this one, are not identical from a procedural standpoint.

That is all I have, Mr. Chairman.

The CHAIRMAN. Anything further? Mr. Watson.

Mr. WATSON. Mr. Chairman, I believe the gentleman from Massachusetts had a question.

Mr. O'NEILL. I wanted to comment—of course if you get this bill back to the Senate under the processes you are proposing, you go through 40 days of debate again, there is a great possibility this bill could never be enacted into law.

Mr. WATSON. May I say to my friend that we have a grave enough responsibility to discharge our duties as Members of the House of Representatives, and I am sure our people will never hold you nor me responsible for what the Senate does on the other side.

Mr. O'NEILL. I think the American people will hold the Congress as a whole responsible for this legislation. I would hate to think what would possibly happen in the major cities of this country if this Congress doesn't act this week.

Mr. WATSON. Well, we have had a lot happen despite other bills that have been passed.

Mr. O'NEILL. I am just trying to prevent anything further from happening.

Mr. WATSON. We have had a lot happen despite other bills that have been passed. I only urge us to face our responsibilities as Members of the House. Certainly we have no control over the other body. I thank the chairman and Members for allowing me the opportunity to testify.

The CHAIRMAN. Thank you, Mr. Watson.

The Committee will be glad to hear from you, Mr. Waggonner.

STATEMENT OF HON. JOE D. WAGGONNER, JR., A REPRESENTATIVE IN CONGRESS FROM THE FOURTH DISTRICT, STATE OF LOUISIANA

Mr. WAGGONNER. May I express my personal appreciation to you, Mr. Chairman, and members of the committee for the opportunity of being heard briefly and after that I will answer any questions that some of you might have of me with regard to this legislation.

I can only wish today that I had the oratorical ability of the 18th century English statesman, Edmund Burke, and if he were here today as a Member of the House of Representatives, I have no doubt in my mind that he would have asked to appear before this distinguished committee as I have in opposition to the bill before you. I feel safe in making this prediction because his position was exactly the same as mine. He summed up his view in words of crystal brilliant purity when he said:

> The poorest man may, in his cottage, bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter, the rain may enter . . . but the King of England cannot enter; all of his force dares not cross the threshold.

If ever there was an unassailable right of every freeman in America, this has been it: that in his home every man has sanctuary from the oppression of his government. This right, inalienable thus far, has played a vital role in the very development of this Nation, because it has been a heritage, a freedom, and a civilizing force giving us sober stability.

Now you gentlemen have before you legislation that will take away from every man, not just the white man at whom this bill is punitively aimed, but take away from every man the right to own and hold and dispose of his property as he sees fit. Those who want to railroad this bill through the House without benefit of any committee consideration in either the House or the Senate can try to soothe their consciences by saying that human rights take precedence over property rights, but this is self-delusion because, if you take away from man his right to own property, you are stripping him of a human right, not a property right, just as surely as if you took away his right to choose the kind of car he drives, what color suit he wears, what food he eats or what cigarette he smokes. These could be called property rights, too, because they too involve property, but what you take away from a man when you take away from him the right to sell his property as he chooses is not so much his property as his right to dispose of it.

If the present Supreme Court were made up of Justices devoted to preserving the Constitution of the United States instead of prostituting their positions to advance so-called social reforms, such a pro-

posal as you have before you would be declared unconstitutional before the sun sets today. Courts have held, time after time, that the Federal Government has no place meddling in the private business transactions of individuals.

In a decision upheld by the Supreme Court itself, the Second Circuit Court had this to say:

> We had supposed that it was elementary law that a trader could buy from whom he pleased and sell to whom he pleased and that his selection of seller and buyer was wholly his own concern. It is part of a man's civil rights.

Gentlemen, I would like to repeat that phrase if I may:

> It is part of a man's civil rights that he be at liberty to refuse business relations with any person whomsoever, whether the refusal rests upon reason or is the result of whim, caprice, prejudice or malice. We have not yet reached the stage where the selection of a trader's customers is made for him by the government. (227 Fed. 2d Circ. Upheld.)

We could search court decisions from now until adjournment and not find a more pointed refutation of every specious argument which is being made in favor of this unfair housing proposal.

How prophetic that the Court should use the phrase "not yet reached the stage." This was the Court's judgment in 1915 when this decision was made. Now in 1968 the House is being asked to declare that the Federal Government has reached that stage; that traders can no longer enjoy the privilege of choosing their customers; that they must be directed by a faceless bureaucrat from Washington.

I cannot believe that there is a Member of either body of the Congress who does not truly know in his conscience that in advocating passage of this measure he is taking part in the stripping away of one of the basic privileges that have distinguished Americans from those who live in totalitarian countries.

When you tell an American that he cannot sell his home to X; that he has to sell it to Y or A instead, you have struck at the very taproot of freedom. If the Federal Government thrusts the nose of the camel under the tent, if the legislative precedent is established that the Federal Government has the right to take any part in such a private transaction, then we are not a legal inch away from the proposition that this same Government can dictate what price can be charged, when a house can be sold or if a house can be sold.

Gentlemen, I want to read to you from page 29 of the bill, beginning with line 4, the section entitled "Discrimination in the Financing of Housing," and listen to me carefully, and tell me what this section says. I say to you that this section says that a man who lends money for real estate transactions cannot even refuse to make a loan, not based upon discrimination because of race, color, religion or national origin or that sort of thing, but he is denied the basic right to even refuse to make a loan.

Listen to it, gentlemen, and tell me if this is not what it says.

> Section 805. After December 31, 1968, it shall be unlawful for any bank, building and loan association, insurance company or other corporation, association, firm or enterprise whose business consists in whole or in part in the making of commercial real estate loans, to deny a loan or other financial assistance to a person applying therefor for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling.

And sure, there is more. But it says "or to discriminate." The reasons for making the loan have nothing to do with discrimination prior to this point. The man who is in the lending business is denied the right to refuse to even make a loan. The Federal Government should have no such right.

It can be argued until we are all blue in the face that this unfair housing section does not go that far and that there is no sentiment that it go that far. But the final answer is that there is no majority sentiment in the Nation today for the proposal that is before you. I need only cite the case of the State of California, where such an unfair housing proposition was put to the voters and soundly rejected. It was then that the Supreme Court, nine men neither good men nor true, decided that they had to protect the majority of the people from themselves and they struck down the will of the people.

Some of you gentlemen may have been present on the floor of the House on the 14th of last month when the chairman of the Judiciary Committee and the leadership attempted to violate its commitment to those of us who are opposed to this measure by bringing the bill up for immediate debate. You will remember that I questioned the chairman of the Judiciary Committee as to what this bill contained and he admitted that he was not familiar with all its provisions.

I am sure that this was an admission he was ashamed to make. And well he should be when any committee chairman has to admit to the other 434 members that he does not know the intricacies of legislation he asks us to pass without any committee consideration.

Gentlemen, I don't fear the voice of the people as some of the proponents of this measure apparently do. I am not afraid to take the time necessary to give this bill a hearing in the Judiciary Committee or a House-Senate conference. I am not afraid to let the people know what this bill contains and what it will do to their rights as free men and women if it becomes law.

Apparently the chairman of the Judiciary Committee and the administration are afraid. The desperation effort to railroad this bill through Congress without sending it to committee for hearing, investigation, and debate goes against the grain of the democratic principles as violently as the provisions of the bill itself.

And we talk about letting the democratic process function by letting the Members of the House of Representatives vote on this measure, whether or not they want to accept it.

Gentlemen, if you are sincere about letting the democratic principle function, why don't you submit this in a public referendum to the people of this country and see what the people of this country believe about this proposal? Let's have a nationwide referendum. Let's see whether or not the people of this country want such legislation if you are truly sincere about letting the democratic process function. And that will be a real illustration of the will of the people and the democratic process will have spoken and the people of this country will abide by it.

What is this inordinate fear that is driving the leadership to railroad this bill through the House? Why is it afraid to take a few weeks or a month to give this bill the sober consideration any major legisla-

tion must be given? Is there a fear that if given time the people will express their opposition in such overwhelming terms that they cannot be ignored? Is there a fear that the militant Black Power groups will continue to burn our cities down if Congress does not pay this blackmail, as has been said here this morning, we must fear?

I will answer my own questions. The answer to them all is "Yes." An Associated Press story appearing in last Friday a week ago's Washington Post quoted him as saying he wanted quick action on this bill because of the impending march on Washington. There is only one phrase to describe the administration's panic: "racial blackmail."

This legislative illegitimacy is being dumped on the doorstep of the House with a note pinned to its diaper asking us to give it the honorable parentage it does not now have. Gentlemen, I make an unwilling wet nurse.

Gentlemen, before I close my remarks on this bill, I want to touch for a moment on an ill-conceived and dangerous amendment adopted by the Senate which would impose severe penalties for certain activities in connection with civil disorders. I have reference to title X of the bill, sections 231 to 233, known popularly as the Long amendment.

I know that Senator Long, who represents my own State of Louisiana, had the best intentions in the world with this amendment. I know the distinguished Senator's sensible views on civil disobedience and violence and it could not have been his intention to open up the Pandora's box this amendment opens.

Paragraphs (1) and (2) of section 231(a) make criminal the teaching, demonstration of use, application, making, transportation, or manufacture of firearms while—and this is the dangerous wording I am opposed to—"while knowing or having reason to know or intending" that the firearm would be unlawfully used in any way or degree to impede or adversely affect commerce.

Now, as I say, I am sure the Senator had in mind a purpose that is entirely constitutional and proper. However, the vagueness of the phraseology used here could and undoubtedly would involve innocent persons in criminal liability with very heavy penalties.

The phrase "or having reason to know or intending" is an example of what I mean. The all-encompassing scope of this terminology embraces more than is either constitutional or practical. A firearms manufacturer or a firearms safety instructor could easily become a violator of a Federal criminal statute by any number of innocent circumstances if this language is allowed to stand.

I feel sure that the Judiciary Committee, made up as it is of some of the foremost legal minds in this Nation, would strike such ombiguous and vague wordage.

Any number of other examples of this uncertain wordage are found in this amendment, such as, for another example, the words "in any way or degree." This has the clear meaning that no matter how remote or infinitesimal the adverse impact on commerce might be, a person could be caught up in the tangle of this Federal statute and imprisoned, fined, or both.

The impracticality of such language is manifest, Mr. Chairman, and this dangerous situation must be cleared up. It can only be cleared up by taking the proper approach in such a situation, send the bill to the Judiciary Committee or to a House-Senate conference,

or better yet, if you still want the democratic process to function, conduct a national referendum.

This final word, Mr. Chairman, on this bill as a whole. We are being accused by the President of "piddling around" when we ask that this bill be given the same procedural treatment that is given every other bill.

And I submit to you that when the House was asked to send to conference the tax bill, which supposedly the administration wants, another process was invoked. It was sent to committee. It was not taken to the House and the Senate amendments concurred in and the bill passed. So I raise the question, which does the President want the most? It ill behooves anyone who has served in the Congress to make such a remark. The end does not justify the means. Not in this case or in any other.

No proposal is so desperately needed that the time cannot be spared to follow the democratic process. In that direction lies autocracy and dictatorship.

The Congress does not enact every piece of legislation I favor and it does not turn down every piece that I oppose, but in the long run there is no process of legislation that I prefer. If we can dismiss the committee system and roll roughshod over the House, then perhaps the time has come to disband the entire congressional system, if the administration has no trust and faith in the traditional method of legislating. I don't share that view. And I know, gentlemen, much has been said today about the wake of the senseless killing of Martin Luther King last Thursday night, that this legislation should be passed as a memorial to him. I don't know how many of you have seen the wire this morning; I don't know how many of you are familiar with the statement made by the distinguished majority leader of the other body, but the distinguished majority leader had this to say on the floor of the Senate this morning:

Senate Majority Leader Mike Mansfield flashed a "go slow" sign today against President Johnson's attempt to rush a new bill through Congress in the wake of the riots that followed Dr. Martin Luther King's assassination at Memphis.

Thank you, gentlemen.

The CHAIRMAN. Thank you, sir. If you will bear with me a moment, I would like to go back to the history of this legislation and ask the gentleman whether or not he concurs in the recital of these facts.

I think the gentleman will recall, as well as this committee and the House, that last year there was an antiriot bill, a number of antiriot bills, introduced and referred to the Committee on the Judiciary.

The chairman of that committee, the dean of this House, and a very able man, did not see fit to have any hearings on these antiriot bills. They nestled over there in the Judiciary Committee for months. Whereupon—and if you will pardon the personal reference—I took occasion as chairman of this committee, feeling that I had the backing of the committee and of the country, to serve notice upon the chairman of the Judiciary Committee that if that bill were not activated and there was no action forthcoming, I proposed to ask this Committee on Rules to exercise a power that it has but rarely used, to take that bill from that committee, report it to the floor, and then have it acted upon, to give the House an opportunity to express its will, the democratic process.

As a result of that I am sure the Committee on Judiciary then reported out that bill, antiriot bill, but added to it the basic substance of this bill, a civil rights bill.

Mr. WAGGONNER. The basic substance of title I, if you will allow me to intervene, Mr. Chairman, not the rest of the bill.

The CHAIRMAN. I thank the gentleman for correcting me and making the statement more accurate. I was coming to that.

But we did not accept that bill. And again we served notice that we wanted that bill on its own. Whereupon the Judiciary Committee was reconvened and the antiriot bill was reported and in substance section 1 of this bill, the so-called civil rights bill.

This committee acted upon both of those bills separately, on different dates, and they went to the floor and were passed separately and sent over to the other body.

Now that, as I recall it, was in August of last year. That committee without any action, deferred any action on those bills for some time, and finally reported out a bill combining the two. It went to the floor of the Senate and there other matters were considered and finally these additional provisions were written upon the floor of the Senate.

Bearing in mind again now that this body is an equal body of Congress, we have had passed bills dealing with antiriot matters and civil rights, but when the bill comes back to this House it carries with it legislation involving the Indians of this country, a very small minority, and whether that legislation is good or bad, frankly I don't know. All I know in that connection is that the Committee on Interior and Insular Affairs headed by the very able and highly respected member of this House, Mr. Aspinal of Colorado, is now, and has been for some time, giving it consideration. But this proposal before us would take that bill away from that committee and enact legislation on the subject of Indian affairs.

It is a matter of common knowledge, is it not, that for years there has been gun legislation considered in the various committees of the House. But because of the very highly controversial nature of this legislation, no action was ever taken and the House has never considered that matter. The House has never had the opportunity to consider that legislation and to work its will thereon.

Then, of course, there is a fair housing provision which seems to be the principal bone of contention in the Congress, the whole Congress, in the House as it was in the Senate. But again on the floor of that body, after months of debate, a provision on open housing was adopted by the senate and went into this bill, was written into this bill, and adopted by the Senate.

Now I repeat there has never been any question in my mind about this matter going to the floor. The only question has been and now is whether this equal body of Congress will have an opportunity in the democratic process to express its will on these various new matters that have been injected into this proposed legislation.

Now may I just conclude. Every day that we have had these hearings we have heard people talk about giving the House an opportunity to express its will. Now that is what the gentleman from Louisiana is asking here today. That is what others who have been here have asked. I ask the gentleman is it the democratic process, the proposed resolution of the gentleman from Indiana here to take

this Senate bill with all of these extraneous matters, these new matters that have not been considered by this Congress, and pass it without any consideration?

Again we hear a lot about second-class citizens. Are we setting ourselves up here as a second-class body that must take whatever the other body sees fit to hand us?

I think the gentleman has answered my question already, but I shall be pleased to have you comment.

Mr. WAGGONNER. Mr. Chairman, I don't believe that any man, if I could comment on the last first, is a second-class citizen who doesn't think he is one and who doesn't act like one. I think there is a great deal of state of the mind involved in this so-called second-class citizenship.

Now this sequence of events that you have related with regard to the different facets which now comprise this proposal are reasonably accurate. They did occur as the distinguished chairman has stated.

But I call to your attention that the chairman of the Judiciary Committee, the distinguished gentleman and learned lawyer from New York, the foremost lawyer in this House truthfully speaking, did oppose the section of this legislation having to do with riots at the time the House considered it. He spoke against it. On the 14th day of last month, the 14th of March, the day this legislation was sent to this Rules Committee, when this was called to his attention he admitted that that part of the legislation was bad, but he was willing to take some bad to get something else.

I submit to you that that is a very poor way indeed to legislate.

Now I mentioned only one facet of this bill that I can't conceivably believe the House or this Rules Committee in good conscience would be a party to. And I refer back again just to the portion of page 29 having to do with discrimination in the financing of housing.

The language of this section denies a lender the basic right to deny a loan. It doesn't say that he must not discriminate in denying a loan. It says he can't even refuse to make a loan. It says "or discrimination," in doing some other things. But it does not forbid him, or rather allow him to discriminate in fixing the conditions in making a basic loan. He is denied the right to refuse to make a basic loan. There are some other words which follow on, but they have to do with other conditions, not with whether or not the basic loan, the basic decision as to whether a loan will be made or denied, can be made or denied. He is forbidden, with the language of this bill, to refuse to make a loan for building, buying, renovating homes in the real estate business.

Now, gentlemen, I challenge the press that are here today to let the country know that that language is included in this bill. To let the people know that financial institutions can't refuse to make a loan if anybody requests it.

Oh, yes, there are some other words, again I say, but the basic right to deny a loan is forbidden by this language. And gentlemen, read it for yourselves. It is written exactly that way into the law.

The CHAIRMAN. Mr. Smith, any questions?

Mr. SMITH. No questions.

The CHAIRMAN. Mr. Madden?

Mr. MADDEN. Well, my good friend from Louisiana is certainly painting a vivid picture about the real estate situation. Personally, under this bill I don't know of anybody who owns a piece of property

who is restricted in any way if somebody comes up with the cash. He can sell it. There is nothing in this bill that will stop him from selling it.

Now I am not a real estate expert and I don't think the gentleman from Louisiana is a real estate expert. I think both of us, if we were, would be out where we could make some money instead of being in Congress.

Here is a statement made before the Senate committee by Evans Buchanan, former president of the National Association of Home Builders, in behalf of this bill:

The fair housing provisions are needed by the real estate industry as a means of eliminating unsound competitive practices in protecting those who choose to do business on a non-discriminatory basis. Participants in FHA and VA programs are now pledged to the policies and practice of non-discrimination under the provisions of Executive Order 11063. Enactment of this bill will provide the uniform standards of conduct so greatly needed in today's real estate market. Many business firms and organizations would long since have discontinued the practice of discrimination except for the fear of adverse economic consequences stemming from competitors who choose to capitalize on racial and religious prejudices. With a national law commanding the acceptance of all, the entire industry will sell or rent without discrimination and without fear of economic reprisals.

Now here is Elliott Couden, Seattle, Wash., real estate broker, member of the Seattle Real Estate Board, the Washington Association of Realtors, and the National Association of Real Estate Boards.

A universal law would remove many of the shackles and impasses we in the real estate business are subjected to. Many real estate salesmen and brokers who would voluntarily provide equal service to all clients suffer a reasonably well grounded apprehension that their efforts will result in intimidation from other realtors and economic attrition from potential clients. This legislation frees all parties from coercion, probably the greatest single element in the housing business.

Now here is Fred Cramer, Chicago, Ill., president of Draper & Cramer, real estate mortgages and banking, who manages 15,000 real estate units:

I think it is in the interest of all of us in the real estate business to be put on an equal basis when it comes to accepting minority groups as buyers, borrowers, or tenants.

Now just a couple more. Edward Derschleg of Chicago:

The real estate industry, our various communities, as well as the country as a whole would benefit from the enactment of fair housing legislation.

Ken Rothchild, President of the Minnesota Mortgage Bankers Association:

Minnesota's open housing laws have not hurt the real estate business. It has been good. There was great fear among the real estate people, but none of their fears have been justified. Realtors and apartment owners and builders have experienced greater demands for their product. The entire community has benefitted from the rapidly improving housing conditions and from reduced racial tension.

Philip M. Klutznick, whom I went to school with a way back years ago, and he is probably one of the biggest real estate housing developers in the United States today, he has built several cities that I know of, and he has endorsed this bill.

So I don't think we are going to ruin the real estate business. We will help a lot of people and eliminate a lot of tension, a lot of bick-

ering, a lot of prejudice and division, divisiveness that exist in America today by this bill if it is enacted into law.

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

Mr. WAGGONNER. May I comment, Mr. Chairman?

The CHAIRMAN. Certainly, you can respond to the gentleman's question.

Mr. WAGGONNER. The gentleman concludes by saying we are going to eliminate a lot of prejudice and divisiveness and bickering which is going on in this country today by passing this so-called civil rights proposal.

I don't think any of our members need to be very long in remembering that this same claim was laid to each of the previous civil rights proposals that we have had in recent years, beginning with my first session in the Congress, the 87th Congress, and I don't think any of you will challenge the statement when I make the statement that none of these have accomplished what its proponents said.

Now the gentleman started by saying that neither he nor I were real estate experts. I readily agree that I am not. And I accept the gentleman's statement that he is not. But the very fact that he admits that he is a lawyer, that as a Member of Congress, and I admit that I, not as a lawyer, but as a Member of Congress considering this legislation, cannot class myself as a real estate expert makes necessary the usage of third parties in conducting real estate transactions. And the use of third parties is outlawed by this proposal if a man is not to be subject to the penalty of the law after a due process of time, when the law is fully in effect.

Now there isn't anything in the present law today that prevents any man who owns a home or any real estate man who is engaged in the real estate business from selling to whomever they want to, if they want to. These things can be done now if people want to.

I think the very fact that people don't want to is demonstrated by virtue of the fact that they haven't been doing these things that we are going to compel them to do by passage of this legislation.

The CHAIRMAN. Mr. Anderson?

Mr. JOHN B. ANDERSON. Mr. Chairman, just one question. I understood the gentleman to say that he interprets section 805 to say that a financial institution cannot deny a loan.

Mr. WAGGONNER. Yes, sir.

Mr. JOHN B. ANDERSON. I read those words "to deny a loan" in connection with the next clause "or to discriminate against him because of race, color, religion, or national origin." I don't see how you can come to the conclusion that this is a prohibition against turning down a loan. Don't you have to read in the other clause in that section?

Mr. WAGGONNER. Yes, sir. But it says "or to discriminate against him in the fixing of the amount of interest rate, duration or other terms or conditions of such loan or other financial assistance."

Mr. JOHN B. ANDERSON. Because of race, color, religion, or national origin.

Mr. WAGGONNER. But not the basic right. The basic right to deny the loan is not included in those prohibitions.

Now the English construction, Mr. Anderson, simply is not there.

Mr. JOHN B. ANDERSON. Well, I wouldn't set myself up as a stylist and perhaps the gentleman's knowledge of syntax is better than

mine; it probably is. But I still think you have to consider the paragraph as a whole. You just can't take out one clause and ignore the other language in that section.

I just can't conceive of this Congress or any other Congress writing a law saying that a financial institution must make a particular loan. And I would think we could make that very clear not only in these hearings, but on the floor.

Mr. WAGGONNER. Mr. Anderson, that proves the point; that is the reason this legislation needs to go to committee where some of these things can be worked out. I thank you for that contribution.

Mr. MATSUNAGA. Will the gentleman yield?

Mr. JOHN B. ANDERSON. Yes, I yield.

Mr. MATSUNAGA. I am inclined to agree with the gentleman from Illinois. There is a comma after the word "assistance" there. If that comma were missing then I would agree with the gentleman from Louisiana. But there is that comma before the word "because." It reads, "because of race, color, religion, or national origin of such person." So that definitely this clause would modify the denial of loans also. And I think the fears of the gentleman from Louisiana are truly unfounded. And I might say that as one who has had some experience in legal interpretation of statutes.

The CHAIRMAN. Mr. Bolling?

Mr. BOLLING. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Martin?

Mr. MARTIN. No questions.

The CHAIRMAN. Mr. O'Neill?

Mr. O'NEILL. No questions.

The CHAIRMAN. Mr. Latta?

Mr. LATTA. No questions.

The CHAIRMAN. Mr. Sisk?

Mr. SISK. No questions.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. No questions.

The CHAIRMAN. Mr. Anderson?

Mr. WILLIAM R. ANDERSON. No questions, Mr. Chairman.

The CHAIRMAN. Mr. Matsunaga?

Mr. MATSUNAGA. No further questions.

The CHAIRMAN. Thank you very much, Mr. Waggonner. I think you have made a very able statement about this matter. It is going to be up to the committee tomorrow.

Mr. WAGGONNER. Mr. Chairman, before I go, could I concur with the gentleman from Missouri? We don't always agree on some of our politics, but I would agree with the gentleman from Missouri that the die was cast and this issue I think had been settled to a degree as to what this committee would do—and what the House would do—prior to the events of last Thursday night.

I agree with his appraisal of the situation prior to last Thursday night.

The CHAIRMAN. Just one further thing. I would like to get the opinion of the able gentleman from Louisiana on this. As to the antiriot bill which the country was so much interested in, I noticed on the TV and other media of communication that this rioting, this burning, this looting, this thing that required some 12,000 troops to

come in here, is now being called by those in authority in the District a civil disturbance.

I take it that under that language, if that were adopted, this whole antiriot bill wouldn't amount to much.

Thank you very much.

Mr. WAGGONNER. Thank you, Mr. Chairman.

The CHAIRMAN. The committee will recess at this time until tomorrow morning at 10:30, when the die will be cast if it hasn't already been cast. And the witnesses who were scheduled and who asked to be heard who could not come today will have an opportunity to express their views, following the procedure of this committee to permit everybody to express themselves.

(Thereupon, at 12 noon, the committee adjourned, to reconvene at 10:30 a.m. the following day.)

(The following was subsequently supplied:)

STATEMENT OF REPRESENTATIVE ARMISTEAD SELDEN

Mr. Chairman and members of the Rules Committee, I welcome this opportunity to share with you my views concerning the legislation presently under consideration, House Resolution 1100, which provides that H.R. 2516 be taken from the Speaker's table and the Senate amendment be agreed to.

Mr. Chairman, I oppose the adoption of this resolution, and I urge that it be amended so as to send H.R. 2516 back to the Judiciary Committee so that the proper legislative procedure can be followed by the holding of hearings on those matters that have not been considered by the 90th Congress. I might add that it appears that the Interior and Insular Affairs Committee also should be consulted concerning several titles of the revised version of H.R. 2516.

This pending legislation tramples on the basic English Law and U.S. Constitutional principles of the rights of property. Yet, we have seen in recent days an attempt to coerce the Congress to enact this legislation—not on the merits or constitutionality of the measure but rather under the threat of mob violence in the streets of this nation.

We in the Congress must not bow to this coercion. We will not be coerced.

Mr. Chairman, during 1966 the House of Representatives approved legislation containing similar provisions as those in H.R. 2516. The basis of the provisions of the so-called open housing sections at that time was the commerce clause. Undoubtedly, that vehicle now has been dropped, and the proponents of the Senate amendments now appear to base this legislation on the equal protection clause of the 14th Amendment to the Constitution.

In view of a long series of Supreme Court cases, it is evident to me that this cannot be the basis for the constitutionality of Title VIII of H.R. 2516. I believe that *United States* v. *Guest*, 383 U.S. 745, makes this point crystal clear, for in that case the Court said:

"It is commonplace that rights under the equal protection clause arise only where there has been involvement of the State or of one acting under the color of its authority. The equal protection clause 'does not . . . add anything to the rights which one citizen has under the Constitution against another.' (*United States* v. *Cruikshank*, 92 U.S. 542, 554–555)."

Also the Court pointed out in the 1948 decision in *Shelly* v. *Kraemer*, 334 U.S. 1:

"The principle has become firmly embedded in our constitutional law that the action inhibited by the first section of the 14th amendment is only such action as may fairly be said to be that of the State. That amendment erects no shield against merely private conduct, however discriminatory or wrongful."

Mr. Chairman, Title VIII of H.R. 2516, as passed by the Senate, is a travesty upon the conscience of our people. Through the years American citizens have been encouraged to privately own real property. Indeed, the ownership of a home in fee simple is the dream of millions of Americans.

I do not believe that the federal government—or any government—should have the power to interfere with the rights of citizens to exercise their rights over their property, as H.R. 2516 seeks to grant. We have been bombarded with propaganda about the conflict between "property rights" and "human rights,"

but, in truth, there is no such conflict. The ownership of property in our society carries with it rights and responsibilities which are indisputably "human rights." Chief among these is the individual owner's right to manage and sell and rent and use his property. As long as the owner pays the taxes on his property and uses it for no illegal or immoral purpose, he can do with it what he wishes. He can occupy it, vacate it, sell it, or rent it as he sees fit and to whom he wishes.

If H.R. 2516 is enacted in its present form, this will no longer be true.

Title VIII of this measure constitutes a dictatorial imposition on the homeowner by the federal government. It constitutes the use of federal force to divest an owner of fundamental rights and prerogatives which have always gone with ownership under our system. It gives preference to one party to a proposed transaction by denying to the other his freedom of choice.

Mr. Chairman, human rights cannot exist without property rights and a healthy respect for both. Any attempt to destroy or weaken the right of private ownership of property is an attempt to destroy a system of private capital and to substitute a totalitarian form of government in its place.

Any government which has the power to give all of its citizens everything can be the same government which can subsequently take away all rights of all citizens—of majority and minority groups alike, reducing them to the status of slaves and subjugating them absolutely to the tyranny of an all-powerful bureaucracy.

For those who clamor so loudly for federal action to correct what they regard as a wrong should reflect that this same federal action may some day be used against them.

Mr. Chairman, I believe that most Americans subscribe to the philosophy of the English statesman William Pitt, who said in the 18th century:

"The poorest man may, in his cottage, bid defiance to all force of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter, the rain may enter—but the King of England cannot enter; all of his force dares not cross the threshold. * * *"

Our federal judiciary has followed William Pitt's philosophy. As Justice Harlan in a concurring opinion in *Peterson* v. *Greenville*, 373 U.S. 244 stated:

"An individual's right to restrict the use of his property, however unregenerate a particular exercise of that right may be thought, lies beyond the reach of the 14th amendment. The dilution or virtual elimination of that right cannot well be justified either on the premise that it will hasten formal repeal of outworn laws or on the ground that it will facilitate prudent State action is a case of that kind."

Mr. Chairman and distinguished members of the Rules Committee, I respectfully urge that you give most careful consideration to House Resolution 1100 and, in your wisdom, require that the latest civil rights legislation—H.R. 2516—be returned to the appropriate committees of the House of Representatives so that the will of the people, through their elected representatives, may be heard on this dangerous and far-reaching proposal.

Thank you very much.

TO PRESCRIBE PENALTIES FOR CERTAIN ACTS OF VIOLENCE OR INTIMIDATION

TUESDAY, APRIL 9, 1968

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

The committee met at 10:50 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 resume its consideration of House Resolution 1100 and House Resolution 1118, the so-called civil rights bill.

Mr. Wiggins, I believe you would like to make a presentation.

STATEMENT OF HON. CHARLES E. WIGGINS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WIGGINS. Yes, Mr. Chairman.

Mr. Chairman and members of the committee, I first thank you all for the privilege of offering my testimony on this bill, H.R. 2516.

My testimony shall be confined to titles I and VIII of the bill. It is not my purpose to comment upon the need, if any, for this legislation, nor the moral issues which may be involved and which others have raised. My remarks will be addressed only to the constitutionality of the two titles.

The tragic events of the past few days have no legal relevancy on this constitutional issue.

Mr. Chairman, the most important single fact is that we are discussing Federal legislation. Our Federal Government possesses no general police power jurisdiction to do whatever may seem reasonable and necessary to protect the public interest. General governmental powers of this sort are reserved to the States.

State governments may, and have, enacted open housing laws without serious constitutional challenge. I am personally unaware of any constitutional bar to the enactment of a carefully drawn open housing law at the State level.

But to concede the power to act on the part of States is no admission that such power exists at the Federal level. This is what the federal system is all about.

Further amplification on the point should be unnecessary. I am sure that every member of this committee agrees with the elementary proposition that the Federal Government possesses only limited, enumerated powers as a starting point for a discussion of the constitutional issues.

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).

No such limiting language is found in the present bill.

The omission is a significant one and leads to the conclusion that Congress is attempting to prevent private discrimination against all places of public accommodation, whether commerce is involved or not. Unless some other source of power is found, Congress may not reach that far.

With respect to the open housing sections, it has been argued that the prohibition against private acts of discrimination is amply supported under the commerce clause since buyers, materiel and credit freely cross State lines. This argument would have constiutional substance if Congress found as true the key fact that discrimination on the basis of race is a burden to the free flow of such commerce. H.R. 2516 fails to make this finding, and I personally believe that the omission is an intentional one.

I do not feel that the distinction between owner-occupied, owner-sold, or broker-sold housing has any critical importance constitutionally, nor does the number of private units involved play a critical role. These facts should only come into play in support of a "commerce" argument which is backed by a congressional finding that commerce is affected and a record of testimony in support thereof before appropriate committees.

It is not stylish nowadays to remember that the commerce clause is not a source of unlimited power. However, I commend to the committee the statement of Chief Justice Hughes in *NLRB* v. *Jones & Laughlin Steel Corp.*, 301 U.S. at page 30:

> The authority of the Federal Government may not be pushed to such an extreme as to destroy the distinction which the commerce clause itself establishes between commerce "among the several States" and the internal concerns of a State. That distinction between what is national and what is local in the activities of commerce is vital to the maintenance of our Federal system.

(2) Under the 14th amendment:

Historically, the 14th amendment has served as a limitation on State action. Only recently has the language of section 5 of that article been viewed as an independent source of Federal power to reach private discrimination.

As of this date, the Supreme Court has not held that the 14th amendment serves as a constitutional basis for the Congress to prohibit acts of private discrimination.

Several Justices have entertained that view—for example, Douglas and Goldberg in separate, concurring opinions in the *Atlanta Motel* case, and indeed a majority reached that conclusion as dictum in *United States* v. *Guest*, 383 U.S. 745.

Whatever the view of the Court may be in the future on this issue, we in Congress have an equal and independent duty to interpret the Constitution.

Section 5 of the 14th amendment states that "Congress shall have the power to enforce, with appropriate legislation, the provisions of this article." The "provisions" of the 14th amendment prohibit State discrimination, not private discrimination. The only "right" which exists under the 14th amendment is to be treated equally by the State. It does not mean that every person has a constitutional "right" to be treated equally by every other person. That is the thrust of the civil rights cases.

Rights do not exist in the air. Rather, they exist between legal entities. The 14th amendment establishes that relationship between State and citizen. It does not address itself to the question of how one citizen should treat another.

I conclude, Mr. Chairman, that the 14th amendment to the Constitution does not authorize the Federal Government to prohibit acts of private discrimination unrelated to governmental activities, and that there is no showing that interstate commerce is affected by the conduct sought to be regulated in this bill. In its present form, therefore, the bill is most probably unconstitutional.

To those who cry in despair, "Something must be done to end bigotry in America," we should answer, "The Congress agrees, but look to your State government."

And if the reply is heard that State government is not responsive to the needs of the people, we should have the courage to say, "Change the policies of your State government."

The Constitution guarantees to all Americans equal political power to affect the actions of their Government. Congress has appropriately implemented that power by legislation. It is the political power thus created—rather than raw force—which must be the vehicle to accomplish social change.

If Congress preempts powers properly reserved to the States, State government and the federal system as a viable structure shall die. I view private acts of discrimination as no greater evil than the emasculation of the federal system contemplated in this bill.

Thank you again for the privilege of testifying.

Mr. MADDEN. Congressman Wiggins, I personally haven't made any exhaustive study regarding the constitutionality of this legislation, but have you read over the Senate hearings on this legislation when they were held last August over in the other body?

Mr. WIGGINS. Yes; I did, sir. They had the whole title on the constitutionality in the Senate hearings. I read the Senate report, rather than the hearings themselves.

Mr. MADDEN. Of course, as I say, personally I haven't gone into the constitutionality of this legislation, but the hearings were held over there on the constitutionality of the fair housing provisions of H.R. 2516 based on the 14th amendment and the commerce clause in the Constitution, and the Supreme Court decisions in other civil cases.

You mentioned the *Atlanta Motel* case. In my mind, from the hearings that I read, they leave little doubt regarding the constitutionality of the fair housing angle of this legislation.

Further, during the Senate hearings on fair housing last August, a variety of qualified witnesses, lawyers, testified on the constitutionality of this law. The U.S. Attorney General, Ramsey Clark, said that there is no doubt whatsoever about the constitutionality of this proposal.

In the Senate hearings on page 7 of his testimony, he also testified to the constitutionality of the open housing legislation with the deans of three major law schools, Rev. Robert F. Drian, Boston College Law School; Joseph B. Fordham of the University of Pennsylvania Law School; and Louis H. Pollock of the Yale Law School. Those hearings and that testimony start on page 127 of the Senate hearings.

The constitutionality authority of the Congress to enact fair housing legislation was confirmed by a committee consisting of some 30 con-

stitutional lawyers and experts, scholars, and this committee of 30 lawyers was headed by Sol Rabkin of the Anti-Defamation League.

My personal opinion is, considering the testimony of the Senate hearings from distinguished legal authority like this, that there is no doubt regarding the constitutionality of this legislation.

Mr. WIGGINS. I appreciate the gentleman's comment. I can only say that I respectfully disagree with you and with the gentleman you cited in support of your position.

I will say this: that for this bill to be constitutional, two facts have to exist. Point 1: The dictum in the *Guest* case has to be the law of the land. I am not willing to say that it is. The Supreme Court has not said that it is. I would hope that the Supreme Court would never reach that conclusion in a holding because it would be a strained construction of section 5 of the 14th amendment to say that appropriate legislation means any legislation.

Point 2: For this legislation to be constitutional, it will have to reach only commerce, and the legislation is not drafted in that way. Its reach is beyond commerce or even things that affect commerce.

I suspect that the Judiciary Committee of the Senate has carefully omitted the language which would confine it to commerce. There are the only two sources of constitutional authority. If they are not true or if they are not present, the bill is unconstitutional.

Mr. MADDEN. In view of the testimony before the Senate committee regarding these experts, including the Attorney General of the United States, you are not opposed to having the Rules Committee adopt this resolution and let the members decide on that?

Mr. WIGGINS. No, sir. It is not my purpose here to suggest that this committee should bottle it up.

Mr. MADDEN. If it should be unconstitutional, the courts can take care of that, don't you think?

Mr. WIGGINS. No; I do not agree that Members of Congress should not concern themselves with constitutional questions.

Mr. MADDEN. That is true. If your contention is correct, it could be corrected by the courts?

Mr. WIGGINS. Yes, and I hope that if this body, in its eminent wisdom, passes the bill, it will be corrected by the court.

Mr. SMITH. I would like to commend the gentleman for his statement. I have had the opportunity of working with him on some matters, in redistricting and other constitutional questions. I know him to be a very able lawyer and I know he has spent some time on this. I commend the gentleman for his interest in it.

Do you think the problems you raise can be corrected by court, or should they be corrected in a conference? Do you have any thought on that?

Mr. WIGGINS. Yes, sir. We in Congress should never pass a bill that is tainted with unconstitutionality if it can be corrected here. I would like to see a conference correct not only the constitutional issues that I have suggested. I haven't even discussed the fact that the bill is drafted in such a way that it is hardly a credit to the Congress. It really ought to be cleaned up, in my view, in conference before it becomes law, if it is to become law.

Mr. SMITH. You are in support of civil rights legislation?

Mr. WIGGINS. I would have no trouble at all in supporting this bill, given just a few amendments. But I could not support it and will not support it in its present form, because I am convinced that it is unconstitutional.

The CHAIRMAN. Mr. Delaney?

Mr. DELANEY. What about the general welfare clause? Would that exempt it?

Mr. WIGGINS. No, sir. There is no right of Congress to legislate, apart from the appropriation of money, for the general welfare. I stated that positively as a matter of constitutional law.

I really should say that is my opinion, but I think that is the law, that this Congress has no police power or jurisdiction, to do whatever is in the public interest or the general welfare. That clause only comes into play in connection with the spending of money.

Mr. DELANEY. Not with the delegation of power. We have only such power as delegated to us by the original articles, and then the amendments as they have been added.

Mr. WIGGINS. That is right.

Mr. DELANEY. You found no place where under a general welfare clause this could be included?

Mr. WIGGINS. I find only one article, one power. I am talking about article 1, section 8, the enumerated power of the Constitution that might be called upon to support this legislation, and that is the commerce clause.

Mr. DELANEY. Thank you.

Mr. BOLLING. No questions.

The CHAIRMAN. Mr. O'Neill? Mr. Quillen?

Mr. QUILLEN. Mr. Wiggins, I, too, want to commend you and ask you a question.

The gun law provisions, and the titles dealing with the rights of the Indians, would you consider those two parts of the bill to be germane to the matter at hand?

Mr. WIGGINS. I would be happy to give my opinions on the matter.

Under the rules of the House I am not sure how I would rule if I were the parliamentarian. But they border upon being not germane.

The Indian civil rights bill is a civil rights bill in that broad context and perhaps should be included here. I personally think that it is a mistake, however, to do so without separate consideration by a committee of this House.

On the sole issue of germaneness, if I had to make a mistake, I would make a mistake on the side of conservatives and say that it is not germane for the purpose of seeing that it had better consideration by this House.

Mr. QUILLEN. Thank you.

The CHAIRMAN. Mr. O'Neill?

Mr. O'NEILL. I have no questions.

The CHAIRMAN. Mr. Sisk?

Mr. SISK. No questions, Mr. Chairman, other than to commend the gentleman. I know he is a very able lawyer. I think he has prepared a very fine statement.

Mr. WIGGINS. Thank you.

The CHAIRMAN. Mr. Latta?

Mr. LATTA. I have no questions. I want to join my friend from California in commending Mr. Wiggins on what I think is one of the most scholarly statements that I have had the privilege to look at since I have been on this committee.

The CHAIRMAN. Mr. Young?

Mr. YOUNG. No questions. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Pepper, you are a great constitutional lawyer?

Mr. PEPPER. I don't have that capacity. I would like to ask the gentleman one or two questions.

Under the Constitution, all persons born or naturalized in the United States are citizens of the United States and of the several States in which they reside. So all of these people who are the proposed beneficiaries of this legislation, presuming that they were born in the United States, are citizens of the United States as well as of the several States in which they reside.

What would the able gentleman—you have made an able statement of the matter—say if it came to the knowledge of the Congress that all of the white people in this country had adopted a practice and there was sort of an agreement to that effect not to sell any food to any citizens of the United States who were Afro-Americans in descent?

Would there be any authority on the part of Congress under the national defense to preserve the health and potential of soldiers or otherwise? Would there be, in your opinion, any authority on the part of Congress to prevent such action?

Mr. WIGGINS. I don't think that there would be any question about the power of Congress to respond to that situation.

Mr. PEPPER. Do you think Congress could act?

Mr. WIGGINS. Yes, I think the Congress authority extends that far.

Mr. PEPPER. Then your question about Congress acting in this case is a matter of degree. You don't think housing is sufficiently comparable and important to food to authorize Congress to act in the housing case when you think it could act in the food case?

Mr. WIGGINS. No. Let me make that distinction. I think it is possible for housing, some housing at least, to be involved in commerce. I am saying that this bill, however, purports to go beyond. I am also prepared to say that some housing is not involved in the flow of commerce. This bill reaches all housing.

I am mainly concerned with the fact that it goes beyond the thrust of the commerce clause. Distinguish that from food. Food is a steady stream from market until it is consumed. It does not attain a situs the way real property has a situs.

I think the factual distinctions are clear and would not bother the Court; nor should it bother this Congress one bit to say that food, all food, is a part of commerce. Indeed, as you know, in the one case cited, food homegrown by the farmer and consumed by the farmer, fed to his own chickens, which he ate himself, was deemed to affect commerce. That problem wouldn't bother me at all, sir.

Mr. PEPPER. Yet in housing, wouldn't it be probable that in nearly every house there are some ingredients that came into the area where the house is built that came across State lines; nails, or something that went into the house?

Mr. WIGGINS. Yes. You see, the problem is whether or not housing is commerce. This Congress ought to face up to it and make that finding, that it is commerce, and indicate in the bill that we are only reaching commerce because that is our constitutional policy.

That has been our approach in other civil rights bills which we sought to justify under the commerce clause. Here we carefully neglected to confine it to commerce. I conclude we are really attempting to reach beyond commerce to a certain level of housing. That is unconstitutional.

Mr. PEPPER. It is true that when we are generally speaking about the necessities of the people, we ordinarily say food, clothing, and shelter.

Mr. WIGGINS. Yes.

Mr. PEPPER. Thank you.

Mr. WIGGINS. Thank you.

The CHAIRMAN. Mr. Matsunaga?

Mr. MATSUNAGA. Mr. Wiggins, is it your position that if the dictum in the *Guest* case were the law today, then the constitutionality of H.R. 2516 would be upheld?

Mr. WIGGINS. My view is that if the dictum in the *Guest* case is the law, the answer is that this bill would be constitutional, and more than that, whatever the Congress wanted to do in the area of civil rights would also be constitutional. It is a no-holds-barred dictum. You can do whatever is appropriate.

Mr. MATSUNAGA. Then the gentleman will agree, of course, that much of our law today is based on dicta, what used to be dicta. The mere fact that the review of the Court over the actions of Congress started out as a dictum in the *Marbury* v. *Madison* case, there is th possibility, not a probability, that by the time H.R. 2516 comes before the Supreme Court, the Supreme Court may hold what is now dictum in the *Guest* case?

Mr. WIGGINS. I confess, sir; that the Court may uphold that and I regret to say that it probably will at some future time. I invite the gentleman to read the language of the 14th amendment and just search your heart and say, "Does that make sense? Does the language, the dictum, in the *Guest* case make sense?"

It seems to me rather clear that the appropriate legislation which can be enacted under section 5 of the 14th amendment specifically refers to enforcing the provisions of this article and the provisions referred to are the 14th amendment provisions.

It would require an utter repudiation of a long line of cases to say that the 14th amendment refers to private actions.

Mr. MATSUNAGA. The fact remains that reasonable men do disagree on the interpretation, especially of our Federal Constitution. There is this possibility, not a probability, of a dictum becoming a holding?

Mr. WIGGINS. It may, but I again will restate my view that we in Congress have the separate, independent duty to interpret the Constitution. I suggest this commonsense interpretation.

Mr. MATSUNAGA. No further questions.

The CHAIRMAN. Mr. Anderson?

Mr. ANDERSON of Tennessee. I have no questions.

The CHAIRMAN. Mr. Wiggins, unfortunately, I was out of the room when you testified. I shall not attempt to rehash what has been said, or the questions that have been asked.

I wanted to approach this just briefly from another angle. The thing that has bothered me ever since this controversy arose after the other body rewrote this bill is whether under the circumstances that exist under the action that was taken by the other body, would it or not be your opinion, as a Member of the Congress, that the usual procedure should be, after all of these amendments that we are adding to the bill, one of two things: either the Committee on the Judiciary should reexamine the bill and correct such flaws as it might see fit to improve the bill either from the point of view of making it stronger or weaker or expressing the will of the House and the committee, or it should go to conference?

Does the gentleman care to express himself about that?

Mr. WIGGINS. Yes, sir; I would be happy to.

I would settle for conference. But in terms of what is best, I believe it would help this bill and would not affect adversely its ultimate chances of passage if the Judiciary Committee of this House had an opportunity to work on the language of the bill because of the kind of legislation you expect to be drafted on the floor of the body. It really does not give due credit to the Congress, in my opinion.

The CHAIRMAN. As a matter of fact, this bill was largely written on the floor of the other body.

Mr. WIGGINS. That is the problem. I agree, sir. That is the problem. It would help the bill to go to the House Judiciary Committee, but short of that, it would help also to go to conference.

I wish the chairman would consider whether or not this matter is of such overriding urgency to require special action to be taken by the House.

We have open housing legislation in most of the large, industrial, Northern States. We have it right here in the District of Columbia. We have it in my State of California.

This is not as if we are all of a sudden confronted with an emergency problem that we must meet tomorrow afternoon. It is something we should handle carefully and use our best judgment.

The CHAIRMAN. I am sure the gentleman has given more thought to this than I have, and possibly is much more capable of arriving at the proper conclusion. Wouldn't the effect of this be to preempt the State laws? There is some confusion about that, I understand.

Mr. WIGGINS. The language of the bill, as you know, specifically disclaims any attempt to preempt the State law.

The CHAIRMAN. That is in one provision, isn't it?

Mr. WIGGINS. Yes, sir; I believe it is in title I that the language occurs. I also believe in title VIII that language occurs.

The Congress, if this bill is passed, would say it is not preempting State law. I am concerned, however, that Congress is getting its nose under the tent into an area which quite properly ought to be reserved to State governments.

You see, Mr. Chairman, I believe very strongly, and I am sure the chairman does as well, in the viability of State government. The way

to make it work is to give it responsibility and make it perform. The idea of taking powers away from the State simply because they have not performed, to me, carries the seeds of destroying the whole federal system. I don't approve of that.

The CHAIRMAN. Of course, the gentleman, in subscribing to that theory, I am afraid, puts himself in the position with some of us older people who subscribe to that doctrine and believe that the 10th amendment to the Constitution is still part of it.

Of course, the gentleman will recall that those powers are not specifically delegated to the Federal establishment, the Government shall remain in the Congress or the people. But that amendment seems to have been lost sight of in all of this theory about appealing to the minority groups.

I thank the gentleman.

Mr. Latta?

Mr. LATTA. The gentleman mentioned that the District of Columbia has an open-housing bill.

Mr. WIGGINS. I believe I said that; yes, sir.

Mr. LATTA. How does that compare with this one? Is it as tough, so to speak, as this bill?

Mr. WIGGINS. In answer to the gentleman, I would have to say I am not that well acquainted with the provisions of the District's open-housing bill. I am relying upon statements made to me that (*a*) we have such a bill; and (*b*) we have made one for some time. I have not had the occasion to review its text, so I cannot answer the gentleman with any authority.

Mr. LATTA. Then if the District of Columbia does have a bill and it is an effective piece of legislation, which I would think it would be, it sort of lays waste to the argument that we have got to pass this in undue haste or we are going to have riots because if they had riots here in the District of Columbia to the extent that the papers say they did, and the television says they did, it seems not to be related to the matter of open housing.

I didn't see too many signs saying they would want open housing in the District of Columbia. I think we had testimony before this committee that 22 States also had open housing, including the State of Ohio. I heard last night where they had a riot in Cincinnati. They had one in Youngstown. So apparently it is not related to this problem we have been considering here before our committee.

Mr. WIGGINS. It might be, in answer to the gentleman, a fair comment to ask, Have we had a riot in the States that do not have an open-housing law? I am sure that we probably have had. I certainly agree that legislation of this sort has got to be totally unrelated to the emotional issue on the street. I hope that we will view it without reference to any incidents of the last few days.

The CHAIRMAN. Thank you, Mr. Wiggins.

Mr. WIGGINS. I thank the chairman for the privilege of testifying.

The CHAIRMAN. Because of, first, the vote to be taken to wind this matter up today, and the agreement of the committee this morning informally that the committee will go into executive session at 11:30, I suspect that this will conclude the hearing.

I understand, Mr. McCulloch, that you had a statement that you wanted to present to the committee.

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

Mr. McCULLOCH. Mr. Chairman, if there be no time to orally present it, of course, I want to file it for the record. I have deep feelings about this matter.

The CHAIRMAN. Of course, I call to the attention of my friend from Ohio the fact that we have invited him on several occasions to take the witness stand. The last message I had from him was that he desired to file his statement.

Mr. Latta?

Mr. LATTA. That is the impression that the gentleman gave us. The gentleman from Ohio indicated he wanted to file it rather than to present it.

The CHAIRMAN. That is correct.

Mr. McCULLOCH. I should like to file this statement and have the time, please, sir, to say, regretfully, that I cannot agree with my very able colleague on the Judiciary Committee, Mr. Wiggins. There is a long section of my statement devoted to the constitutionality of this legislation.

The CHAIRMAN. Without objection, the request of the gentleman from Ohio to submit his statement for the record will be granted.

(Mr. McCulloch's statement follows:)

STATEMENT OF WILLIAM M. McCULLOCH

Mr. Chairman and Members of the Committee: I am pleased to present my views to the Committee on Rules on H. Res. 1100. Everyone knows that the adoption of this resolution by the House would enact H.R. 2516 into law as written by the other body.

From January eighteenth to March eleventh of this year—for nearly two months—the other body considered little more than H.R. 2516. The labors of the other body drew national attention, and rightly so.

Open Housing, a most important part of the Bill, is once again before the Congress. In 1966, the House approved Open Housing legislation, but the other body did not act thereon. Now the other body has acted and the burden is upon us.

The people are watching, the people are waiting.

Indeed, they should. The broad problem of civil rights and civil disorders is one of the most difficult and troublesome domestic issues of our time. The problem saps our national strength, it paralyzes our will, it shames our soul.

Last summer, the President appointed a National Advisory Commission on Civil Disorders. What the report of the Commission said is pertinent here:

"This is our basic conclusion: Our nation is moving toward two societies, one black, one white—separate and unequal."

Focusing on the question of open housing, the Report observed:

"Discrimination prevents access to many non-slum areas, particularly the suburbs, where good housing exists. In addition, by creating a 'back pressure' in the racial ghettos, it makes it possible for landlords to break up apartments for denser occupancy, and keeps prices and rents of deteriorated ghetto housing higher than they would be in a truly free market."

Men can be imprisoned outside of jails. The ghetto-dweller knows that. The Negro knows that he is caged, that society really gives him nowhere else to go.

There are no iron bars, but iron bars do not always the prison make. (Apologies to Richard Lovelace.) But neither are there any exist to so many entrances.

A federal open-housing bill could be compared to a writ of habeas corpus for a whole people. On passage of the bill, Congress would thereby decree that society has no right, no authority to imprison a man in a ghetto, because of his color.

A door would be opened. The prisoner would be free to leave, yes, free to flee the ghetto. Of course, the bill would not buy for the prisoner a fine home in the

suburbs. But it would offer the prisoner the hope that if he tried to climb the economic leader, society would not forever be stamping on his hands.

If that could be done, it would eliminate the posts and cross-beams of despair on which the ghetto-prison is built.

If the prisoner were given access to a better home, he would then have access to a better education for his children. Then his better-educated children would have access to better jobs. And then, like all other minority groups, the Negro would have won his equality through economic power. The great American dream would, for him, in part come true.

I supported such a bill in the last Congress, and I now support the recommendation of the Commission on Civil Disorders for such legislation.

I have listened to testimony for a long, long time on the plight of those in the ghetto, and I am convinced of the necessity for open-housing legislation, without unnecessary delay.

On the other hand, when, in 1964 we were similarly faced with a March on Washington, I said at that time,

"There is considerable pressure for civil rights legislation from certain quarters on the ground that unless legislation is enacted there will be rioting in the streets, heightened racial unrest, and the further shedding of blood. This kind of activity, in my mind, is highly improper and could do much to retard the enactment of effective civil rights legislation.

"No people can gain lasting liberty and equality by riot and unlawful demonstration. Legislation under such threat is basically not legislation at all. In the long run, behavior of this type will lead to a total undermining of society where equality and civil rights will mean nothing.

"Behavior of this type also creates the false sense of hope that once legislation is enacted, all burdens of life will dissolve. No statutory law can completely end discrimination, under attack by this legislation. Intelligent work and vigilance by members of all races will be required, for many years, before discrimination completely disappears. To create hope of immediate and complete success can only promote conflict and result in brooding despair.

"Not force or fear, then, but belief in the inherent equality of man induces me to support this legislation."

It is said that H.R. 2516 is not perfect. Having served a long time in the Congress, I would not expect a bill of fifty pages in length to be perfect.

If the entire matter were in my control, I would amend the legislation where needed and enact the bill. But, of course, that is not the situation. There are many in both Houses who are opposed to the substance of this legislation.

I am fearful that if this legislation is sent back to the other body for any reason, the bill's fragile chances of becoming law will be seriously impaired.

Thus our real choice may not be between imperfect legislation and perfect legislation, but between imperfect legislation and no legislation at all.

If that is the choice we must make, then we must decide whether the defects outweigh the good that may flow from passing this legislation without further amendment.

I do not believe that the defects outweigh the good. I know that in the protection provisions of Title I, there are some overlapping provisions that may be confusing to the reader. Even so, the question is whether they do the job. In my opinion, they do.

I know that the anti-riot provisions of Title I may well contain a rule of evidence that simply does not make sense; and if it doesn't, can anyone show how that provision would impede enforcement of such a law? That is the real question. I don't see how that section hurts anybody.

I know that the Indian provisions in Titles II through VII have not been aired in the House. But the questions raised thereunder have been discussed and resolved in the other body. There have been hearings. There is a committee report. There is a legislative history on the passage of the bill. All these are a matter of public record. Those who are concerned about these provisions are referred to that record. It is not now necessary to duplicate the other body's efforts.

The open-housing provisions are among the most important in the bill. Compared to the 1966 House-passed bill, the Dirksen substitute is broader in coverage but softer in enforcement. I consider the Dirksen substitute an improvement.

It is necessary that an open housing law be effective. Half-way measures will not do. Many of the State open-housing laws fail to cure the problem because exemptions are too broad and effective enforcement is often neglected.

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.

I believe that if the problem is viewed in this traditional way, if we look to the breadth of the housing discrimination problem, we can see that the Commerce Clause does support Title VIII.

The question has also been asked whether the line that Congress has drawn between the home owner who uses a real estate broker and the home owner who does not violate the constitution. This kind of question has been argued before the Supreme Court before. In *Mabee* v. *White Plains* and in *Katzenbach* v. *Morgan*, the Supreme Court held that Congress is under NO constitutional obligation to remedy every part of the problem that it addresses itself to. For example, in the *Morgan* case, it was argued that the Voting Rights Act was itself discriminatory because it protected foreign-speaking people taught in American flag schools, but not the foreign-speaking people taught in non-American flag schools. The Court said that it is up to Congress to decide where the line should be drawn.

Certainly, on reflection, no other rule would be possible. If the Supreme Court had decided that question in any other way, then any Congressional regulation of interstate commerce would be subject to the attack that it discriminated against intrastate commerce. If such an attack were upheld, the power of Congress would effectively collapse.

Title X—another anti-riot provision—has aroused some controversy. But although the controversy is interesting, it is mostly academic. As a practical matter, no U.S. Attorney will attempt to prove the unprovable—that a person gave another a firearm or explosive having reason to know that such an item would be used in a civil disorder which affected interstate commerce.

It should not be overlooked that Title X would also protect firemen and policemen lawfully performing their duties during civil disorders. I co-sponsored such a bill with over a score of other Congressmen, and I continue to support such legislation now.

In reviewing the bill as it came from the other body, I find no provision that is intolerable. There are some defects. But the game would not be worth the candle. The prospective gain in draftsmanship is not worth the risk of sending the bill to a conference or back to the other body in a modified form, there to possibly be lost for this session of Congress.

Thus, I request this Committee to favorably report H. Res. 1100. And finally, Mr. Chairman, if H. Res. 1100 be favorably reported, I expect to support and vote for it when it is up for decision in the House.

STATEMENT OF HON. THOMAS F. RAILSBACK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RAILSBACK. May I also have the same privilege? I would like to submit a statement, too.

The CHAIRMAN. Without objection, the gentleman's request is granted.

(Mr. Railsback's statement follows:)

STATEMENT BY REPRESENTATIVE THOMAS F. RAILSBACK

Mr. Chairman, Members of the Committee, I appreciate the opportunity to submit a statement concerning H.R. 2516. While a member of the Illinois General Assembly, I always supported civil rights legislation, and I have supported the bill being considered by this Committee, at least, in the form which was passed by the House.

I am very much concerned however, about one particular provision under Title VIII, the open occupancy section of the bill. It seems to me Section 803(b)(1) has the effect of unwisely discriminating against real estate brokers, agents, salesmen or their representives. It encourages people to avoid using the services of these persons in the event they are apprehensive about being brought under the provisions of this title. If this is not corrected it could have, and probably would have, the effect of causing people to quit using the services of the professional realtor.

I am attaching a copy of an editorial which appeared in the Chicago Daily News under date of Wednesday, March 13, 1968, which is directed to this very point. I might add that the Chicago Daily News has always, in my memory, favored civil rights legislation as well as open occupancy legislation.

I realize that if the bill is sent to conference this provision should be corrected. In the event that it is not sent to conference it should still be corrected by the introduction of legislation designed to do away with this discriminatory feature. I intend to introduce such legislation if the bill is not sent to conference.

I favor the passage of open occupany legislation, and I can support this Committee's recommendation whether it chooses to report favorably H.Res. 1100, the resolution to recede from one House bill and concur in the Senate amendments or a resolution by this Committee to send the bill to conference or to open it up for strictly limited amendment on the Floor. I simply want the Committee to know my opinion of this particular section which I think has to be corrected to make this particular title fair and equitable to all concerned.

[From the Chicago Daily News, Mar. 13, 1968]

FLAW IN THE HOUSING BILL

The civil rights bill passed by the Senate after agonizing weeks of debate is one of those compromises that is wholly satisfactory to very few people. But if it falls short of triumph for liberals and conservatives alike, it nevertheless marks another faltering step toward the equality of opportunity that remains this nation's goal.

The feature of the bill that stalled the Senate for weeks was its fair-housing provision. For the first time, this bill would involve the federal government in the sale or rental of individual homes, and lower racial barriers in 80 per cent of the nation's dwellings.

The compromise hammered out on the floor of the Senate contains an escape clause that may prove bigger than the lawmakers intended. And it deals unfairly, in our opinion, with the real estate agents by putting them in a position of policing fair housing.

This bill provides that an individual who owns up to three homes is exempt from restrictions—in other words he may discriminate—in renting or selling his property provided he does not use the services of a real estate agent. Predictably, this would have a double effect. It forces the real estate agent to evaluate the intentions of the owner who seeks help in finding a renter or a buyer. And it shuts him out of transactions that are legitimate for an owner acting alone, with a consequent loss of business and fees.

Given the politics of the situation, it is perhaps understandable that the Senate had to leave a loophole or see the whole effort to move toward fair housing go down the drain. But if the homeowner is given a license to discriminate, and made to bear the onus for that action, the law should require no more of the agent than that he make a conscientious effort to bring buyer and seller together, regardless of race, creed or color.

Mr. BOLLING. If it is not out of order, I understood any Member of Congress who wished to file a statement would have that privilege. I would make that statement.

The CHAIRMAN. The question is whether any other Members desire to file a statement or not. There were a number who signified their intention to appear here, but they haven't appeared. Those who have so signified may have, without objection, the privilege of filing their statements.

The committee will now go into executive session.

(Whereupon, at 11:30 a.m., the committee proceeded in executive session.)