UNMASKING THE CIVIL RIGHTS BILL

THE DISSENTING VIEWS

OF

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"The reported bill is not a 'moderate' bill and it has not been 'watered down.' It constitutes the greatest grasp for executive power conceived in the 20th Century."

TABLE OF CONTENTS

FOREWORD

This brochure deals with the Civil Rights Bill now pending in Congress.

It consists of a series of questions and answers.

The questions are those this committee believes you, yourself, would like answered.

The answers are the exact words used by Judiciary committee members when they wrote their dissenting opinion.

Each of these Congressmen is an attorney and each is an expert on this sort of legislation.

THE LANGUAGE REPRODUCED HEREIN IS EXACT, NOT A WORD HAS BEEN ADDED.

That this Civil Rights Bill impairs the property rights as well as the civil rights of all Americans is amply demonstrated by the words of these experts. If the bill becomes law, in the concluding words of their report, our "fireball of liberty will spin into darkness".

If you oppose the Civil Rights Bill, tell your Congressman and your Senators – both of them. Write them, urge them to oppose the measure.

Tell them why.

The Coordinating Committee for
FUNDAMENTAL AMERICAN FREEDOMS

WILLIAM LOEB, *Chairman*
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QUESTION:

Was the Civil Rights Bill Railroaded through The House Judiciary Committee?*

ANSWER:

This legislation is being reported to the House without the benefit of any consideration, debate, or study of the bill by any subcommittee or committee of the House and without any member of any committee or subcommittee being granted an opportunity to offer amendments to the bill. This legislation is the most radical proposal in the field of civil rights ever recommended by any committee of the House or Senate. It was drawn in secret meetings held between certain members of this committee, the Attorney General and members of his staff and certain select persons, to the exclusion of other committee members. . . . .

As stated above, the full-committee substitute for H.R. 7152 was railroaded through the Committee on the Judiciary without an opportunity by members of that committee to discuss, debate or amend the 56-page mimeographed document. While this document was being forced through the committee wholly without study, it was hailed as "moderate" legislation and as a "compromise" when in truth and in fact it was no less extreme and vicious than the subcommittee proposal. In coordination with these statements, the reported bill was denounced, publicly, by civil rights political pressure groups for the apparent purpose of creating the impression the substitute measure was, in fact, a "watered down" version of the unacceptable subcommittee proposal.

Now that we, as members of the committee, have had some opportunity to compare the reported bill with the subcommittee proposal, we find that the bill, as reported, is no compromise at all. It actually broadens and strengthens many powers conferred upon the Attorney General in the subcommittee proposal and grants new sweeping and unlimited authority to the President, while retaining all of the most viscious and harsh provisions of the subcommittee proposal. . . . .

*For full details of how this bill was "railroaded", plus a title-by-title analysis of the pending bill, see House Document 914.

QUESTION:

What civil and property rights of 180 million citizens are impaired by this Civil Rights Bill?

ANSWER:

In truth and in fact, the bill, under the cloak of protecting the civil rights of certain minorities, will destroy civil rights of *all* citizens of the United States who fall within its scope. Congress would abnegate its duty to consider and protect all of the Nation's citizens.

If the proposed legislation is enacted, the President of the United States and his appointees—particularly the Attorney General—would be granted the power to seriously impair the following civil rights of those who fall within the scope of the various titles of this bill:

1. The right of freedom of speech and freedom of the press concerning "discrimination or segregation of any kind" "at any establishment or place", as delineated in the bill (secs. 202-203).

2. The right of homeowners to rent, lease, or sell their homes as free individuals (secs. 601-602).

3. The right of realtors and developers of residential property to act as free agents (secs. 601-602).

4. The right of banks, savings and loan associations and other financial institutions to make loans and extend credits in accordance with their best judgment (secs. 601—602).

5. The right of employers "to hire or discharge any individual" and to determine "his compensation, terms, conditions, or privileges of employment" (title VII).

6. The seniority rights of employees in corporate and other employment (title VII, title VI via sec. 711 (b)).

7. The seniority rights of all persons under the Federal civil service (sec. 711 (a)).

8. The seniority rights of labor union members within their locals and in their apprenticeship programs (title II, title VI via sec. 711 (b)).

9. The right of labor unions to choose their members, to determine the rights accorded to their members, and to determine the relationship of their members to each other (title VII, title VI via sec. 711 (b)).

10. The right of farmers to freely choose their tenants and employees (title VI and title VII).

11. The right of farm organizations to choose their members, to determine the rights accorded to their members, and the relationship of their members to each other (title VI and title VII).

12. The right of boards of trustees of public and private schools and colleges to determine the handling of students and teaching staffs (title IV, title VI, title VII).

13. The right of owners of inns, hotels, motels, restaurants, cafeterias, lunchrooms, soda fountains, motion picture houses, theaters, concert halls, sports arenas, stadiums and other places of entertainment to freely carry on their businesses in the service of their customers (title II, title VI, and title VII).

14. The right of the States to determine the qualifications of voters in all Federal elections and many State elections (title I).

15. The right of litigants to receive evenhanded justice in the Federal courts; this legislation places civil rights litigants (*particularly the Attorney General*) in a special category with preferences and advantages not afforded parties in any other form of litigation (sec. 101 (d), title IX).

QUESTION:

What will Federal inspectors dictate to you — or else you will be penalized or go to jail?

ANSWER:

The depth, the revolutionary meaning of this act, is almost beyond description. It cannot be circumscribed, it cannot be said that it goes this far and no farther. The language written into the bill is not of that sort. It has open-end provisions that give it whatever depth and intensity one desires to read into it. In the language of the bill, "The President is authorized to take such action as may be appropriate to prevent * * *" (sec. 711 (b)), and "Each Federal department and agency * * * shall take action to effectuate * * *" (sec. 602). This vests, of course,

almost unlimited authority by the President and his appointees to do whatever they desire.

It is, in the most literal sense, revolutionary, destructive of the very essence of life as it has been lived in this country since the adoption of our Constitution. Because this is true, the undersigned members of this committee believe it wise to demonstrate, by example, the effects of this legislation on people; to demonstrate, by example, the meaning of lost liberty; to demonstrate, by example, the power in this bill to completely dominate the lives of even the least of us.

To this end, there follow nine examples of the effect of the bill upon persons covered by it. There might be offered innumerable examples, because this bill encompasses directly or indirectly nearly every American.

FARMERS

For more than 30 years, the American farmer has been under Federal regulation in many programs involving financial aid. Whether these regulations have served him well or poorly is a matter of divided opinion. In any event, regulation per se is nothing new to the farmer. *But this is a different kind of control. It is not related to the purposes for which the financial aid was rendered.*

If this bill is enacted the farmer (regardless of the number of his employees) would be required to hire people of all races, without preference for any race. If experience has taught the farmer that a member of one race is less reliable than a member of another race, does less for his pay, he will no longer be allowed to hire those he prefers for this reason. If he is of the belief that members of one race are more prone to accident, less trustworthy, more neglectful of duties, are, in short, less desirable employees than those of another race, he will no longer be allowed to exercise his independent judgment. Under the power conferred by this bill, *he may be forced to hire according to race,* to "racially balance" those who work for him *in every job classification* or be in violation of Federal Law.

The penalty for such violation can mean being excluded from every direct and indirect Federal "benefit." It can mean the calling of his bank loans, being shut off by blacklisting from the agencies of Government that recruit labor, the right to purchase supplies from farmer-associated businesses which may, themselves, be dependent in one degree or another on Federal financial assistance. In short, he will become a pariah, an outcast. He will employ those people a Federal inspector says he shall employ or his farm will be deprived of every vestage of Federal "aid," without which few farms, today, can successfully operate.

The agencies required to police farmers, under the directions of the Attorney General and the Commission on Civil Rights, are all (1) Banks for Cooperatives, (2) Federal Land Banks, (3) Federal Intermediate Credit Banks, (4) Production Credit Associations, (5) the Agricultural Stabilization and Conservation Service, (6) the Commodity Credit Corporation, (7) the Federal Crop Insurance Corporation, (8) the Agricultural Marketing Service, (9) the Farmers' Home Administration, (10) the Soil Conservation Service, and *all other* agencies or departments having to do with Federal financial assistance in the field of agriculture.

HOMEOWNERS

The right of homeowners in the United States to freely build, occupy, rent, lease, and sell their homes will be destroyed by this bill. Title VI will be construed by the administration to cover "land to be developed for residential use" and "the sale, leasing, rental, or other disposition of residential property and related facilities * * * or the occupancy thereof," whenever there is involved FHA or GI financing, financing by a national bank or any bank or savings and loan association covered by the FDIC or any other type of Federal financial support. The quotations are from Executive Order 11063, mentioned below.

Federal personnel (*not* the homeowner or his wife) will make decisions as to the personnel building the home, the renting of a single room or several rooms, as well as the rental, leasing, or sale of the home whenever race, color, or national origin is concerned. Federal personnel will also dictate the actions of realtors, developers, attorneys, and the lending institutions.

What of the right of property? What if the person who seeks to rent a room, lease or buy a home, is not,

in the eyes of the homeowner, trustworthy or desirable? If race, color, or national origin is involved—and, by the nature of things, these *must* be involved—the Federal inspector (not the homeowner or his wife) makes the decision. The alternative—foreclosure, blacklisting, cancellation of any Federal benefits under any program.

Already, without any legislative authority whatsoever, the President has issued Executive Order 11063 dated November 20, 1962, purporting to put all of the above into effect concerning an estimated 30 percent of the homebuilding in the United States. *This has been done in spite of the fact that Congress, on six different occasions, defeated amendments to then pending housing acts granting the President authority to so act.* If this bill is passed, it will validate that order. Moreover, it will give the President carte blanche to subject every homeowner to Federal control.

BANKS AND BANKERS

A dispassionate study of the power granted in this bill will convince a reasonable person that no bank could operate under its provisions without undue hardship.

If a bank under this bill were to deny employment, a loan, a line of credit or a sales contract to a person, it would have to prove its decision was based on facts that did not, in any way, discriminate against the rejected applicant because of his race. Among the penalties that could be imposed on the bank would be the *cancellation of the bank's Federal deposit insurance and its right to handle GI, FHA, and other Government-insured money.* The power granted in the bill goes further. If a small businessman, for instance, has been held in violation of the Federal civil rights law, under the provisions of this bill *the bank can be required to cease doing business with the culprit,* or else lose its FDIC protection for all its customers.

To illustrate, assume a bank extends a line of credit to finance construction of an apartment house. Assume a tenant is denied the privilege of leasing one of the apartments because his credit or character, in the opinion of the management, would make him an undesirable tenant. If the Federal inspector decided this amounted to discrimination, the FHA guarantee could be cancelled.

The agencies *required* to police banks and bankers, under the direction of the Attorney General and the Commission on Civil Rights, are all national banks, the Federal Deposit Insurance Corporation, the Federal Reserve System, the Federal Housing Administration, FNMA, and all similar agencies.

Among the institutions and agencies which would be required to conform to the act and police business and professional establishments are all banks, savings and loan associations, and other financial institutions served by the FDIC or the Federal Reserve System, the agencies administering GI, FHA, FNMA, SBA, and all other loans and programs involving Federal financial assistance. Withdrawal of protection or credit, foreclosure of loans, blacklisting, and similar sanctions may be expected.

LABOR UNIONS AND MEMBERS

To millions of working men and women, union membership is the most valuable asset they own. It is designed to insure job security and a rate of pay higher than they otherwise would receive. As none knows better than the union member, himself, these two benefits are dependent upon the system of seniority the unions have followed since their inception. Seniority is the base upon which unionism is founded. Without its system of seniority, a union would lose one of its greatest values to its members.

The provisions of this act grant the power to destroy union seniority. . . . With the full statutory powers granted by this bill, *the extent of actions which would be taken to destroy the seniority system is unknown and unknowable.*

To disturb this traditional practice is to destroy a vital part of unionism. Under the power granted in this bill, if a carpenters' hiring hall, say, had 20 men waiting call, the first 10 in seniority being white carpenters, the union could be forced to pass them over in favor of carpenters beneath them in seniority, but of the stipulated race. And if the union roster did not contain the names of the carpenters of the race needed to "racially balance" the job, the union agent must, then, go into the street and recruit members of the stipulated race in sufficient number to comply with Federal orders, else his local could be held in violation of Federal Law.

Neither competence nor experience is the key for

employment under this bill. Race is the principal, first, criterion.

Specific penalties are provided for violation of this bill (title VII). However, in addition, the President "is authorized to take such action as may be appropriate to prevent the committing or continuing of an unlawful employment practice" in connection with title VI of the bill (sec. 711 (b)). This, of course, amounts to practically unlimited authority. **Unions held in violation of this bill may lose their rights and benefits under such labor statutes as the National Labor Relations Act, the Railway Labor Act, the Davis-Bacon Act, the Walsh-Healey Act, and other legislation beneficial to labor. Representation rights and exclusive bargaining privileges could be cancelled. Unions could be denied access to NLRB or National Mediation Board procedures.**

Moreover, this bill affects unions from the other end, that of the employer, since the law applies to the employer, as well. It extends to railroads, motor carriers, airlines and steamship companies handling mail or other Government shipments, enterprises receiving loans from the Small Business Administration, construction contractors financed through FHA or GI home loan insurance, the rural electrification program and practically all others (secs. 601, 602).

Consequently, however meticulous a local union may be as pertains to *its* racial practice, if a contractor, for example, has been adjudged guilty of discrimination and must, therefore, hire 100 or 1,000 workers of a given race—in preference to all others—before his job becomes "racially balanced," it means the local which supplies his labor can send him only union members of that particular race—and the members of other races will sit until that number has been employed. If the union does not have among its membership the number required, it must recruit membership of that race to supply the contractor's needs. This is a specific instance of the Federal Government interfering in the contract rights of unions and employers.

By threat of contract cancellation and blacklisting, contractors could be forced to actively recruit employees of a specified race and upgrade them into skilled classifications, although this would displace union members in the skilled trades. Where skilled tradesmen of the specified race were not available from union sources, the agency could direct that they

be recruited from nonunion sources, notwithstanding existing union shop or exclusive referral agreements.

INDIVIDUALS AT WORK

Union members are not the only working people affected by this bill. All employees of private industry and apparently those under Federal civil service will be affected. Assume that a nonunion individual is employed by a corporation which has more than 25 people on its payroll (title VII), or is employed by a smaller corporation which has an SBA, FHA, or other federally supported loan or contract (title VI, sec. 711 (b)). Assume that his firm, in his job classification, historically has employed people only of his particular race, whatever that race may be. Assume that a demand is made that his firm abide by a Federal regulation requiring racial balance in his department. To comply—unless unneeded employees are to be hired—somebody has to go. Who? . . . .

HOTELS, RESTAURANTS, AND THEATERS

Places of "public accommodation" do not cater by custom to one race in preference to another solely from proprietary preference. People are in business to make money and in certain areas they have learned, or have reason to believe, it is more profitable to serve only one race or another. In other areas, proprietors have learned it is more profitable to serve all races, indiscriminately. A host follows the customs of his community else he suffers, economically.

To force him to abandon his practice, to run counter to prevailing opinion, is to injure his business and his property. He does not, and he cannot, set custom. He follows it or suffers.

Under the provisions of this bill, the proprietor's right to decide whom he will or will not serve, as that decision pertains to race, color, religion, or national origin, is stripped from him (title II). Moreover, if a customer proves objectionable, the owner can have him removed from his premises only at peril of being in violation of the race laws. For, under this act, the proprietor, if challenged, must prove he did not remove the objectionable customer because of his race, but because of some other reason. This is a perversion of the basic principles of our law. . . . .

How can a restaurant operate successfully if its

owner is not given freedom of choice in the selection of waiters, chefs, and cashiers? Although a restaurant serves, and advertises as its specialty, genuine southern dishes, under this bill the owner could not hire only Negro chefs if covered by sections 601, 602 or title VII. (See Labor Standard, p. 12.) He could not, even though the success of his business depended on such chefs; even though his patronage was built upon the belief the food was being prepared by Negro chefs whose culinary art with "southern" specialties is world renowned. He could be forced instead to hire in a "racially balanced" manner—so long as the potential employee had a modicum of skill—else be in violation of law. And a modicum of skill, it need not be added, is insufficient to attract clientele to a restaurant whose reputation is built upon the culinary art of southern Negro chefs.

THE PRESS

Race, as the first criterion of employment for newspapers, periodicals, radio and television, applies under this bill, as well as for other elements of our commerce. If a job applicant can write and there is an opening and if he is of the race called for to balance the makeup of the staff, that person must be employed in preference to someone of another race.

What such employment practices would do to the character of the newspaper or program is immediately apparent to those who earn their living in the world of mass media. Yet that is the sense of this bill. The bill grants the power to make it mandatory that the staff of a newspaper be thoroughly integrated, racially and religiously, else the owners are in violation of Federal law.

If the owners of a television station prefer an announcer of a certain race to enunciate its commercials, it is denied that choice. Announcers, as well as commentators, actors, and supporting staff, must be racially balanced, despite the fact the use of members of a certain race may, demonstrably, cause diminished sales to both station and sponsor.

Even so, this destruction of the right of free choice, serious as it is, is not the most fearsome feature of this bill as it applies to the press.

Title II, section 203, says: "No person shall * * * incite or aid or abet any person to do any of the foregoing," i.e., deny or attempt to deny any person any right or privilege described in the title.

Read that language as you will, if this becomes the law it means that no editor could with impunity editorialize in opposition to its provisions.

If a citizen takes a position in direct opposition to some provision of this title and a newspaper writes an editorial in support of that position, indeed, urges others to take similar stands, is that newspaper inciting, or aiding, or abetting? It would seem so (sec. 203 (a) (e)).

The fact of the matter is this: If a person stands in a public square or before a civic club and advocates that segregation is best for either race and urges that it be maintained—and his stand is editorially supported by a newspaper—*both* would be in violation of Federal law and *both would be subject to fine and imprisonment* (sec. 202, 203 (a) (e)), if they continue to exercise freedom of speech and of the press. Under such a circumstance, what becomes of the right of free speech? Or freedom of the press? Of course, this violates all constitutional concepts.

TEACHERS AND SCHOOLS—PUBLIC AND PRIVATE

The proposed legislation ultimately would result in total Federal control of the education processes in the United States.

Under provisions of this bill, the President and his appointees in Federal agencies would have the right to dictate pupil assignments in local schools and to approve the faculties (secs. 601, 602, 711 (b), title IV). The alternative would be the loss of all Federal aid (sec. 602). The child who is given lunch through Federal grant must also study under a federally approved faculty. This applies to every school, public or private, benefiting from programs involving Federal aid.

The power contained in this bill to cut off Federal funds is not merely a negative power. Those who have already accepted Federal funds can be compelled, in various instances, by foreclosure, injunction and blacklisting, to meet the current Federal standards (secs. 601, 602, Executive Order 11063).

The bill gives the Attorney General the power to institute school integration suits, not only against in-

dividuals but against States and local governments as well (sec. 407). This action gives to one man a power which has never before existed; previously the Attorney General could only intervene in private suits. This new power needless to add, can affect the rights of local school boards where no parents or pupils have filed any suits. Under this power the defendants could be deprived of the right of trial by jury. In any contempt actions arising out of U.S. suits, local school officials would be tried by the very judge whose order was allegedly disobeyed.

VETERANS BENEFITS AND SOCIAL SECURITY

Title VI amends every act authorizing veterans benefits, veterans and civil service pensions, health and welfare programs, unemployment compensation, and social security benefits so as to subject them to the controls and sanctions provided in the bill such as *"the termination of or refusal to grant or to continue assistance under such program"* (sec. 602).

QUESTION:

How does this drastic legislation bring about these results?

ANSWER:

In brief, the proposed bill now reported to the House by the committee does the following:

1. Amends every Federal statute setting up or appropriating money for any program or activity involving Federal financing by a mandatory requirement that every Federal department and agency "shall take action to effectuate" the purposes of the act (secs. 601 -602). Persons with less than 25 employees are not excepted from this title of the bill. This makes available to the President and his chief law enforcement officer, the Attorney General, enormous and unlimited funds for sociological manipulation in the field of civil rights.

2. The various definitions contained in the bill, particularly titles II and VII, would extend "interstate commerce" so as to encompass substantially all intrastate commerce and thus bring under Federal control all phases of commerce, whether interstate or intrastate. Actions of any persons under color of local custom or usage, or which are encouraged, fostered, or

required by any state or political sub-division thereof are classified as "State action" and subject to Federal control. This authority, if granted, would extend Federal control into the business and the home of almost every individual in the United States (secs. 201 and 202).

3. The reported bill creates an Equal Employment Opportunity Commission to police and control the hiring, discharge, and terms of compensation, conditions and privileges of employment of all persons employed by any business or industry "affecting commerce" and which has 25 or more employees (title VII). The administration's original bill was much more limited, in that it applied only to employers involved in programs and activities financially assisted by the Federal Government. The Commission is to be supported by $2,500,000 for the first year and $10 million per year thereafter. The power granted by this title, if invoked, would destroy seniority in unions, corporate employment and apparently in civil service. Precedents destroying seniority have already been set in limited fields by Executive orders and administrative regulations. The exception of employers who have less than 25 employees (the exception is fixed at 100 employees for the first year and 50 employees for the second year) does not apply to those participating in any program or activity receiving Federal financial assistance by way of grant, contract, or loan under title VI coupled with section 711 (b).

4. The reported bill draws under Federal control inns, hotels, motels and other lodging houses, restaurants, cafeterias, lunchrooms, soda fountains, gasoline stations, motion picture houses, concert halls, theaters, sports arenas, stadiums, and other places of exhibition and entertainment. It also includes *any other* establishment located within the premises of a covered establishment or on the premises of which a covered establishment is located (title II). It destroys the right of owners of such establishments to serve whomsoever they please. If this action is proper, it should logically apply across the board. Hence the exception of lodging establishments actually occupied by the proprietor which contain not more than five rooms for rent is clearly included for political purposes. This constitutes one form of discrimination.

5. A combination of (*a*) conferring new powers upon the U.S. Commissioner of Education (title IV),

(*b*) requiring action by every agency and department of the Federal Government administering activities or programs involving Federal financial assistance (title VI), and (*c*) granting unlimited authority to the President to take whatever action he deems to be appropriate concerning employment in such programs (sec. 711 (b)), results in the following: Public and private schools and colleges benefiting from any Federal financial program are placed under Federal control in the handling of pupils and the selection of faculty members insofar as they relate to race, color, or national origin and desegregation or discrimination in connection therewith.

6. The bill is designed to divest from State authorities and invest in Federal authorities the determination of the qualification of voters in all Federal elections and many State elections (title I). It has been framed to include all State and local elections where any Federal election is held as a part thereof. It appears that this title would affect the election of State or local officials in 46 States ("The Book of the States, 1962–63", p. 23–25). These are Alabama, Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.

7. The power of the Attorney General to file suits in the name of or in behalf of the United States is broadened so that, if this bill is enacted, such suits could be filed by him affecting voting (under existing authority), "places of public accommodation" (sec. 204), all public facilities (sec. 301), education (sec. 407), and, apparently, all programs and activities assisted by Federal financing (sec. 711 (b)).

8. The orderly and usual procedures in litigation in Federal courts are varied to place civil rights actions in a special preferred category (sec. 101 (d), sec. 203, sec. 707, and title IX).

The most flagrant and dangerous departure from accepted rules of civil procedure is embodied in title IX. Under existing law, certain civil or criminal ac-

tions brought in the State courts may be removed to the Federal court in the district and division in which the action is pending. The law of removal provides that immediately upon the filing of a removal petition by the defendant and the posting of a minimum bond, the State court is divested of jurisdiction to proceed. No process of any kind can issue by the State court, no depositions can be taken, hearings scheduled or in process must be suspended and the State court is powerless to maintain the status quo. Title 28, section 1447 (d) presently provides that an order of remand to the State court is "not reviewable on appeal or otherwise." This enables the State court upon remand by the Federal district court to promptly resume jurisdiction and proceed with the disposition of the cause and the enforcement of its orders. Any Federal questions are reviewable by the Federal courts through regular channels.

Title IX would add to section 1447 (d) the words, "except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise." Thus the jurisdiction of the State courts (in these cases alone) could be nullified for months by the simple filing of a petition to remove, followed by an *adverse* order of the U.S. district court, even though followed by an *adverse* judgment of the U.S. court of appeals upon the appeal. This seemingly simple amendment would permit the whim of the civil rights litigants (*and none other*) to destroy the efficacy of State courts. For all of the years past this right has been reserved to the U.S. district courts, on the motion to remand, and not to the litigant.

It should be noted that the administration bill contained references to "racial imbalance" in connection with desegregation in public education. The subcommittee proposal and the reported bill have omitted this reference. It appears that this action is a matter of "public relations" or semantics, devised to prevent the people of the United States from recognizing the bill's true intent and purpose. Ostensibly, the administration intends to rely upon its own construction of "discrimination" as including the lack of racial balance, as distinguished from a statutory reference to "racial imbalance." . . .

The method which the administration intends to employ to attain "racial balance" is illustrated by the

standards proposed by the Secretary of Labor on October 25, 1963, pursuant to 29 U.S.C. 22, concerning union apprenticeship programs. These standards require, "The selection of apprentices on the basis of qualifications alone * * * unless the selections otherwise made would themselves demonstrate that there is equality of opportunity," and *"The taking of whatever steps are necessary,* in acting upon application lists developed prior to this time, *to remove the effects of previous practices under which discriminatory patterns of employment may have resulted."*

It will be noted that the word "discrimination" is nowhere defined in the bill.

QUESTION:

Is it political propaganda that this bill is "moderate" or "watered down" or is it as harsh and vicious as prior proposals?

ANSWER:

We will compare in detail, title by title, the reported bill with the subcommittee proposal which was rejected as extreme and unacceptable. Before doing so, we will make a short comparison of the most radical departures in the reported bill from the earlier adminstration bills and the subcommittee proposal.

On February 28, 1963, the President transmitted his long-awaited civil rights message to the 88th Congress and on April 4 the chairman of this committee introduced the Civil Rights Act of 1963 as H.R. 5455 and 5456. The legislation thus recommended and introduced included only an extension of the life of the Commission on Civil Rights for 4 years, certain amendments of its duties and the unconstitutional provisions concerning voting later embodied in title I of H.R. 7152, including the temporary voting referee provision. This was the sum and total of the legislation recommended as necessary in the field of civil rights by the President. Every legal, constitutional, and public policy reason which may have existed for civil rights legislation on June 10 also existed on February 28 and April 4. Yet on June 19 President Kennedy transmitted another message to Congress on civil rights and on June 21 there was introduced H. R. 7152 as the administration bill embodying new radical and far-reaching proposals.

Later, even more radical, unconstitutional, and

vicious proposals were added in the substitute proposed by Subcommittee No. 5. As the reported bill has been widely hailed as a "moderate" and "watered down" bill, we summarize for the convenience of the House the most far-reaching provisions thereof added to either H.R. 7152 as introduced or to the subcommittee proposal.

1. The reported bill changed the words "any election" in the subcommittee proposal back to the words "any Federal election" used in the administration bill wherever they appeared in title I. However, there was inserted a definition that "the words 'Federal election' shall mean any general, special or primary election held solely *or in part* for the purpose of electing or selecting any candidate for the office of President, Vice President, presidential elector, Member of the senate, or Member of the House of Representatives" (sec. 101 (c)). Hence, as detailed elsewhere herein, the reported bill is thus drafted to make the provisions of title I concerning voting applicable to election of State or county officials in 46 States.

2. There was added in the reported bill in section 101(d) the unprecedented provision that, "In any proceeding instituted in any district court of the United States under this section the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case." This did not appear in any previous version of the bill.

3. There was added in the reported bill section 202 which did not appear in any previous version of the bill. This section would make unlawful "discrimination or segregation of any kind on the ground of race, color, religion, or natural origin" *"at any establishment or place,"* if either purports to be required by any rule, order, etc., of any State or any agency or political subdivision thereof. This section is not limited to public places or facilities. As hereinafter pointed out, under the penal provisions of section 203, this amounts to an unconstitutional abridgement of freedom of speech, freedom of the press, and attempted Federal control of State and municipal judges and law enforcement officers.

4. The reported bill brings forward the language inserted in the subcommittee proposal, making it the mandatory duty of every Federal department or agency to utilize the funds provided for Federal

financial assistance in every program or activity to enforce civil rights requirements (sec. 602). Such mandatory requirement did not appear in the administration bill. The purported "moderation" of the section consisted chiefly of changing words describing such assistance from "by way of grant, contract, loan, insurance, guaranty, or otherwise" to the words "by way of grant, contract or loan." As hereinafter pointed out, those signing this report have not been able to ascertain any program involving Federal "insurance" or guaranty" that does not involve a "contract." Hence this change appears to have little or no effect.

5. The reported bill is drawn to attempt to utilize the dual basis of interstate commerce and "State action" for its regulation of places of public accommodation and to classify such places as subject to governmental regulation, as was the subcommittee substitute (sec. 201). As detailed elsewhere in this report, as to State action the words "authorization, permission or license" have been changed to "custom or usage," and the words "compelled, encouraged, or sanctioned" by a State have been changed to "required, fostered, or encouraged" by action of a State. As to interstate commerce, the reported bill broadens some of the language attempting to make all commerce interstate commerce. There does not appear to be any moderation of this title, but a strengthening of its provisions, with the exception that its coverage has been narrowed to the named establishments and the "catchall" phrases of the subcommittee proposal have been omitted.

6. There has been added to the reported bill a provision as section 711 (b) giving the President unlimited powers of enforcement concerning Federal financially assisted programs and activities in relation to the provisions of title VII "Equal Employment Opportunity." This did not appear in the subcommittee proposal. The change from administrative procedures before a board within the Equal Employment Opportunity Commission to proceeding before a master in the Federal district courts is discussed elsewhere herein.

7. As hereinafter detailed, the powers of the Attorney General to file suits in the name of the United States within the scope of the various titles of the bill exceed the powers requested in the administration bill and, in a number of instances, are broadened beyond

the subcommittee proposal, but title III of the subcommittee proposal, extending the right of filing of such suits far beyond the scope of the bill has been deleted.

8. There are brought forward into the reported bill from the subcommittee proposal numerous provisions attempting to nullify State administrative and court proceedings and giving preference in the Federal courts to civil rights litigants, as hereinafter detailed.

9. The effect of the bill upon public and private schools and colleges (title IV and title VI) has not been "moderated." It has been extended and harshened by the addition of section 711 (b), giving the President unlimited powers.

QUESTION:

Is this bill constitutional?

ANSWER:

The destruction of individual liberty and freedom of choice resulting from the almost limitless extension of Federal Government control over individuals and business, rather than being in support of the Bill of Rights, is directly contrary to the spirit and intent thereof.

Judge Learned Hand, in 1958, said in his "Oliver Wendell Holmes Lectures":

> * * * the Bill of Rights is concerned only with the protection of the individual against the impact of Federal and State law.

Dean Roscoe Pound, dean emeritus of Harvard University School of Law, said in 1957 in his "The Development of Constitutional Guarantees of Liberty":

> Analytically the bills of rights are bills of liberties. They define circumstances and situations and occasions in which politically organized society will keep its hands off and permit free, spontaneous, individual activity; they guarantee that the agents and agencies of politically organized society will not do certain things and will not do certain other things otherwise than in certain ways.

In determing whether this bill should be adopted, it must be remembered that when legislation is enacted designed to benefit one segment or class of a

society, the usual result is the destruction of co-existing rights of the remainder of that society. One freedom is destroyed by governmental action to enforce another freedom. The governmental restraint of one individual at the behest of another implies necessarily the restriction of the civil liberties and the destruction of civil rights of the one for the benefit of the other. This legislation, then, brings to mind the wise statement of George Washington:

> Government is not reason, it is not eloquence—it is force. Like fire, it is a dangerous servant and a fearful master. . . . .

Space will not permit the full presentation of authorities demonstrating the unconstitutionality of the provisions of H.R. 7152 as reported to the House. There are certain portions of this legislation so clearly unconstitutional that we give a brief summary below:*

Space will not permit further citation of authorities or discussion of the many other phases of this legislation which are unconstitutional. Titles I and II have been discussed in this report as illustrative of the total disregard of the Constitution of the United States by those who drafted this legislation. We will not burden this report with further authorities.

If this bill is enacted, the basic and fundamental power of the States and the power of our local governments to regulate business and to govern the relation of individuals to each other will have been preempted.

In all the years Congress has pondered the equities of civil rights legislation, no committee has ever suggested for the executive such totality of power as is embodied in this package of legislation. Grant it, and our fire ball of liberty will spin into darkness, suffocate. For our Republic cannot live without breath and the breath of our Republic is personal liberty and personal responsibility.

E. E. Willis, M.C.
E. L. Forrester, M.C.
Wm. M. Tuck, M.C.
Robert T. Ashmore, M.C.
John Dowdy, M.C.
Basil L. Whitener, *M.C.*

*At this point the committee report includes citations of numerous decisions of the Supreme Court of the United States demonstrating that this legislation is unconstitutional.

If you want to maintain your personal liberty—your right of free choice—write your Senators (both of them) and your Congressman and tell them you are opposed to The Civil Rights Bill. Tell them why.

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